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H. R. 2930

[Report No. 117–196, Part I]

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

IN THE HOUSE OF REPRESENTATIVES

APRIL 30, 2021

Ms. LEGER FERNANDEZ (for herself, Mr. YOUNG, Ms. DAVIDS of Kansas, Mr. COLE, Ms. PINGREE, Mr. MAST, Mrs. RADEWAGEN, and Ms. BASS) introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committees on the Judiciary, and Foreign Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

DECEMBER 1, 2021

Additional sponsors: Mr. KILMER, Mr. O'HALLERAN, Mr. CASE, Ms. MCCOLLUM, Ms. STANSBURY, Mr. JOYCE of Ohio, Mr. TAKANO, Ms. NORTON, Mr. FITZPATRICK, Ms. OMAR, Ms. MANNING, Ms. LOFGREN, Mr. GRIJALVA, Mr. HUFFMAN, Ms. CRAIG, Ms. MENG, and Mr. NEGUSE

DECEMBER 1, 2021

Reported from the Committee on Natural Resources with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

DECEMBER 1, 2021

Committees on the Judiciary and Foreign Affairs discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on April 30, 2021]

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 Objects*
5 *of Patrimony Act of 2021”.*

6 **SEC. 2. PURPOSES.**

7 *The purposes of this Act are—*

8 *(1) to carry out the trust responsibility of the*
9 *United States to Indian Tribes;*

10 *(2) to increase the maximum penalty for actions*
11 *taken in violation of the Native American Graves*
12 *Protection and Repatriation Act (25 U.S.C. 3001 et*
13 *seq.) (including section 1170 of title 18, United States*
14 *Code, as added by that Act), in order to strengthen*
15 *deterrence;*

16 *(3) to stop the export, and facilitate the inter-*
17 *national repatriation, of cultural items prohibited*
18 *from being trafficked by the Native American Graves*
19 *Protection and Repatriation Act (25 U.S.C. 3001 et*
20 *seq.) (including section 1170 of title 18, United States*
21 *Code, as added by that Act) and archaeological re-*
22 *sources prohibited from being trafficked by the Ar-*
23 *chaeological Resources Protection Act of 1979 (16*
24 *U.S.C. 470aa et seq.) by—*

25 *(A) explicitly prohibiting the export;*

1 (B) creating an export certification system;
2 and

3 (C) confirming the authority of the Presi-
4 dent to request from foreign nations agreements
5 or provisional measures to prevent irremediable
6 damage to Native American cultural heritage;

7 (4) to establish a Federal framework in order to
8 support the voluntary return by individuals and or-
9 ganizations of items of tangible cultural heritage, in-
10 cluding items covered by the Native American Graves
11 Protection and Repatriation Act (25 U.S.C. 3001 et
12 seq.) (including section 1170 of title 18, United States
13 Code, as added by that Act) and the Archaeological
14 Resources Protection Act of 1979 (16 U.S.C. 470aa et
15 seq.);

16 (5) to establish an interagency working group to
17 ensure communication between Federal agencies to
18 successfully implement this Act, the Native American
19 Graves Protection and Repatriation Act (25 U.S.C.
20 3001 et seq.) (including section 1170 of title 18,
21 United States Code, as added by that Act), the Ar-
22 chaeological Resources Protection Act of 1979 (16
23 U.S.C. 470aa et seq.), and other relevant Federal
24 laws;

1 (6) *to establish a Native working group of In-*
 2 *dian Tribes and Native Hawaiian organizations to*
 3 *assist in the implementation of this Act, the Native*
 4 *American Graves Protection and Repatriation Act*
 5 *(25 U.S.C. 3001 et seq.) (including section 1170 of*
 6 *title 18, United States Code, as added by that Act),*
 7 *the Archaeological Resources Protection Act of 1979*
 8 *(16 U.S.C. 470aa et seq.), and other relevant Federal*
 9 *laws;*

10 (7) *to exempt from disclosure under section 552*
 11 *of title 5, United States Code (commonly known as*
 12 *the “Freedom of Information Act”)—*

13 (A) *information submitted by Indian Tribes*
 14 *or Native Hawaiian organizations pursuant to*
 15 *this Act; and*

16 (B) *information relating to an Item Requir-*
 17 *ing Export Certification for which an export cer-*
 18 *tification was denied pursuant to this Act; and*

19 (8) *to encourage buyers to purchase legal contem-*
 20 *porary art made by Native artists for commercial*
 21 *purposes.*

22 **SEC. 3. DEFINITIONS.**

23 *In this Act:*

24 (1) *ARCHAEOLOGICAL RESOURCE.—The term*
 25 *“archaeological resource” means an archaeological re-*

1 *source (as defined in section 3 of the Archaeological*
 2 *Resources Protection Act of 1979 (16 U.S.C. 470bb))*
 3 *that is Native American.*

4 (2) *CULTURAL AFFILIATION.—The term “cul-*
 5 *tural affiliation” means that there is a relationship*
 6 *of shared group identity that can be reasonably traced*
 7 *historically or prehistorically between a present day*
 8 *Indian Tribe or Native Hawaiian organization and*
 9 *an identifiable earlier group.*

10 (3) *CULTURAL ITEM.—The term “cultural item”*
 11 *means any 1 or more cultural items (as defined in*
 12 *section 2 of the Native American Graves Protection*
 13 *and Repatriation Act (25 U.S.C. 3001)).*

14 (4) *INDIAN TRIBE.—The term “Indian Tribe”*
 15 *has the meaning given the term “Indian tribe” in sec-*
 16 *tion 2 of the Native American Graves Protection and*
 17 *Repatriation Act (25 U.S.C. 3001).*

18 (5) *ITEM PROHIBITED FROM EXPORTATION.—The*
 19 *term “Item Prohibited from Exportation” means—*

20 (A) *a cultural item prohibited from being*
 21 *trafficked, including through sale, purchase, use*
 22 *for profit, or transport for sale or profit, by—*

23 (i) *section 1170(b) of title 18, United*
 24 *States Code, as added by the Native Amer-*

ican Graves Protection and Repatriation
Act (25 U.S.C. 3001 *et seq.*); or

(ii) any other Federal law or treaty;

and

(B) an archaeological resource prohibited
from being trafficked, including through sale,
purchase, exchange, transport, receipt, or offer to
sell, purchase, or exchange, including in inter-
state or foreign commerce, by—

(i) subsections (b) and (c) of section 6
of the Archaeological Resources Protection
Act of 1979 (16 U.S.C. 470ee); or

(ii) any other Federal law or treaty.

(6) *ITEM REQUIRING EXPORT CERTIFICATION.*—

(A) *IN GENERAL.*—The term “Item Requir-
ing Export Certification” means—

(i) a cultural item; and

(ii) an archaeological resource.

(B) *EXCLUSION.*—The term “Item Requir-
ing Export Certification” does not include an
item described in clause (i) or (ii) of subpara-
graph (A) for which an Indian Tribe or Native
Hawaiian organization with a cultural affili-
ation with the item has provided a certificate
authorizing exportation of the item.

1 (7) *NATIVE AMERICAN*.—The term “Native
2 *American*” means—

3 (A) *Native American* (as defined in section
4 2 of the *Native American Graves Protection and*
5 *Repatriation Act* (25 U.S.C. 3001)); and

6 (B) *Native Hawaiian* (as so defined).

7 (8) *NATIVE HAWAIIAN ORGANIZATION*.—The term
8 “*Native Hawaiian organization*” has the meaning
9 given the term in section 2 of the *Native American*
10 *Graves Protection and Repatriation Act* (25 U.S.C.
11 3001).

12 (9) *SECRETARY*.—The term “*Secretary*” means
13 the *Secretary of the Interior*.

14 (10) *TANGIBLE CULTURAL HERITAGE*.—The term
15 “*tangible cultural heritage*” means—

16 (A) *Native American human remains*; or

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

21 **SEC. 4. ENHANCED NAGPRA PENALTIES.**

22 Section 1170 of title 18, *United States Code*, is amend-
23 *ed—*

24 (1) *by striking “5 years” each place it appears*
25 *and inserting “10 years”; and*

1 (2) *in subsection (a), by striking “12 months”*
2 *and inserting “1 year and 1 day”.*

3 **SEC. 5. EXPORT PROHIBITIONS; EXPORT CERTIFICATION**
4 **SYSTEM; INTERNATIONAL AGREEMENTS.**

5 (a) *EXPORT PROHIBITIONS.—*

6 (1) *IN GENERAL.—It shall be unlawful for any*
7 *person—*

8 (A) *to export, attempt to export, or other-*
9 *wise transport from the United States any Item*
10 *Prohibited from Exportation;*

11 (B) *to conspire with any person to engage*
12 *in an activity described in subparagraph (A); or*

13 (C) *to conceal an activity described in sub-*
14 *paragraph (A).*

15 (2) *PENALTIES.—Any person who violates para-*
16 *graph (1) and knows, or in the exercise of due care*
17 *should have known, that the Item Prohibited from Ex-*
18 *portation was taken, possessed, transported, or sold in*
19 *violation of, or in a manner unlawful under, any*
20 *Federal law or treaty, shall be fined in accordance*
21 *with section 3571 of title 18, United States Code, im-*
22 *prisoned for not more than 1 year and 1 day for a*
23 *first violation, and not more than 10 years for a sec-*
24 *ond or subsequent violation, or both.*

1 (3) *DETENTION, FORFEITURE, AND REPATRI-*
2 *ATION.—*

3 (A) *DETENTION AND DELIVERY.—The Sec-*
4 *retary of Homeland Security, acting through the*
5 *Commissioner of U.S. Customs and Border Pro-*
6 *tection, shall—*

7 (i) *detain any Item Prohibited from*
8 *Exportation that is exported, attempted to*
9 *be exported, or otherwise transported from*
10 *the United States in violation of paragraph*
11 *(1); and*

12 (ii) *deliver the Item Prohibited from*
13 *Exportation to the Secretary.*

14 (B) *FORFEITURE.—Any Item Prohibited*
15 *from Exportation that is exported, attempted to*
16 *be exported, or otherwise transported from the*
17 *United States in violation of paragraph (1) shall*
18 *be subject to forfeiture to the United States in ac-*
19 *cordance with chapter 46 of title 18, United*
20 *States Code (including section 983(c) of that*
21 *chapter).*

22 (C) *REPATRIATION.—Any Item Prohibited*
23 *from Exportation that is forfeited under sub-*
24 *paragraph (B) shall be expeditiously repatriated*
25 *to the appropriate Indian Tribe or Native Ha-*

1 *waiian organization in accordance with, as ap-*
2 *plicable—*

3 *(i) the Native American Graves Protec-*
4 *tion and Repatriation Act (25 U.S.C. 3001*
5 *et seq.) (including section 1170 of title 18,*
6 *United States Code, as added by that Act);*
7 *or*

8 *(ii) the Archaeological Resources Pro-*
9 *tection Act of 1979 (16 U.S.C. 470aa et*
10 *seq.).*

11 ***(b) EXPORT CERTIFICATION SYSTEM.—***

12 ***(1) EXPORT CERTIFICATION REQUIREMENT.—***

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

18 ***(B) PUBLICATION.—****The Secretary, in con-*
19 *sultation with Indian Tribes and Native Hawai-*
20 *ian organizations, shall publish in the Federal*
21 *Register a notice that includes—*

22 *(i) a description of characteristics typ-*
23 *ical of Items Requiring Export Certifi-*
24 *cation, which shall—*

1 (I) include the definitions of the
2 terms—

3 (aa) “cultural items” in sec-
4 tion 2 of the Native American
5 Graves Protection and Repatri-
6 ation Act (25 U.S.C. 3001); and

7 (bb) “archaeological re-
8 source” in section 3 of the Archae-
9 ological Resources Protection Act
10 of 1979 (16 U.S.C. 470bb);

11 (II) describe the provenance re-
12 quirements associated with the traf-
13 ficking prohibition applicable to—

14 (aa) cultural items under
15 section 1170(b) of title 18, United
16 States Code; and

17 (bb) archaeological resources
18 under subsections (b) and (c) of
19 section 6 of Archaeological Re-
20 sources Protection Act of 1979 (16
21 U.S.C. 470ee);

22 (III)(aa) include the definitions of
23 the terms “Native American” and “Na-
24 tive Hawaiian” in section 2 of the Na-
25 tive American Graves Protection and

1 *Repatriation Act (25 U.S.C. 3001);*
2 *and*

3 *(bb) describe how those terms*
4 *apply to archaeological resources under*
5 *this Act; and*

6 *(IV) be sufficiently specific and*
7 *precise to ensure that—*

8 *(aa) an export certification*
9 *is required only for Items Requir-*
10 *ing Export Certification; and*

11 *(bb) fair notice is given to*
12 *exporters and other persons re-*
13 *garding which items require an*
14 *export certification under this*
15 *subsection; and*

16 *(ii) a description of characteristics*
17 *typical of items that do not qualify as Items*
18 *Requiring Export Certification and there-*
19 *fore do not require an export certification*
20 *under this subsection, which shall clarify*
21 *that—*

22 *(I) an item made solely for com-*
23 *mercial purposes is presumed to not*
24 *qualify as an Item Requiring Export*
25 *Certification, unless an Indian Tribe*

1 or Native Hawaiian organization chal-
2 lenges that presumption; and

3 (II) in some circumstances, re-
4 ceipts or certifications issued by In-
5 dian Tribes or Native Hawaiian orga-
6 nizations with a cultural affiliation
7 with an item may be used as evidence
8 to demonstrate a particular item does
9 not qualify as an Item Requiring Ex-
10 port Certification.

11 (2) *ELIGIBILITY FOR EXPORT CERTIFICATION.*—
12 *An Item Requiring Export Certification is eligible for*
13 *an export certification under this subsection if—*

14 (A) *the Item Requiring Export Certification*
15 *is not under ongoing Federal investigation;*

16 (B) *the export of the Item Requiring Export*
17 *Certification would not otherwise violate any*
18 *other provision of law; and*

19 (C) *the Item Requiring Export Certifi-*
20 *cation—*

21 (i) *is not an Item Prohibited from Ex-*
22 *portation;*

23 (ii) *was excavated or removed pursu-*
24 *ant to a permit issued under section 4 of*
25 *the Archaeological Resources Protection Act*

1 of 1979 (16 U.S.C. 470cc) and in compli-
2 ance with section 3(c) of the Native Amer-
3 ican Graves Protection and Repatriation
4 Act (25 U.S.C. 3002(c)), if the permit for
5 excavation or removal authorizes export; or

6 (iii) is accompanied by written con-
7 firmation from the Indian Tribe or Native
8 Hawaiian organization with authority to
9 alienate the Item Requiring Export Certifi-
10 cation that—

11 (I) the exporter has a right of pos-
12 session (as defined in section 2 of the
13 Native American Graves Protection
14 and Repatriation Act (25 U.S.C.
15 3001)) of the Item Requiring Export
16 Certification; or

17 (II) the Indian Tribe or Native
18 Hawaiian organization has relin-
19 quished title or control of the Item Re-
20 quiring Export Certification in accord-
21 ance with section 3 of the Native
22 American Graves Protection and Repa-
23 triation Act (25 U.S.C. 3002).

24 (3) EXPORT CERTIFICATION APPLICATION AND

25 ISSUANCE PROCEDURES.—

1 (A) *APPLICATIONS FOR EXPORT CERTIFI-*
2 *CATION.*—

3 (i) *IN GENERAL.*—*An exporter seeking*
4 *to export an Item Requiring Export Certifi-*
5 *cation from the United States shall submit*
6 *to the Secretary an export certification ap-*
7 *plication in accordance with clause (iii).*

8 (ii) *CONSEQUENCES OF FALSE STATE-*
9 *MENT.*—*Any willful or knowing false state-*
10 *ment made on an export certification appli-*
11 *cation form under clause (i) shall—*

12 (I) *subject the exporter to crimi-*
13 *nal penalties pursuant to section 1001*
14 *of title 18, United States Code; and*

15 (II) *prohibit the exporter from re-*
16 *ceiving an export certification for any*
17 *Item Requiring Export Certification in*
18 *the future unless the exporter submits*
19 *additional evidence in accordance with*
20 *subparagraph (B)(iii)(I).*

21 (iii) *FORM OF EXPORT CERTIFICATION*
22 *APPLICATION.*—*The Secretary, in consulta-*
23 *tion with Indian Tribes and Native Hawai-*
24 *ian organizations, and at the discretion of*
25 *the Secretary, in consultation with third*

1 *parties with relevant expertise, including*
2 *institutions of higher education, museums,*
3 *dealers, and collector organizations, shall*
4 *develop an export certification application*
5 *form, which shall require that an appli-*
6 *cant—*

7 *(I) describe, and provide pictures*
8 *of, each Item Requiring Export Certifi-*
9 *cation that the applicant seeks to ex-*
10 *port;*

11 *(II) include all available informa-*
12 *tion regarding the provenance of each*
13 *such Item Requiring Export Certifi-*
14 *cation; and*

15 *(III) include the attestation de-*
16 *scribed in subparagraph (B)(i).*

17 *(B) EVIDENCE.—*

18 *(i) IN GENERAL.—In completing an ex-*
19 *port certification application with respect*
20 *to an Item Requiring Export Certification*
21 *that the exporter seeks to export, the ex-*
22 *porter shall attest that, to the best of the*
23 *knowledge and belief of the exporter, the ex-*
24 *porter is not attempting to export an Item*
25 *Prohibited from Exportation.*

1 (ii) *SUFFICIENCY OF ATTESTATION.*—

2 *An attestation under clause (i) shall be con-*
3 *sidered to be sufficient evidence to support*
4 *the application of the exporter under sub-*
5 *paragraph (A)(iii)(III), on the condition*
6 *that the exporter is not required to provide*
7 *additional evidence under clause (iii)(I).*

8 (iii) *ADDITIONAL REQUIREMENTS.*—

9 (I) *IN GENERAL.*—*The Secretary*
10 *shall give notice to an exporter that*
11 *submits an export certification appli-*
12 *cation under subparagraph (A)(i) that*
13 *the exporter is required to submit addi-*
14 *tional evidence in accordance with sub-*
15 *clause (III) if the Secretary has deter-*
16 *mined under subparagraph (A)(ii) that*
17 *the exporter made a willful or knowing*
18 *false statement on the application or*
19 *any past export certification applica-*
20 *tion.*

21 (II) *DELAYS OR DENIALS.*—*The*

22 *Secretary shall give notice to an ex-*
23 *porter that submits an export certifi-*
24 *cation application under subparagraph*
25 *(A)(i) that the exporter may submit*

1 *additional evidence in accordance with*
2 *subclause (III) if the issuance of an ex-*
3 *port certification is—*

4 *(aa) delayed pursuant to the*
5 *examination by the Secretary of*
6 *the eligibility of the Item Requir-*
7 *ing Export Certification for an*
8 *export certification; or*

9 *(bb) denied by the Secretary*
10 *because the Secretary determined*
11 *that the Item Requiring Export*
12 *Certification is not eligible for an*
13 *export certification under this*
14 *subsection.*

15 *(III) ADDITIONAL EVIDENCE.—On*
16 *receipt of notice under subclause (I),*
17 *an exporter shall, or on receipt of a no-*
18 *tice under subclause (II), an exporter*
19 *may, provide the Secretary with such*
20 *additional evidence as the Secretary*
21 *may require to establish that the Item*
22 *Requiring Export Certification is eligi-*
23 *ble for an export certification under*
24 *this subsection.*

25 *(C) DATABASE APPLICATIONS.—*

1 (i) *IN GENERAL.*—*The Secretary shall*
2 *establish and maintain a secure central*
3 *Federal database information system (re-*
4 *ferred to in this subparagraph as the “data-*
5 *base”) for the purpose of making export cer-*
6 *tification applications available to Indian*
7 *Tribes and Native Hawaiian organizations.*

8 (ii) *COLLABORATION REQUIRED.*—*The*
9 *Secretary shall collaborate with Indian*
10 *Tribes, Native Hawaiian organizations,*
11 *and the interagency working group con-*
12 *vened under section 7(a) in the design and*
13 *implementation of the database.*

14 (iii) *AVAILABILITY.*—*Immediately on*
15 *receipt of an export certification applica-*
16 *tion, the Secretary shall make the export*
17 *certification application available on the*
18 *database.*

19 (iv) *DELETION FROM DATABASE.*—*On*
20 *request by an Indian Tribe or Native Ha-*
21 *waiian organization, the Secretary shall de-*
22 *lete an export certification application from*
23 *the database.*

24 (v) *TECHNICAL ASSISTANCE.*—*If an*
25 *Indian Tribe or Native Hawaiian organiza-*

1 *tion lacks sufficient resources to access the*
2 *database or respond to agency communica-*
3 *tions in a timely manner, the Secretary, in*
4 *consultation with Indian Tribes and Native*
5 *Hawaiian organizations, shall provide tech-*
6 *nical assistance to facilitate that access or*
7 *response, as applicable.*

8 *(D) ISSUANCE OF EXPORT CERTIFI-*
9 *CATION.—*

10 *(i) On receipt of an export certification*
11 *application for an Item Requiring Export*
12 *Certification that meets the requirements of*
13 *subparagraphs (A) and (B), if the Sec-*
14 *retary, in consultation with Indian Tribes*
15 *and Native Hawaiian organizations with a*
16 *cultural affiliation with the Item Requiring*
17 *Export Certification, determines that the*
18 *Item Requiring Export Certification is eli-*
19 *gible for an export certification under para-*
20 *graph (2), the Secretary may issue an ex-*
21 *port certification for the Item Requiring*
22 *Export Certification.*

23 *(ii) On receipt of an export certifi-*
24 *cation application for an Item Requiring*

1 *Export Certification that meets the require-*
2 *ments of sub-paragraphs (A) and (B)—*

3 (I) *The Secretary shall have 1*
4 *business day to notify the relevant In-*
5 *Indian Tribes and Native Hawaiian Or-*
6 *ganizations of an application for ex-*
7 *port of an Item Requiring Export Cer-*
8 *tification;*

9 (II) *Indian Tribes and Native*
10 *Hawaiian organizations shall have 9*
11 *business days to review the export cer-*
12 *tification application;*

13 (III) *If an Indian Tribe or Native*
14 *Hawaiian organization notifies the*
15 *Secretary that the Item Requiring Ex-*
16 *port Certification may not be eligible*
17 *for an export certification under para-*
18 *graph (2), the Secretary shall have 7*
19 *business days to review the applica-*
20 *tion;*

21 (IV) *If no Indian Tribe or Native*
22 *Hawaiian organization so notifies the*
23 *Secretary, the Secretary shall have 1*
24 *business day to review the application;*

1 (V) *With notice to the exporter,*
2 *the Secretary may extend the review of*
3 *an application for up to 30 business*
4 *days if credible evidence is provided*
5 *that the Item Requiring Export Cer-*
6 *tification may not be eligible for an ex-*
7 *port certification under paragraph (2);*
8 *and*

9 (VI) *The Secretary shall make a*
10 *determination to approve or deny the*
11 *export certification application within*
12 *the time allotted.*

13 (E) *REVOCATION OF EXPORT CERTIFI-*
14 *CATION.—*

15 (i) *IN GENERAL.—If credible evidence*
16 *is provided that indicates that an item that*
17 *received an export certification under sub-*
18 *paragraph (D) is not eligible for an export*
19 *certification under paragraph (2), the Sec-*
20 *retary may immediately revoke the export*
21 *certification.*

22 (ii) *DETERMINATION.—In determining*
23 *whether a revocation is warranted under*
24 *clause (i), the Secretary shall consult with*
25 *Indian Tribes and Native Hawaiian orga-*

1 *nizations with a cultural affiliation with*
 2 *the affected Item Requiring Export Certifi-*
 3 *cation.*

4 (4) *DETENTION, FORFEITURE, REPATRIATION,*
 5 *AND RETURN.—*

6 (A) *DETENTION AND DELIVERY.—The Sec-*
 7 *retary of Homeland Security, acting through the*
 8 *Commissioner of U.S. Customs and Border Pro-*
 9 *tection, shall—*

10 (i) *detain any Item Requiring Export*
 11 *Certification that an exporter attempts to*
 12 *export or otherwise transport without an ex-*
 13 *port certification; and*

14 (ii) *deliver the Item Requiring Export*
 15 *Certification to the Secretary, for seizure by*
 16 *the Secretary.*

17 (B) *FORFEITURE.—Any Item Requiring*
 18 *Export Certification that is detained under sub-*
 19 *paragraph (A)(i) shall be subject to forfeiture to*
 20 *the United States in accordance with chapter 46*
 21 *of title 18, United States Code (including section*
 22 *983(c) of that chapter).*

23 (C) *REPATRIATION OR RETURN TO EX-*
 24 *PORTER.—*

1 (i) *IN GENERAL.*—Not later than 60
2 days after the date of delivery to the Sec-
3 retary of an Item Requiring Export Certifi-
4 cation under subparagraph (A)(ii), the Sec-
5 retary shall determine whether the Item Re-
6 quiring Export Certification is an Item
7 Prohibited from Exportation.

8 (ii) *REPATRIATION.*—If an Item Re-
9 quiring Export Certification is determined
10 by the Secretary to be an Item Prohibited
11 from Exportation and is forfeited under
12 subparagraph (B), the item shall be expedi-
13 tiously repatriated to the appropriate In-
14 dian Tribe or Native Hawaiian organiza-
15 tion in accordance with, as applicable—

16 (I) *the Native American Graves*
17 *Protection and Repatriation Act (25*
18 *U.S.C. 3001 et seq.) (including section*
19 *1170 of title 18, United States Code, as*
20 *added by that Act); or*

21 (II) *the Archaeological Resources*
22 *Protection Act of 1979 (16 U.S.C.*
23 *470aa et seq.).*

24 (iii) *RETURN TO EXPORTER.*—

1 (I) *IN GENERAL.*—If the Secretary
2 determines that credible evidence does
3 not establish that the Item Requiring
4 Export Certification is an Item Pro-
5 hibited from Exportation, or if the Sec-
6 retary does not complete the deter-
7 mination by the deadline described in
8 clause (i), the Secretary shall return
9 the Item Requiring Export Certifi-
10 cation to the exporter.

11 (II) *EFFECT.*—The return of an
12 Item Requiring Export Certification to
13 an exporter under subclause (I) shall
14 not mean that the Item Requiring Ex-
15 port Certification is eligible for an ex-
16 port certification under this subsection.

17 (5) *PENALTIES.*—

18 (A) *ITEMS REQUIRING EXPORT CERTIFI-*
19 *CATION.*—

20 (i) *IN GENERAL.*—It shall be unlawful
21 for any person to export, attempt to export,
22 or otherwise transport from the United
23 States any Item Requiring Export Certifi-
24 cation without first obtaining an export cer-
25 tification.

1 (ii) *PENALTIES.*—*Except as provided*
2 *in subparagraph (D), any person who vio-*
3 *lates clause (i) shall be—*

4 (I) *assessed a civil penalty in ac-*
5 *cordance with such regulations as the*
6 *Secretary promulgates pursuant to sec-*
7 *tion 10; and*

8 (II) *subject to any other applica-*
9 *ble penalties under this Act.*

10 (B) *ITEMS PROHIBITED FROM EXPOR-*
11 *TATION.*—*Whoever exports an Item Prohibited*
12 *from Exportation without first securing an ex-*
13 *port certification shall be liable for a civil money*
14 *penalty, the amount of which shall equal the*
15 *total cost of storing and repatriating the Item*
16 *Prohibited from Exportation.*

17 (C) *USE OF FINES COLLECTED.*—*Any*
18 *amounts collected by the Secretary as a civil*
19 *penalty under subparagraph (A)(ii)(I) or (B)—*

20 (i) *may be used by the Secretary—*

21 (I) *for fines collected under sub-*
22 *paragraph (A)(ii)(I), to process export*
23 *certification applications under this*
24 *subsection; and*

1 (II) for fines collected under sub-
2 paragraph (B), to store and repatriate
3 the Item Prohibited from Exportation;

4 (ii) shall supplement (and not sup-
5 plant) any appropriations to the Secretary
6 to carry out this subsection; and

7 (iii) shall not be covered into the
8 Treasury as miscellaneous receipts.

9 (D) VOLUNTARY RETURN.—

10 (i) IN GENERAL.—Any person who at-
11 tempts to export or otherwise transport
12 from the United States an Item Requiring
13 Export Certification without first obtaining
14 an export certification, but voluntarily re-
15 turns the Item Requiring Export Certifi-
16 cation, or directs the Item Requiring Ex-
17 port Certification to be returned, to the ap-
18 propriate Indian Tribe or Native Hawaiian
19 organization in accordance with section 6
20 prior to the commencement of an active
21 Federal investigation shall not be prosecuted
22 for a violation of subparagraph (A) with re-
23 spect to the Item Requiring Export Certifi-
24 cation.

1 (ii) *ACTIONS NOT COMMENCING A FED-*
2 *ERAL INVESTIGATION.—For purposes of*
3 *clause (i), the following actions shall not be*
4 *considered to be actions that commence an*
5 *active Federal investigation:*

6 (I) *The submission by the exporter*
7 *of an export certification application*
8 *for the Item Requiring Export Certifi-*
9 *cation under paragraph (3)(A)(i).*

10 (II) *The detention of the Item Re-*
11 *quiring Export Certification by the*
12 *Secretary of Homeland Security, act-*
13 *ing through the Commissioner of U.S.*
14 *Customs and Border Protection, under*
15 *paragraph (4)(A)(i).*

16 (III) *The delivery to the Secretary*
17 *of the Item Requiring Export Certifi-*
18 *cation by the Secretary of Homeland*
19 *Security, acting through the Commis-*
20 *sioner of U.S. Customs and Border*
21 *Protection, under paragraph (4)(A)(ii).*

22 (IV) *The seizure by the Secretary*
23 *of the Item Requiring Export Certifi-*
24 *cation under paragraph (4)(A)(ii).*

25 (6) *FEEES.—*

1 (A) *IN GENERAL.*—*The Secretary may col-*
 2 *lect reasonable fees to process export certification*
 3 *applications under this subsection.*

4 (B) *AVAILABILITY OF AMOUNTS COL-*
 5 *LECTED.*—*Any amounts collected by the Sec-*
 6 *retary under subparagraph (A)—*

7 (i) *shall supplement (and not sup-*
 8 *plant) any appropriations to the Secretary*
 9 *for the activities described in subparagraph*
 10 *(A); and*

11 (ii) *shall not be covered into the Treas-*
 12 *ury as miscellaneous receipts.*

13 (7) *ADMINISTRATIVE APPEAL.*—*If the Secretary*
 14 *denies an export certification or an Item Requiring*
 15 *Export Certification is detained under this sub-*
 16 *section, the exporter, on request, shall be given a hear-*
 17 *ing on the record in accordance with such rules and*
 18 *regulations as the Secretary promulgates pursuant to*
 19 *section 10.*

20 (8) *TRAINING.*—

21 (A) *IN GENERAL.*—*The Secretary, the Sec-*
 22 *retary of State, the Attorney General, and the*
 23 *heads of all other relevant Federal agencies shall*
 24 *require all appropriate personnel to participate*
 25 *in training regarding applicable laws and con-*

1 *sultations to facilitate positive government-to-*
2 *government interactions with Indian Tribes and*
3 *Native Hawaiian Organizations.*

4 (B) *U.S. CUSTOMS AND BORDER PROTEC-*
5 *TION TRAINING.—The Secretary of Homeland Se-*
6 *curity, acting through the Commissioner of U.S.*
7 *Customs and Border Protection, shall require all*
8 *appropriate personnel of U.S. Customs and Bor-*
9 *der Protection to participate in training pro-*
10 *vided by the Secretary of the Interior or an In-*
11 *dian Tribe or Native Hawaiian organization to*
12 *assist the personnel in identifying, handling, and*
13 *documenting in a culturally sensitive manner*
14 *Items Requiring Export Certification for pur-*
15 *poses of this Act.*

16 (C) *CONSULTATION.—In developing or*
17 *modifying and delivering trainings under sub-*
18 *paragraphs (A) and (B), the applicable heads of*
19 *Federal agencies shall consult with Indian Tribes*
20 *and Native Hawaiian organizations.*

21 (c) *AGREEMENTS TO REQUEST RETURN FROM FOR-*
22 *EIGN COUNTRIES.—The President may request from foreign*
23 *nations agreements that specify concrete measures that the*
24 *foreign nation will carry out—*

1 (1) *to discourage commerce in, and collection of,*
 2 *Items Prohibited from Exportation;*

3 (2) *to encourage the voluntary return of tangible*
 4 *cultural heritage; and*

5 (3) *to expand the market for the products of In-*
 6 *dian art and craftsmanship in accordance with sec-*
 7 *tion 2 of the Act of August 27, 1935 (49 Stat. 891,*
 8 *chapter 748; 25 U.S.C. 305a) (commonly known as*
 9 *the “Indian Arts and Crafts Act”).*

10 **SEC. 6. VOLUNTARY RETURN OF TANGIBLE CULTURAL HER-**
 11 **ITAGE.**

12 (a) *LIAISON.*—*The Secretary and the Secretary of*
 13 *State shall each designate a liaison to facilitate the vol-*
 14 *untary return of tangible cultural heritage.*

15 (b) *TRAININGS AND WORKSHOPS.*—*The liaisons des-*
 16 *ignated under subsection (a) shall offer to representatives*
 17 *of Indian Tribes and Native Hawaiian organizations and*
 18 *collectors, dealers, and other individuals and organizations*
 19 *trainings and workshops regarding the voluntary return of*
 20 *tangible cultural heritage.*

21 (c) *REFERRALS.*—

22 (1) *IN GENERAL.*—*The Secretary shall refer indi-*
 23 *viduals and organizations to 1 or more Indian Tribes*
 24 *and Native Hawaiian organizations with a cultural*
 25 *affiliation to tangible cultural heritage for the pur-*

1 *pose of facilitating the voluntary return of tangible*
2 *cultural heritage.*

3 (2) *REFERRAL REPRESENTATIVES.*—*The Sec-*
4 *retary shall compile a list of representatives from*
5 *each Indian Tribe and Native Hawaiian organization*
6 *for purposes of referral under paragraph (1).*

7 (3) *CONSULTATION.*—*The Secretary shall consult*
8 *with Indian Tribes, Native Hawaiian organizations,*
9 *and the Native working group convened under section*
10 *8(a) before making a referral under paragraph (1).*

11 (4) *THIRD-PARTY EXPERTS.*—*The Secretary may*
12 *use third parties with relevant expertise, including*
13 *institutions of higher education, museums, dealers,*
14 *and collector organizations, in determining to which*
15 *Indian Tribe or Native Hawaiian organization an*
16 *individual or organization should be referred under*
17 *paragraph (1).*

18 (d) *LEGAL LIABILITY.*—*Nothing in this section im-*
19 *poses on any individual or entity any additional penalties*
20 *or legal liability.*

21 (e) *TAX DOCUMENTATION.*—*In facilitating the vol-*
22 *untary return of tangible cultural heritage under this sec-*
23 *tion, the Secretary shall include provision of tax docu-*
24 *mentation for a deductible gift to an Indian Tribe or Native*
25 *Hawaiian organization, if the recipient Indian Tribe or*

1 *Native Hawaiian organization consents to the provision of*
 2 *tax documentation.*

3 (f) *REPATRIATION UNDER NATIVE AMERICAN GRAVES*
 4 *PROTECTION AND REPATRIATION ACT.*—*The voluntary re-*
 5 *turn provisions of this section shall apply to a specific item*
 6 *of tangible cultural heritage only to the extent that the repa-*
 7 *triation provisions under section 7 of the Native American*
 8 *Graves Protection and Repatriation Act (25 U.S.C. 3005)*
 9 *do not apply to the item of tangible cultural heritage.*

10 **SEC. 7. INTERAGENCY WORKING GROUP.**

11 (a) *IN GENERAL.*—*The Secretary shall designate a co-*
 12 *ordinating office to convene an interagency working group*
 13 *consisting of representatives from the Departments of the*
 14 *Interior, Justice, State, and Homeland Security.*

15 (b) *GOALS.*—*The goals of the interagency working*
 16 *group convened under subsection (a) are—*

17 (1) *to facilitate the repatriation to Indian Tribes*
 18 *and Native Hawaiian organizations of items that*
 19 *have been illegally removed or trafficked in violation*
 20 *of applicable law;*

21 (2) *to protect tangible cultural heritage, cultural*
 22 *items, and archaeological resources still in the posses-*
 23 *sion of Indian Tribes and Native Hawaiian organiza-*
 24 *tions; and*

1 (3) to improve the implementation by the appli-
2 cable Federal agencies of—

3 (A) the Native American Graves Protection
4 and Repatriation Act (25 U.S.C. 3001 et seq.)
5 (including section 1170 of title 18, United States
6 Code, as added by that Act);

7 (B) the Archaeological Resources Protection
8 Act of 1979 (16 U.S.C. 470aa et seq.); and

9 (C) other relevant Federal laws.

10 (c) *RESPONSIBILITIES.*—The interagency working
11 group convened under subsection (a) shall—

12 (1) aid in implementation of this Act and the
13 amendments made by this Act, including by aiding
14 in—

15 (A) the voluntary return of tangible cultural
16 heritage under section 6; and

17 (B) halting international sales of items that
18 are prohibited from being trafficked under Fed-
19 eral law; and

20 (2) collaborate with—

21 (A) the Native working group convened
22 under section 8(a);

23 (B) the review committee established under
24 section 8(a) of the Native American Graves Pro-

1 *tection and Repatriation Act (25 U.S.C.*
 2 *3006(a));*

3 *(C) the Cultural Heritage Coordinating*
 4 *Committee established pursuant to section 2 of*
 5 *the Protect and Preserve International Cultural*
 6 *Property Act (Public Law 114–151; 19 U.S.C.*
 7 *2601 note); and*

8 *(D) any other relevant committees and*
 9 *working groups.*

10 **SEC. 8. NATIVE WORKING GROUP.**

11 *(a) IN GENERAL.—The Secretary shall convene a Na-*
 12 *tive working group consisting of not fewer than 12 rep-*
 13 *resentatives of Indian Tribes and Native Hawaiian organi-*
 14 *zations with relevant expertise, who shall be nominated by*
 15 *Indian Tribes and Native Hawaiian organizations, to ad-*
 16 *vise the Federal Government in accordance with this sec-*
 17 *tion.*

18 *(b) RECOMMENDATIONS.—The Native working group*
 19 *convened under subsection (a) may provide recommenda-*
 20 *tions regarding—*

21 *(1) the voluntary return of tangible cultural her-*
 22 *itage by collectors, dealers, and other individuals and*
 23 *non-Federal organizations that hold such tangible cul-*
 24 *tural heritage; and*

1 (2) *the elimination of illegal commerce of cul-*
 2 *tural items and archaeological resources in the United*
 3 *States and foreign markets.*

4 (c) *REQUESTS.—The Native working group convened*
 5 *under subsection (a) may make formal requests to initiate*
 6 *certain agency actions, including requests that—*

7 (1) *the Department of Justice initiate judicial*
 8 *proceedings domestically or abroad to aid in the repa-*
 9 *triation cultural items and archaeological resources;*
 10 *and*

11 (2) *the Department of State initiate dialogue*
 12 *through diplomatic channels to aid in that repatri-*
 13 *ation.*

14 (d) *AGENCY AND COMMITTEE ASSISTANCE.—*

15 (1) *IN GENERAL.—On request by the Native*
 16 *working group convened under subsection (a), the*
 17 *agencies and committees described in paragraph (2)*
 18 *shall make efforts to provide information and assist-*
 19 *ance to the Native working group.*

20 (2) *DESCRIPTION OF AGENCIES AND COMMIT-*
 21 *TEES.—The agencies and committees referred to in*
 22 *paragraph (1) are the following:*

23 (A) *The Department of the Interior.*

24 (B) *The Department of Justice.*

25 (C) *The Department of Homeland Security.*

1 (D) *The Department of State.*

2 (E) *The review committee established under*
 3 *section 8(a) of the Native American Graves Pro-*
 4 *tection and Repatriation Act (25 U.S.C.*
 5 *3006(a)).*

6 (F) *The Cultural Heritage Coordinating*
 7 *Committee established pursuant to section 2 of*
 8 *the Protect and Preserve International Cultural*
 9 *Property Act (Public Law 114–151; 19 U.S.C.*
 10 *2601 note).*

11 (G) *Any other relevant Federal agency,*
 12 *committee, or working group.*

13 (e) *APPLICABILITY OF FEDERAL ADVISORY COM-*
 14 *MITTEE ACT.—The Federal Advisory Committee Act (5*
 15 *U.S.C. App.) shall not apply to the Native working group*
 16 *convened under subsection (a).*

17 **SEC. 9. TREATMENT UNDER FREEDOM OF INFORMATION**
 18 **ACT.**

19 (a) *IN GENERAL.—Except as provided in subsection*
 20 *(c), the following information shall be exempt from disclo-*
 21 *sure under section 552 of title 5, United States Code:*

22 (1) *Information that a representative of an In-*
 23 *Indian Tribe or Native Hawaiian organization—*

1 (A) submits to a Federal agency pursuant
 2 to this Act or an amendment made by this Act;
 3 and

4 (B) designates as sensitive or private ac-
 5 cording to Native American custom, law, culture,
 6 or religion.

7 (2) Information that any person submits to a
 8 Federal agency pursuant to this Act or an amend-
 9 ment made by this Act that relates to an item for
 10 which an export certification is denied under this Act.

11 (b) *APPLICABILITY.*—For purposes of subsection (a),
 12 this Act shall be considered a statute described in section
 13 552(b)(3)(B) of title 5, United States Code.

14 (c) *EXCEPTION.*—An Indian Tribe or Native Hawai-
 15 ian organization may request and shall receive its own in-
 16 formation, as described in subsection (a), from the Federal
 17 agency to which the Indian Tribe or Native Hawaiian orga-
 18 nization submitted the information.

19 **SEC. 10. REGULATIONS.**

20 Not later than 1 year after the date of enactment of
 21 this Act, the Secretary, in consultation with the Secretary
 22 of State, the Secretary of Homeland Security, and the At-
 23 torney General, and after consultation with Indian Tribes
 24 and Native Hawaiian organizations, shall promulgate rules
 25 and regulations to carry out this Act.

1 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

2 *There is authorized to be appropriated to carry out*
3 *this Act \$3,000,000 for each of fiscal years 2022 through*
4 *2027.*

Union Calendar No. 140

117TH CONGRESS
1ST Session

H. R. 2930

[Report No. 117-196, Part I]

A BILL

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

DECEMBER 1, 2021

Reported from the Committee on Natural Resources with an amendment

DECEMBER 1, 2021

Committees on the Judiciary and Foreign Affairs discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed