

116TH CONGRESS
1ST SESSION

S. 2165

To enhance protections of Native American tangible cultural heritage, and
for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 18, 2019

Mr. HEINRICH (for himself, Ms. MURKOWSKI, Ms. BALDWIN, Mr. DAINES,
Mr. SCHATZ, Ms. MCSALLY, Mr. UDALL, and Mr. LANKFORD) introduced
the following bill; which was read twice and referred to the Committee
on Indian Affairs

A BILL

To enhance protections of Native American tangible cultural
heritage, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Safeguard Tribal Ob-
5 jects of Patrimony Act of 2019”.

6 **SEC. 2. PURPOSE.**

7 It is the purpose of this Act—

8 (1) to carry out the United States trust respon-
9 sibility to Indian Tribes;

1 (2) to increase the maximum penalty for actions
2 taken in violation of the Native American Graves
3 Protection and Repatriation Act (25 U.S.C. 3001 et
4 seq.) (including section 1170 of title 18, United
5 States Code, as added by the Native American
6 Graves Protection and Repatriation Act), in order to
7 strengthen deterrence;

8 (3) to make internationally applicable the Na-
9 tive American Graves Protection and Repatriation
10 Act (25 U.S.C. 3001 et seq.) (including section 1170
11 of title 18, United States Code, as added by the Na-
12 tive American Graves Protection and Repatriation
13 Act), the Archaeological Resources Protection Act of
14 1979 (16 U.S.C. 470aa et seq.), and the Antiquities
15 Act under section 1866(b) of title 18, United States
16 Code, to facilitate the international repatriation of
17 Native American cultural items, Native American
18 archaeological resources, and Native American ob-
19 jects of antiquity;

20 (4) to access other countries' domestic laws and
21 law enforcement mechanisms to facilitate inter-
22 national repatriation by explicitly prohibiting the ex-
23 portation of Native American cultural items obtained
24 in violation of the Native American Graves Protec-
25 tion and Repatriation Act (25 U.S.C. 3001 et seq.)

1 (including section 1170 of title 18, United States
2 Code, as added by the Native American Graves Pro-
3 tection and Repatriation Act), Native American ar-
4 chaeological resources obtained in violation of the
5 Archaeological Resources Protection Act of 1979 (16
6 U.S.C. 470aa et seq.), and Native American objects
7 of antiquity obtained in violation of the Antiquities
8 Act under section 1866(b) of title 18, United States
9 Code, and by creating an export certification system;
10 (5) to confirm the authority of the President to
11 request from foreign nations agreements or provi-
12 sional measures under the Convention on the Means
13 of Prohibiting and Preventing the Illicit Import, Ex-
14 port, and Transfer of Ownership of Cultural Prop-
15 erty (823 U.N.T.S. 231 (1972)), to facilitate the re-
16 turn of Native American cultural items obtained in
17 violation of the Native American Graves Protection
18 and Repatriation Act (25 U.S.C. 3001 et seq.) (in-
19 cluding section 1170 of title 18, United States Code,
20 as added by the Native American Graves Protection
21 and Repatriation Act), Native American archae-
22 ological resources obtained in violation of the Ar-
23 chaeological Resources Protection Act of 1979 (16
24 U.S.C. 470aa et seq.), and Native American objects
25 of antiquity obtained in violation of the Antiquities

1 Act under section 1866(b) of title 18, United States
2 Code;

3 (6) to establish a Federal framework in order
4 to support individuals' and organizations' voluntary
5 return of items of tangible cultural heritage, which
6 need not be obtained in violation of the Native
7 American Graves Protection and Repatriation Act
8 (25 U.S.C. 3001 et seq.) (including section 1170 of
9 title 18, United States Code, as added by the Native
10 American Graves Protection and Repatriation Act),
11 the Archaeological Resources Protection Act of 1979
12 (16 U.S.C. 470aa et seq.), or the Antiquities Act
13 under section 1866(b) of title 18, United States
14 Code;

15 (7) to establish an interagency working group
16 to ensure communication between all Federal agen-
17 cies to successfully implement the Native American
18 Graves Protection and Repatriation Act (25 U.S.C.
19 3001 et seq.) (including section 1170 of title 18,
20 United States Code, as added by the Native Amer-
21 ican Graves Protection and Repatriation Act), the
22 Archaeological Resources Protection Act of 1979 (16
23 U.S.C. 470aa et seq.), and the Antiquities Act under
24 section 1866(b) of title 18, United States Code;

1 (8) to establish a Tribal working group to pro-
2 vide recommendations regarding implementation of
3 the Native American Graves Protection and Repatri-
4 ation Act (25 U.S.C. 3001 et seq.) (including section
5 1170 of title 18, United States Code, as added by
6 the Native American Graves Protection and Repatri-
7 ation Act), the Archaeological Resources Protection
8 Act of 1979 (16 U.S.C. 470aa et seq.), and the An-
9 tiquities Act under section 1866(b) of title 18,
10 United States Code; and

11 (9) to create a Freedom of Information Act ex-
12 emption for information submitted by Indian Tribes
13 pursuant to this Act.

14 **SEC. 3. DEFINITIONS.**

15 In this Act, the following definitions apply:

16 (1) CULTURAL AFFILIATION.—The term “cul-
17 tural affiliation” has the meaning given the term in
18 section 2 of the Native American Graves Protection
19 and Repatriation Act (25 U.S.C. 3001).

20 (2) INDIAN TRIBE.—The term “Indian
21 Tribe”—

22 (A) has the meaning given the term “In-
23 dian tribe” in section 2 of the Native American
24 Graves Protection and Repatriation Act (25
25 U.S.C. 3001); and

1 (B) includes “Native Hawaiian organiza-
 2 tion” as that term is defined in section 2 of the
 3 Native American Graves Protection and Repa-
 4 triation Act (25 U.S.C. 3001).

5 (3) ITEM REQUIRING EXPORT CERTIFI-
 6 CATION.—The term “Item Requiring Export Certifi-
 7 cation” means—

8 (A) a Native American “cultural item” as
 9 defined in section 2 of the Native American
 10 Graves Protection and Repatriation Act (25
 11 U.S.C. 3001);

12 (B) a Native American “archaeological re-
 13 source” as defined in section 3 of the Archae-
 14 ological Resources Protection Act of 1979 (16
 15 U.S.C. 470bb); or

16 (C) a Native American “object of antiq-
 17 uity” within the meaning of section 1866(b) of
 18 title 18, United States Code.

19 (4) ITEM PROHIBITED FROM EXPORTATION.—
 20 The term “Item Prohibited from Exportation”
 21 means—

22 (A) a Native American “cultural item” as
 23 defined in section 2 of the Native American
 24 Graves Protection and Repatriation Act (25
 25 U.S.C. 3001) and obtained in violation of the

1 Native American Graves Protection and Repa-
2 triation Act (25 U.S.C. 3001 et seq.) (including
3 section 1170 of title 18, United States Code, as
4 added by the Native American Graves Protec-
5 tion and Repatriation Act);

6 (B) a Native American “archaeological re-
7 source” as defined in section 3 of the Archae-
8 ological Resources Protection Act of 1979 (16
9 U.S.C. 470bb) and obtained in violation of the
10 Archaeological Resources Protection Act of
11 1979 (16 U.S.C. 470aa et seq.);

12 (C) a Native American “object of antiq-
13 uity” within the meaning of and obtained in
14 violation of the Antiquities Act under section
15 1866(b) of title 18, United States Code; or

16 (D) a Native American “cultural item” as
17 defined in section 2 of the Native American
18 Graves Protection and Repatriation Act (25
19 U.S.C. 3001), Native American “archaeological
20 resource” as defined in section 3 of the Archae-
21 ological Resources Protection Act of 1979 (16
22 U.S.C. 470bb), or Native American “object of
23 antiquity” within the meaning of the Antiq-
24 uities Act under section 1866(b) of title 18,

1 United States Code, that is under active Fed-
2 eral investigation.

3 (5) NATIVE AMERICAN.—The term “Native
4 American”—

5 (A) has the meaning given the term in sec-
6 tion 2 of the Native American Graves Protec-
7 tion and Repatriation Act (25 U.S.C. 3001);
8 and

9 (B) includes “Native Hawaiian” as that
10 term is defined in section 2 of the Native Amer-
11 ican Graves Protection and Repatriation Act
12 (25 U.S.C. 3001).

13 (6) SECRETARY.—The term “Secretary” means
14 the Secretary of the Interior.

15 (7) TANGIBLE CULTURAL HERITAGE.—The
16 term “tangible cultural heritage” means—

17 (A) Native American human remains; or

18 (B) culturally, historically, or
19 archaeologically significant objects, resources,
20 patrimony, or other items that are affiliated
21 with a Native American culture.

22 **SEC. 4. ENHANCED NAGPRA PENALTIES.**

23 Section 1170 of title 18, United States Code, is
24 amended by striking “5 years” each place it appears and
25 inserting “10 years”.

1 **SEC. 5. EXPORT PROHIBITION AND CERTIFICATION SYS-**
2 **TEM AND INTERNATIONAL AGREEMENTS.**

3 (a) EXPORT PROHIBITIONS.—

4 (1) IN GENERAL.—It shall be unlawful for any
5 person to export or otherwise transport from the
6 United States any Item Prohibited from Expor-
7 tation.

8 (2) PENALTIES.—Any person who violates
9 paragraph (1) shall be fined in accordance with sec-
10 tion 3571 of title 18, United States Code, and shall
11 be imprisoned for not more than 1 year for a first
12 violation and not more than 10 years for a second
13 or subsequent violation.

14 (b) EXPORT CERTIFICATION SYSTEM.—

15 (1) EXPORT CERTIFICATION REQUIREMENT.—

16 (A) IN GENERAL.—No Item Requiring Ex-
17 port Certification may be exported from the
18 United States without first having obtained an
19 export certification in accordance with this sub-
20 section.

21 (B) PUBLICATION.—The Secretary shall,
22 in consultation with Indian Tribes, publish in
23 the Federal Register a notice that includes—

24 (i) a description of characteristics typ-
25 ical of Items Requiring Export Certifi-
26 cation, which shall be sufficiently specific

1 and precise to ensure an export certifi-
2 cation is required only of such Items Re-
3 quiring Export Certification and that fair
4 notice is given to exporters and other per-
5 sons as to which items require an export
6 certification under this paragraph; and

7 (ii) a description of characteristics
8 typical of items that do not qualify as
9 Items Requiring Export Certification and
10 therefore do not require an export certifi-
11 cation under this paragraph, which shall—

12 (I) clarify that objects made for
13 commercial purposes generally do not
14 qualify as an Item Requiring Export
15 Certification; and

16 (II) clarify that in some cir-
17 cumstances receipts or certifications
18 issued by Indian Tribes may be used
19 as evidence to demonstrate a par-
20 ticular item does not qualify as an
21 Item Requiring Export Certification.

22 (2) ELIGIBILITY FOR EXPORT CERTIFI-
23 CATION.—An Item Requiring Export Certification is
24 not an Item Prohibited from Exportation and is

1 therefore eligible for an export certification if it is
2 not under ongoing Federal investigation and it—

3 (A) was not obtained within the time and
4 location provenance parameters of the Native
5 American Graves Protection and Repatriation
6 Act (25 U.S.C. 3001 et seq.) (including section
7 1170 of title 18, United States Code, as added
8 by the Native American Graves Protection and
9 Repatriation Act), the Archaeological Resources
10 Protection Act of 1979 (16 U.S.C. 470aa et
11 seq.), or the Antiquities Act under section
12 1866(b) of title 18, United States Code, and
13 the export of the Item Requiring Export Cer-
14 tification would not otherwise violate any other
15 provision of law;

16 (B) was excavated or removed pursuant to
17 a permit issued under section 4 of the Archae-
18 ological Resources Protection Act of 1979 (16
19 U.S.C. 470cc) or section 320302 of title 54,
20 United States Code, or in compliance with sec-
21 tion 3(c) of the Native American Graves Pro-
22 tection and Repatriation Act (25 U.S.C.
23 3002(c)), if the permit for excavation or re-
24 moval authorizes export, and the export of the

Item Requiring Export Certification would not otherwise violate any other provision of law; or

(C) is accompanied by written confirmation from an Indian Tribe that the exporter has a right of possession, as defined in section 2 of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001), or that the Indian Tribe has relinquished title or control, as provided for in section 3 of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3002), of the Item Requiring Export Certification, and the export of the Item Requiring Export Certification would not otherwise violate any other provision of law.

(3) EXPORT CERTIFICATION APPLICATION AND ISSUANCE PROCEDURES.—

(A) APPLYING FOR EXPORT CERTIFICATION.—

(i) ATTESTATION.—

(I) IN GENERAL.—With respect to each Item Requiring Export Certification to be exported from the United States, the exporter shall make an attestation (on an attestation form described in subclause (III))

1 that, to the best of the exporter's
2 knowledge and belief, the exporter is
3 not exporting an Item Prohibited from
4 Exportation.

5 (II) CONSEQUENCES OF FALSE
6 STATEMENT.—Any willful or knowing
7 false statement made on an attesta-
8 tion form under subclause (I) shall—

9 (aa) subject the exporter to
10 criminal penalties pursuant to
11 section 1001 of title 18, United
12 States Code; and

13 (bb) prohibit the exporter
14 from receiving an export certifi-
15 cation for any Item Requiring
16 Export Certification through at-
17 testation alone in the future.

18 (III) ATTESTATION FORM.—An
19 attestation form shall describe and
20 provide pictures of each Item Requir-
21 ing Export Certification. The Sec-
22 retary shall consult with Indian
23 Tribes in designing the attestation
24 form.

1 (ii) ADDITIONAL EVIDENCE.—If attes-
2 tation alone is no longer permitted or an
3 export certification is delayed or denied,
4 notice shall be given to the exporter, who
5 may provide the Secretary with evidence to
6 establish that the Item Requiring Export
7 Certification is not an Item Prohibited
8 from Exportation.

9 (B) AVAILABILITY OF APPLICATIONS.—
10 The Secretary shall make each export certifi-
11 cation application available to Indian Tribes via
12 a secure website immediately after each export
13 certification application has been submitted.

14 (C) ISSUANCE OF EXPORT CERTIFI-
15 CATION.—The Secretary, in consultation with
16 Indian Tribes, may issue an export certification
17 for an Item Requiring Export Certification that
18 is not an Item Prohibited from Exportation and
19 is therefore eligible for export.

20 (D) REVOCATION OF EXPORT CERTIFI-
21 CATION.—If credible evidence is provided that
22 indicates an item that received an export certifi-
23 cation qualifies as an Item Prohibited from Ex-
24 portation, the Secretary may immediately re-
25 voke the export certification. In making a deter-

1 mination about whether revocation is war-
2 ranted, Indian Tribes shall be consulted.

3 (4) SEIZURE, FORFEITURE, AND RETURN.—

4 (A) SEIZURE.—Any Item Requiring Ex-
5 port Certification that an exporter attempts to
6 export without an export certification shall be
7 subject to seizure by the U.S. Customs and
8 Border Protection.

9 (B) FORFEITURE.—An item found to qual-
10 ify as an Item Prohibited from Exportation
11 shall be forfeited, consistent with chapter 46 of
12 title 18, United States Code, to the Federal
13 Government and repatriated to the Indian
14 Tribe pursuant to the process provided for
15 under the law under which it is found to be ob-
16 tained in violation.

17 (C) RETURN TO EXPORTER.—An Item Re-
18 quiring Export Certification that is seized
19 under subparagraph (A) for which credible evi-
20 dence does not establish within 60 days that it
21 is an Item Prohibited from Exportation shall be
22 returned to the exporter but shall not receive an
23 export certification at that time.

24 (5) ADMINISTRATIVE APPEAL.—If the Secretary
25 denies an export certification or seizes an Item Re-

1 quiring Export Certification under this subsection,
2 the exporter shall upon request be given a hearing
3 on the record under such rules and regulations as
4 the Secretary may promulgate.

5 (6) FEES.—Reasonable fees may be collected
6 for the processing of export certification applications
7 under this subsection.

8 (7) TRAINING.—The Secretary of Homeland
9 Security, acting through the Commissioner of U.S.
10 Customs and Border Protection, shall require all ap-
11 propriate personnel of U.S. Customs and Border
12 Protection to participate in training to identify
13 Items Requiring Export Certification for purposes of
14 this Act and the amendment made by this Act. In-
15 dian Tribes shall be consulted in developing and de-
16 livering such trainings.

17 (8) VOLUNTARY RETURN.—Whoever seeks to
18 export an Item Requiring Export Certification with-
19 out a required export certification but voluntarily re-
20 turns it to the Indian Tribe with a likely cultural af-
21 filiation prior to active Federal investigation shall
22 not be prosecuted for such violation with respect to
23 the Item Requiring Export Certification. The export-
24 er's application to obtain an export certification does

1 not qualify as triggering an active Federal investiga-
2 tion.

3 (c) AGREEMENTS TO REQUEST RETURN FROM FOR-
4 EIGN COUNTRIES.—The President is authorized to re-
5 quest from a State Party agreements or provisional meas-
6 ures pursuant to the Convention on the Means of Prohib-
7 iting and Preventing the Illicit Import, Export, and Trans-
8 fer of Ownership of Cultural Property (823 U.N.T.S. 231
9 (1972)), subject to the limitations of Articles 6 and 9,
10 under which the President may request the return from
11 the State Party of Items Prohibited from Exportation.

12 (d) RULES AND REGULATIONS.—All rules and regu-
13 lations necessary and appropriate to carry out the provi-
14 sions of this section shall be prescribed by the Secretary
15 and shall be made in consultation with Indian Tribes.

16 **SEC. 6. VOLUNTARY RETURN OF TANGIBLE CULTURAL**
17 **HERITAGE.**

18 (a) LIAISON.—The Secretary and the Secretary of
19 State shall each designate a liaison to facilitate the vol-
20 untary return of tangible cultural heritage.

21 (b) TRAININGS AND WORKSHOPS.—The individuals
22 listed in subsection (a) shall hold trainings and workshops
23 for representatives of Indian Tribes and collectors, deal-
24 ers, and other individuals and organizations regarding the
25 voluntary return of tangible cultural heritage.

1 (c) REFERRALS.—

2 (1) IN GENERAL.—The Secretary shall refer in-
3 dividuals and organizations to one or more Indian
4 Tribes with a likely cultural affiliation to tangible
5 cultural heritage for the purpose of facilitating the
6 voluntary return of tangible cultural heritage.

7 (2) REFERRAL REPRESENTATIVES.—The Sec-
8 retary shall compile a list of representatives from
9 each Indian Tribe for purposes of referral under
10 paragraph (1).

11 (3) CONSULTATION.—The Secretary shall con-
12 sult with Indian Tribes before making a referral
13 under paragraph (1).

14 (4) THIRD-PARTY EXPERTS.—The Secretary
15 may utilize third parties with relevant expertise, in-
16 cluding universities, museums, dealers, collector or-
17 ganizations, and others, in making determinations
18 regarding to which Indian Tribe an individual or or-
19 ganization should be referred under paragraph (1).

20 (d) LEGAL LIABILITY.—This section shall not impose
21 additional penalties or legal liability.

22 (e) TAX DOCUMENTATION.—The Secretary's vol-
23 untary return facilitation shall include provision of tax
24 documentation for a deductible gift to an Indian Tribe.

1 (f) REPATRIATION UNDER NATIVE AMERICAN
2 GRAVES PROTECTION AND REPATRIATION ACT.—The vol-
3 untary return provisions of this section shall apply to a
4 specific item of tangible cultural heritage only to the ex-
5 tent that the repatriation provisions under section 7 of the
6 Native American Graves Protection and Repatriation Act
7 (25 U.S.C. 3005) do not apply to such item of tangible
8 cultural heritage.

9 **SEC. 7. INTERAGENCY WORKING GROUP.**

10 (a) IN GENERAL.—The Secretary shall convene an
11 interagency working group consisting of representatives
12 from the Departments of the Interior, Justice, State, and
13 Homeland Security.

14 (b) GOALS.—The goals of the working group are—

15 (1) to facilitate repatriation to Indian Tribes of
16 items that have been illegally removed or trafficked
17 in violation of law;

18 (2) to protect such items still in Indian Tribes'
19 possession; and

20 (3) to improve Federal agencies' implementa-
21 tion of the Native American Graves Protection and
22 Repatriation Act (25 U.S.C. 3001 et seq.) (including
23 section 1170 of title 18, United States Code, as
24 added by the Native American Graves Protection
25 and Repatriation Act), the Archaeological Resources

1 Protection Act of 1979 (16 U.S.C. 470aa et seq.),
2 the Antiquities Act under section 1866(b) of title 18,
3 United States Code, and other relevant laws.

4 (c) RESPONSIBILITIES.—The interagency working
5 group shall aid in implementation of other provisions of
6 this Act or the amendments made by this Act, including
7 regarding voluntary return and halting international sales,
8 and shall collaborate with the Tribal working group cre-
9 ated pursuant to this Act.

10 **SEC. 8. TRIBAL WORKING GROUP.**

11 (a) IN GENERAL.—The Secretary shall convene a
12 Tribal working group consisting of representatives of In-
13 dian Tribes to advise the Federal Government.

14 (b) RECOMMENDATIONS.—The Tribal working group
15 convened under subsection (a) may provide recommenda-
16 tions regarding—

17 (1) the voluntary return of tangible cultural
18 heritage by collectors, dealers, and other individuals
19 and non-Federal organizations that hold such tan-
20 gible cultural heritage; and

21 (2) the elimination of illegal commerce in the
22 United States and foreign markets.

23 (c) REQUESTS.—The Tribal working group convened
24 under subsection (a) may make formal requests to initiate
25 certain agency actions, including—

1 (1) requesting the Department of Justice ini-
2 tiate judicial proceedings domestically or abroad to
3 aid in repatriation; and

4 (2) requesting the Department of State initiate
5 dialogue through diplomatic channels to aid in repa-
6 triation.

7 (d) AGENCY AND COMMITTEE ASSISTANCE.—

8 (1) IN GENERAL.—The agencies and commit-
9 tees described in paragraph (2) shall provide infor-
10 mation and assistance to the Tribal working group
11 convened under subsection (a) upon request by the
12 Tribal working group.

13 (2) AGENCIES AND COMMITTEES.—The agen-
14 cies and committees described in this paragraph are
15 the following:

16 (A) The Department of the Interior.

17 (B) The Department of Justice.

18 (C) The Department of Homeland Secu-
19 rity.

20 (D) The Department of State.

21 (E) The Native American Graves Protec-
22 tion and Repatriation Review Committee estab-
23 lished under section 8 of the Native American
24 Graves Protection and Repatriation Act (25
25 U.S.C. 3006).

1 (F) Any other relevant Federal agency.

2 **SEC. 9. FREEDOM OF INFORMATION ACT EXEMPTIONS.**

3 (a) IN GENERAL.—Except as provided in subsection
4 (b), information that a representative of an Indian Tribe
5 submits to any Federal agency pursuant to this Act, or
6 any amendment made by this Act, shall qualify for exemp-
7 tion from disclosure under the Freedom of Information
8 Act pursuant to section 552(b)(3) of title 5, United States
9 Code.

10 (b) EXCEPTION.—An Indian Tribe may request and
11 shall receive its own information, as described in sub-
12 section (a), from the Federal agency to which it submitted
13 its information.

○