House Engrossed Senate Bill

FILED
MICHELE REAGAN
SECRETARY OF STATE

State of Arizona
Senate
Fifty-second Legislature
Second Regular Session
2016

CHAPTER 150

SENATE BILL 1237

AN ACT

AMENDING SECTION 15-244, ARIZONA REVISED STATUTES; REPEALING SECTIONS 41-541, 41-542 AND 41-543, ARIZONA REVISED STATUTES; AMENDING TITLE 41, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 15; PROVIDING FOR TRANSFERRING AND RENUMBERING; AMENDING SECTION 41-844, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 15, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 41-2051 AND 41-2052; AMENDING SECTIONS 41-2053 AND 41-2054, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED; REPEALING SECTION 41-3016.31, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 27, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-3024.09; APPROPRIATING MONIES; RELATING TO THE GOVERNOR'S OFFICE ON TRIBAL RELATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 15-244, Arizona Revised Statutes, is amended to read:

15-244. Office of Indian education; definition

A. The office of Indian education is established in the department of education. The superintendent of public instruction shall hire appropriate personnel for the office.

B. The office of Indian education shall:

1. In collaboration with Indian nations, provide technical assistance to schools and Indian nations to meet the educational needs of native American pupils.

2. Provide technical assistance to schools and Indian nations in the planning, development, implementation and evaluation of curricula that are culturally relevant and aligned to state standards.

3. Provide technical assistance to schools and Indian nations to develop culturally appropriate curricula and instructional materials.

4. Establish an Indian education advisory council in the department of education that shall include at least parents who are not certificated teachers.

5. Encourage and foster parental involvement in the education of native American pupils.

C. At least once each year, representatives from all Indian nations, members of the state board, the governor's office, the ~~Arizona commission of Indian affairs~~ GOVERNOR'S OFFICE ON TRIBAL RELATIONS, the intertribal council of Arizona, the legislature, the superintendent of public instruction and the Indian education advisory council shall meet to assist in evaluating, consolidating and coordinating all activities relating to the education of native American pupils.

D. Based on data submitted pursuant to subsection E OF THIS SECTION, the office of Indian education, in collaboration with entities that serve native American pupils, shall submit an annual statewide native American education status report to all Indian nations in this state. The division shall provide a copy of this report to the secretary of state ~~and the director of the Arizona state library, archives and public records~~.

E. A school district with tribal lands located within its boundaries shall provide a district-wide native American education status report to all Indian nations represented within the school district boundaries and to the department of education.

F. The status reports prescribed in subsections D and E OF THIS SECTION shall be written in a brief format and shall include the following information, through which public school performance is measured and reported to the Indian nations:

1. Student achievement as measured by a statewide test approved by the state board, with results disaggregated by ethnicity.

2. School safety.
3. The dropout rate.
4. Attendance.
5. Parent and community involvement.
6. Educational programs that target native American pupils.
7. Financial reports.
8. The current status of federal Indian education policies and procedures.
9. School district initiatives to decrease the number of student dropouts and increase attendance.
10. Public school use of variable school calendars.
11. School district consultations with parent advisory committees.

G. The state board of education, in consultation with the Indian nations in this state, may adopt rules to implement this section.

H. For the purposes of this section, "Indian nations" means an Indian nation, tribe or pueblo located in this state.

Sec. 2. Heading repeal

The article heading of title 41, chapter 3, article 4, Arizona Revised Statutes, is repealed.

Sec. 3. Repeal; transfer of monies

A. Sections 41-541, 41-542 and 41-543, Arizona Revised Statutes, are repealed.

B. All unexpended and unencumbered monies remaining in the Indian affairs commission publications fund established by section 41-543, Arizona Revised Statutes, as repealed by subsection A of this section, are transferred to the governor's office on tribal relations on the effective date of this section.

Sec. 4. Title 41, Arizona Revised Statutes, is amended by adding chapter 15, to read:

CHAPTER 15
GOVERNOR'S OFFICE ON TRIBAL RELATIONS
ARTICLE 1. GENERAL PROVISIONS

Sec. 5. Transfer and renumber

Title 41, chapter 3, article 4, Arizona Revised Statutes, is transferred and renumbered for placement in title 41, chapter 15, Arizona Revised Statutes, as added by this act, as article 1. The following sections are transferred and renumbered for placement in title 41, chapter 15, article 1:

Former Sections	New Sections
41-544	41-2053
41-545	41-2054

Sec. 6. Section 41-844, Arizona Revised Statutes, is amended to read:

41-844. Duty to report discoveries; disposition of discoveries; definitions

A. A person in charge of any survey, excavation, construction or other like activity on any lands owned or controlled by this state, by any public agency or institution of the state, or by any county or municipal corporation within the state shall report promptly to the director of the Arizona state museum the existence of any archaeological, paleontological or historical site or object that is at least fifty years old and that is discovered in the course of such survey, excavation, construction or other like activity and, in consultation with the director, shall immediately take all reasonable steps to secure and maintain its preservation. If it is necessary to move the object before completion of the proceedings prescribed by this section to permit the continuation of work on a construction project or similar project, the director shall require that the move be accomplished in the manner that will least disturb and best preserve the object.

B. If the objects discovered are human remains, funerary objects, sacred ceremonial objects or objects of national or tribal patrimony, the director of the Arizona state museum ~~shall~~, to the best of ~~his~~ THE DIRECTOR'S ability, SHALL give notice of the discovery to:

1. All individuals ~~that~~ WHO may have a direct kinship relationship to the human remains.

2. All groups that it is reasonable to believe may have a cultural or religious affinity to the remains or objects.

3. Appropriate members of the curatorial staff of the Arizona state museum.

4. Faculty members of the state universities who have a significant scholarly interest in the remains or objects.

5. The state historic preservation officer.

C. American Indian tribal governments that wish to be notified pursuant to this section shall keep on file with the director lists of the cultural groups and geographical area with which they claim affinity.

D. If American Indian human remains, funerary objects, sacred ceremonial objects or objects of cultural patrimony are involved, the director, in addition to giving notice as required in subsection B OF THIS SECTION, shall give notice to the tribes that occupy or have occupied the land on which the discovery is made and to the ~~Arizona commission on Indian affairs~~ GOVERNOR'S OFFICE ON TRIBAL RELATIONS and the intertribal council of Arizona.

E. The director shall respond to every report of a discovery in a timely fashion and within six months ~~of~~ AFTER being notified of the discovery, the director shall convene a meeting of notified persons and representatives of notified groups to discuss the most appropriate disposition of the discovered materials. At this meeting, the director shall

encourage agreement among all participants regarding the most appropriate disposition and treatment of the materials. An agreement may include a decision to curate or rebury materials subject to conditions or limitations, a decision to engage in scientific analysis before repatriation or reburial or any other appropriate disposition. If an agreement is reached, it shall determine the disposition and treatment of the materials and the director shall oversee its implementation.

F. If no agreement is reached within six months ~~of~~ AFTER the meeting required by subsection E OF THIS SECTION, the human remains or funerary objects shall be disposed and treated in accordance with the wishes of the nearest relative with a direct kinship relationship, or with the wishes of the governing body of the group with cultural or religious affinity to the remains or objects if no relative exists. If sacred ceremonial objects or objects of national or tribal patrimony are concerned, disposition and treatment shall be in accordance with the wishes of the governing body of the group with cultural or religious affinity to the objects. The authority to determine the disposition and treatment of remains or objects pursuant to this subsection shall not be exercised in a manner that would prevent timely completion of a construction project or other project.

G. If there is no person with a direct kinship relationship or a group with a cultural or religious affinity to human remains or funerary objects and the remains have no scientific value, the remains or funerary objects shall remain undisturbed. If it is necessary to move them in order to permit completion of a construction or similar project, the remains or funerary objects shall be reburied under the supervision of the director in a place as similar and close as possible to their original burial site. If the remains or funerary objects have scientific value, they may be curated by the Arizona state museum or other authorized repository for a period of one year, after which they shall be reinterred. If remains of American Indians are involved, reburial pursuant to this subsection shall be undertaken with the cooperation of the Indian tribe located nearest to the place where the remains were discovered. Reburial ~~may~~, with that tribe's consent, MAY take place on that tribe's reservation. The one-year period for scientific curation may be extended with that tribe's consent. If there is no group with a cultural or religious affinity to sacred ceremonial objects or objects of national or tribal patrimony, the director shall decide on the most appropriate disposition and treatment. Where American Indian materials are involved, the determination shall be made in consultation with appropriate tribal representatives.

H. A repository charged with the care or custody of human remains, funerary objects, sacred ceremonial objects or objects of national or tribal patrimony pursuant to this section shall maintain them with appropriate dignity and respect and with consideration for the specific applicable cultural or religious traditions applicable to the remains or objects. When

materials are returned to relatives or affiliated groups, the relatives or groups shall accept and undertake responsibility for the protection and security of the materials.

I. The expense of any curation or reburial pursuant to this section that is required as the result of a construction project or similar project shall be borne by that project. Reburials made in order to satisfy the wishes of a relative or affinal group shall be by and at the expense of the relative or group.

J. If a person believes that the provisions of this section have not been properly applied ~~he~~ THE PERSON shall give written notice of this claim to all other parties entitled to notice under subsections B and C OF THIS SECTION. The parties shall meet within fifteen days ~~of~~ AFTER receiving the notice and attempt to agree on the designation of a third party to assist in the resolution of the dispute. If the parties cannot agree within fifteen days on a third party, the state historic preservation officer shall serve in that capacity. The adverse parties shall attempt to reach a resolution with the assistance of the third party. If a resolution cannot be reached within ninety days ~~of~~ AFTER the designation of the third party, the third party shall resolve the dispute. Either party may appeal a decision within thirty days to the superior court in the county in which the subject of the dispute is located.

K. If a written request for the reburial or repatriation of human remains, funerary objects, sacred ceremonial objects or objects of national or tribal patrimony in the possession and ownership or control of an agency of this state, as of ~~the effective date of this section~~ SEPTEMBER 27, 1990, is made by the government of an American Indian tribe, the requirements of this section apply as if the remains or objects had been discovered after ~~the effective date of this section~~ SEPTEMBER 27, 1990.

L. Whenever two or more groups or tribes have affinity to the same human remains, funerary object, sacred ceremonial object or object of national or tribal patrimony and they do not agree on the disposition or treatment of such remains or object, the question of which group or tribe shall be deemed to have affinity shall be resolved pursuant to subsection J OF THIS SECTION. In making the determination, consideration shall be given to all the relevant evidence of affinity.

M. For the purposes of this section:

1. "Funerary object" means an object discovered in proximity to human remains and intentionally buried or interred with the remains.

2. "Group with a cultural or religious affinity" means any of the following:

(a) In the case of human remains or funerary objects, any tribe that has submitted a written claim of affinity pursuant to subsection C OF THIS SECTION or any other group or tribe that has cultural affinity in light of all the relevant evidence.

(b) In the case of a sacred ceremonial object, a group whose religious observances traditionally have utilized such object.

(c) In the case of an object of national or tribal patrimony, a group whose past or present government or traditional cultural organization was or is associated with the object.

3. "Group" includes American Indian tribes.

4. "Human remains" means any remains of a human being who died more than fifty years before the remains are discovered.

5. "Objects of national or tribal patrimony" means inalienable items of historical or cultural significance to tribal groups.

6. "Sacred ceremonial object" means an object traditionally utilized in religious observances.

7. "Tribe" means any federally recognized tribal government.

Sec. 7. Title 41, chapter 15, article 1, Arizona Revised Statutes, is amended by adding sections 41-2051 and 41-2052, to read:

41-2051. <u>Governor's office on tribal relations; director; responsibilities of state agencies; report</u>

A. THE GOVERNOR'S OFFICE ON TRIBAL RELATIONS IS ESTABLISHED. THE OFFICE SHALL ASSIST STATE AGENCIES IN IMPLEMENTING TRIBAL CONSULTATION AND OUTREACH ACTIVITIES.

B. THE GOVERNOR SHALL APPOINT THE DIRECTOR PURSUANT TO SECTION 38-211. THE DIRECTOR IS ENTITLED TO RECEIVE COMPENSATION PURSUANT TO SECTION 38-611. THE OFFICE MAY EMPLOY CLERICAL, PROFESSIONAL AND TECHNICAL PERSONNEL SUBJECT TO CHAPTER 4, ARTICLE 4 OF THIS TITLE AND SHALL PRESCRIBE THEIR DUTIES AND DETERMINE THEIR COMPENSATION PURSUANT TO SECTION 38-611.

C. EACH STATE AGENCY SHALL:

1. DEVELOP AND IMPLEMENT TRIBAL CONSULTATION POLICIES TO GUIDE THE AGENCY'S WORK AND INTERACTION WITH THE TRIBAL NATIONS OF THIS STATE.

2. TO THE EXTENT PRACTICABLE AND PERMITTED BY LAW, SEEK INPUT FROM APPROPRIATE ELECTED OR APPOINTED TRIBAL OFFICIALS BEFORE UNDERTAKING ANY ACTION OR POLICY THAT WILL, OR IS REASONABLY BELIEVED TO, HAVE THE POTENTIAL TO AFFECT A TRIBAL COMMUNITY OR ITS MEMBERS.

3. TO THE FULLEST EXTENT POSSIBLE AND TO THE BEST OF THE AGENCY'S ABILITY, INTEGRATE THE INPUT GENERATED FROM TRIBAL CONSULTATION INTO THE AGENCY'S DECISION-MAKING PROCESSES TO ACHIEVE MUTUALLY ACCEPTABLE SOLUTIONS.

4. DESIGNATE A STATE MEMBER TO ASSUME RESPONSIBILITY FOR THE AGENCY'S IMPLEMENTATION OF THE TRIBAL CONSULTATION POLICIES AND TO ACT AS THE PRINCIPAL POINT OF CONTACT FOR TRIBAL AFFAIRS.

5. ON OR BEFORE OCTOBER 1 OF EACH YEAR, REVIEW THE AGENCY'S TRIBAL CONSULTATION POLICIES AND SUBMIT AN ELECTRONIC PROGRESS REPORT WITH PERFORMANCE MEASURES TO THE OFFICE. THE OFFICE SHALL MAKE THE REPORTS AVAILABLE TO TRIBAL LEADERS AND LEGISLATORS.

D. THE OFFICE MAY INITIATE OR ASSIST PROGRAMS ON TRIBAL LAND ONLY ON THE REQUEST OR WITH THE APPROVAL OF THE TRIBAL NATION.

E. AT LEAST ONCE A YEAR, THE GOVERNOR SHALL MEET WITH THE TRIBAL LEADERS OF THE TWENTY-TWO TRIBAL NATIONS AND COMMUNITIES IN A STATE-TRIBAL SUMMIT TO ADDRESS ISSUES OF MUTUAL CONCERN.

41-2052. Governor's office on tribal relations; state and local public officers and employees; powers; report

A. ON REQUEST, STATE AND LOCAL PUBLIC OFFICERS AND EMPLOYEES SHALL FURNISH THE GOVERNOR'S OFFICE ON TRIBAL RELATIONS WITH ANY INFORMATION THAT THE OFFICE MAY REQUIRE FOR ITS PURPOSES EXCEPT FOR INFORMATION THAT IS NOT SUBJECT TO DISCLOSURE PURSUANT TO LAW.

B. THE OFFICE MAY:

1. APPLY FOR, ACCEPT, RECEIVE AND SPEND PUBLIC AND PRIVATE GIFTS OR GRANTS OF MONIES AND PROPERTY ON THE TERMS AND CONDITIONS AS MAY BE IMPOSED BY THE DONOR AND FOR THE IMPLEMENTATION OF INTERNAL OPERATIONS AND FORUMS FOR AMERICAN INDIAN PEOPLE TO IMPART THEIR KNOWLEDGE ON STATEWIDE ISSUES.

2. ACCEPT, RECEIVE AND SPEND FEES COLLECTED AT THE ARIZONA INDIAN TOWN HALL TO DEFER EXPENSES FOR THE ARIZONA INDIAN TOWN HALL.

3. ASSIST IN EVALUATING, CONSOLIDATING AND COORDINATING ACTIVITIES RELATING TO THE EDUCATION OF AMERICAN INDIAN STUDENTS.

4. SERVE AS AN INFORMATIONAL CLEARINGHOUSE AND PROVIDE TRAINING ON CROSS-CULTURAL SITUATIONS.

5. RECEIVE ANNUAL NOTICE FROM THE DIRECTOR OF THE STATE MUSEUM ON THE DISCOVERY OF AMERICAN INDIAN HUMAN REMAINS, FUNERARY OBJECTS, SACRED CEREMONIAL OBJECTS OR OBJECTS OF CULTURAL PATRIMONY.

6. PROMOTE INCREASED PARTICIPATION BY AMERICAN INDIANS IN LOCAL AND STATE AFFAIRS.

7. WORK IN CONJUNCTION WITH STATE AGENCIES INVOLVED IN ECONOMIC DEVELOPMENT TO DESIGN AND INITIATE PROGRAMS TO STIMULATE ECONOMIC GROWTH OF THE AMERICAN INDIAN POPULATION, INCLUDING MINORITY-OWNED AND WOMEN-OWNED BUSINESSES.

8. ESTABLISH AN EXECUTIVE COMMITTEE OR OTHER COMMITTEES, AS NECESSARY.

C. THE OFFICE SHALL PREPARE A REPORT THAT SUMMARIZES EACH STATE AGENCY'S ANNUAL PROGRESS REPORT SUBMITTED PURSUANT TO SECTION 41-2051, SUBSECTION C THAT DETAILS THE PROGRESS AND CHALLENGES THAT THE STATE AGENCIES HAVE EXPERIENCED IN IMPLEMENTING TRIBAL CONSULTATION POLICIES AND SHALL SUBMIT THE REPORT TO THE LEGISLATURE DURING A JOINT SESSION HELD ON INDIAN NATIONS AND TRIBES LEGISLATIVE DAY.

Sec. 8. Section 41-2053, Arizona Revised Statutes, as transferred and renumbered, is amended to read:

41-2053. Indian nations and tribes legislative day

A. The ~~Arizona commission of Indian affairs~~ GOVERNOR'S OFFICE ON TRIBAL RELATIONS, in cooperation with representatives from ~~the~~ THIS state's Indian nations, shall annually facilitate an Indian nations and tribes legislative day on ~~Tuesday~~ WEDNESDAY of the ~~second~~ FIRST week of each regular legislative session. THE OFFICE SHALL COORDINATE THE PLANNING AND

PREPARATION OF THE LEGISLATIVE DAY WITH THE PRESIDENT OF THE SENATE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND LEGISLATORS WHO ARE NATIVE AMERICAN. THE SENATE SHALL HOST THE LEGISLATIVE DAY IN ODD-NUMBERED YEARS AND THE HOUSE OF REPRESENTATIVES SHALL HOST THE LEGISLATIVE DAY IN EVEN-NUMBERED YEARS. THE HOSTING CHAMBER SHALL HOLD A JOINT SESSION OF THE LEGISLATURE. The ~~commission~~ OFFICE shall invite the legislature~~, governor~~ and other elected officials to pay tribute to the history and culture of the American Indian peoples and their contributions to the prosperity and cultural diversity of the United States. The ~~commission~~ OFFICE shall schedule activities and discussions between state and Indian nations and tribal leaders on issues in which the state and Indian nations and tribes share a common interest or jurisdiction.

B. Indian nations and tribes legislative day is not a legal holiday.

Sec. 9. Section 41-2054, Arizona Revised Statutes, as transferred and renumbered, is amended to read:

41-2054. Indian town hall fund

~~An~~ THE Arizona Indian town hall fund is established that consists of monies collected or received at Indian town halls as fees that are intended to defray administrative costs related to these town halls pursuant to section ~~41-541~~ 41-2052. The ~~commission~~ GOVERNOR'S OFFICE ON TRIBAL RELATIONS shall deposit, pursuant to sections 35-146 and 35-147, all fees collected from this activity in this fund.

Sec. 10. Repeal

Section 41-3016.31, Arizona Revised Statutes, is repealed.

Sec. 11. Title 41, chapter 27, article 2, Arizona Revised Statutes, is amended by adding section 41-3024.09, to read:

41-3024.09. Governor's office on tribal relations; termination July 1, 2024

A. THE GOVERNOR'S OFFICE ON TRIBAL RELATIONS TERMINATES ON JULY 1, 2024.

B. TITLE 41, CHAPTER 15 IS REPEALED ON JANUARY 1, 2025.

Sec. 12. Purpose

Pursuant to section 41-2955, subsection E, Arizona Revised Statutes, the legislature establishes the governor's office on tribal relations in order to assist and support tribal nations and communities in this state and to enhance government-to-government relations between the twenty-two tribal nations within the boundaries of this state.

Sec. 13. Succession

A. As provided by this act, the governor's office on tribal relations succeeds to the authority, powers, duties and responsibilities of the Arizona commission of Indian affairs.

B. This act does not alter the effect of any actions that were taken or impair the valid obligations of the Arizona commission of Indian affairs in existence on the effective date of this act.

1 C. All equipment, records, furnishings and other property, all data
2 and obligations and all appropriated monies that remain unspent and
3 unencumbered on the effective date of this act of the Arizona commission of
4 Indian affairs are transferred to the governor's office on tribal relations.
5 Sec. 14. Retroactivity
6 Sections 10, 11 and 13 of this act are effective retroactively to
7 July 1, 2016.

APPROVED BY THE GOVERNOR MAY 11, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 11, 2016.

Passed the House May 6, 2016,

by the following vote: 54 Ayes,

1 Nays, 5 Not Voting

Speaker of the House

Chief Clerk of the House

Passed the Senate February 29, 2016,

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR
This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20_____,

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

S.B. 1237

SENATE CONCURS IN HOUSE
AMENDMENTS AND FINAL PASSAGE

Passed the Senate May 6, 20 16

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

President of the Senate

Susan Aceves
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

6th day of May, 20 16

at 4:23 o'clock P. M.

Secretary to the Governor

Approved this 11th day of

May

at 8:35 o'clock A. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 11TH day of May, 20 16

at 2:20 o'clock P M.

Michele Reagan
Secretary of State

S.B. 1237