

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—116th Cong., 2d Sess.

S. 2165

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

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by _____

Viz:

1 Strike all after the enacting clause and insert the following:
2

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Safeguard Tribal Objects of Patrimony Act of 2020”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are—

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

10 (2) to increase the maximum penalty for actions taken in violation of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et

1 seq.) (including section 1170 of title 18, United
2 States Code, as added by that Act), in order to
3 strengthen deterrence;

4 (3) to stop the export, and facilitate the inter-
5 national repatriation, of cultural items prohibited
6 from being trafficked by the Native American
7 Graves Protection and Repatriation Act (25 U.S.C.
8 3001 et seq.) (including section 1170 of title 18,
9 United States Code, as added by that Act) and ar-
10 chaeological resources prohibited from being traf-
11 ficked by the Archaeological Resources Protection
12 Act of 1979 (16 U.S.C. 470aa et seq.) by—

13 (A) explicitly prohibiting the export;

14 (B) creating an export certification system;

15 and

16 (C) confirming the authority of the Presi-
17 dent to request from foreign nations agree-
18 ments or provisional measures to prevent irre-
19 mediable damage to Native American cultural
20 heritage;

21 (4) to establish a Federal framework in order
22 to support the voluntary return by individuals and
23 organizations of items of tangible cultural heritage,
24 including items covered by the Native American
25 Graves Protection and Repatriation Act (25 U.S.C.

1 3001 et seq.) (including section 1170 of title 18,
2 United States Code, as added by that Act) and the
3 Archaeological Resources Protection Act of 1979 (16
4 U.S.C. 470aa et seq.);

5 (5) to establish an interagency working group
6 to ensure communication between Federal agencies
7 to successfully implement this Act, the Native Amer-
8 ican Graves Protection and Repatriation Act (25
9 U.S.C. 3001 et seq.) (including section 1170 of title
10 18, United States Code, as added by that Act), the
11 Archaeological Resources Protection Act of 1979 (16
12 U.S.C. 470aa et seq.), and other relevant Federal
13 laws;

14 (6) to establish a Native working group of In-
15 dian Tribes and Native Hawaiian organizations to
16 assist in the implementation of this Act, the Native
17 American Graves Protection and Repatriation Act
18 (25 U.S.C. 3001 et seq.) (including section 1170 of
19 title 18, United States Code, as added by that Act),
20 the Archaeological Resources Protection Act of 1979
21 (16 U.S.C. 470aa et seq.), and other relevant Fed-
22 eral laws;

23 (7) to exempt from disclosure under section 552
24 of title 5, United States Code (commonly known as
25 the “Freedom of Information Act”)—

1 (A) information submitted by Indian
2 Tribes or Native Hawaiian organizations pursu-
3 ant to this Act; and

4 (B) information relating to an Item Re-
5 quiring Export Certification for which an export
6 certification was denied pursuant to this Act;
7 and

8 (8) to encourage buyers to purchase legal con-
9 temporary art made by Native artists for commercial
10 purposes.

11 **SEC. 3. DEFINITIONS.**

12 In this Act:

13 (1) **ARCHAEOLOGICAL RESOURCE.**—The term
14 “archaeological resource” means an archaeological
15 resource (as defined in section 3 of the Archae-
16 ological Resources Protection Act of 1979 (16
17 U.S.C. 470bb)) that is Native American.

18 (2) **CULTURAL AFFILIATION.**—The term “cul-
19 tural affiliation” means that there is a relationship
20 of shared group identity that can be reasonably
21 traced historically or prehistorically between a
22 present day Indian Tribe or Native Hawaiian orga-
23 nization and an identifiable earlier group.

24 (3) **CULTURAL ITEM.**—The term “cultural
25 item” means any 1 or more cultural items (as de-

1 fined in section 2 of the Native American Graves
2 Protection and Repatriation Act (25 U.S.C. 3001)).

3 (4) INDIAN TRIBE.—The term “Indian Tribe”
4 has the meaning given the term “Indian tribe” in
5 section 2 of the Native American Graves Protection
6 and Repatriation Act (25 U.S.C. 3001).

7 (5) ITEM PROHIBITED FROM EXPORTATION.—
8 The term “Item Prohibited from Exportation”
9 means—

10 (A) a cultural item prohibited from being
11 trafficked, including through sale, purchase, use
12 for profit, or transport for sale or profit, by—

13 (i) section 1170(b) of title 18, United
14 States Code, as added by the Native Amer-
15 ican Graves Protection and Repatriation
16 Act (25 U.S.C. 3001 et seq.); or

17 (ii) any other Federal law or treaty;
18 and

19 (B) an archaeological resource prohibited
20 from being trafficked, including through sale,
21 purchase, exchange, transport, receipt, or offer
22 to sell, purchase, or exchange, including in
23 interstate or foreign commerce, by—

1 (i) subsections (b) and (c) of section
2 6 of the Archaeological Resources Protec-
3 tion Act of 1979 (16 U.S.C. 470ee); or

4 (ii) any other Federal law or treaty.

5 (6) ITEM REQUIRING EXPORT CERTIFI-
6 CATION.—

7 (A) IN GENERAL.—The term “Item Re-
8 quiring Export Certification” means—

9 (i) a cultural item; and

10 (ii) an archaeological resource.

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

18 (7) NATIVE AMERICAN.—The term “Native
19 American” means—

20 (A) Native American (as defined in section
21 2 of the Native American Graves Protection
22 and Repatriation Act (25 U.S.C. 3001)); and

23 (B) Native Hawaiian (as so defined).

24 (8) NATIVE HAWAIIAN ORGANIZATION.—The
25 term “Native Hawaiian organization” has the mean-

1 ing given the term in section 2 of the Native Amer-
2 ican Graves Protection and Repatriation Act (25
3 U.S.C. 3001).

4 (9) SECRETARY.—The term “Secretary” means
5 the Secretary of the Interior.

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

8 (A) Native American human remains; or

9 (B) culturally, historically, or
10 archaeologically significant objects, resources,
11 patrimony, or other items that are affiliated
12 with a Native American culture.

13 **SEC. 4. ENHANCED NAGPRA PENALTIES.**

14 Section 1170 of title 18, United States Code, is
15 amended—

16 (1) by striking “5 years” each place it appears
17 and inserting “10 years”;

18 (2) in subsection (a), by striking “12 months”
19 and inserting “1 year and 1 day”; and

20 (3) in subsection (b), by striking “one year”
21 and inserting “1 year and 1 day”.

22 **SEC. 5. EXPORT PROHIBITIONS; EXPORT CERTIFICATION**
23 **SYSTEM; INTERNATIONAL AGREEMENTS.**

24 (a) EXPORT PROHIBITIONS.—

1 (1) IN GENERAL.—It shall be unlawful for any
2 person—

3 (A) to export, attempt to export, or other-
4 wise transport from the United States any Item
5 Prohibited from Exportation;

6 (B) to conspire with any person to engage
7 in an activity described in subparagraph (A); or

8 (C) to conceal an activity described in sub-
9 paragraph (A).

10 (2) PENALTIES.—Any person who violates
11 paragraph (1) and knows, or in the exercise of due
12 care should have known, that the Item Prohibited
13 from Exportation was taken, possessed, transported,
14 or sold in violation of, or in a manner unlawful
15 under, any Federal law or treaty, shall be fined in
16 accordance with section 3571 of title 18, United
17 States Code, imprisoned for not more than 1 year
18 and 1 day for a first violation, and not more than
19 10 years for a second or subsequent violation, or
20 both.

21 (3) DETENTION, FORFEITURE, AND REPATRI-
22 ATION.—

23 (A) DETENTION AND DELIVERY.—The
24 Secretary of Homeland Security, acting through

1 the Commissioner of U.S. Customs and Border
2 Protection, shall—

3 (i) detain any Item Prohibited from
4 Exportation that is exported, attempted to
5 be exported, or otherwise transported from
6 the United States in violation of paragraph
7 (1); and

8 (ii) deliver the Item Prohibited from
9 Exportation to the Secretary.

10 (B) FORFEITURE.—Any Item Prohibited
11 from Exportation that is exported, attempted to
12 be exported, or otherwise transported from the
13 United States in violation of paragraph (1)
14 shall be subject to forfeiture to the United
15 States in accordance with chapter 46 of title
16 18, United States Code (including section
17 983(c) of that chapter).

18 (C) REPATRIATION.—Any Item Prohibited
19 from Exportation that is forfeited under sub-
20 paragraph (B) shall be expeditiously repatriated
21 to the appropriate Indian Tribe or Native Ha-
22 waiian organization in accordance with, as ap-
23 plicable—

24 (i) the Native American Graves Pro-
25 tection and Repatriation Act (25 U.S.C.

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

3 (bb) “archaeological resource” in section 3 of the Archaeological Resources Protection
4 Act of 1979 (16 U.S.C. 470bb);
5

6 (II) describe the provenance requirements associated with the trafficking prohibition applicable to—
7
8

9 (aa) cultural items under
10 section 1170(b) of title 18,
11 United States Code; and
12

13 (bb) archaeological resources
14 under subsections (b) and (c) of
15 section 6 of Archaeological Resources Protection Act of 1979
16 (16 U.S.C. 470ee);
17

18 (III)(aa) include the definitions
19 of the terms “Native American” and
20 “Native Hawaiian” in section 2 of the
21 Native American Graves Protection
22 and Repatriation Act (25 U.S.C.
23 3001); and

1 (bb) describe how those terms
2 apply to archaeological resources
3 under this Act; and

4 (IV) be sufficiently specific and
5 precise to ensure that—

6 (aa) an export certification
7 is required only for Items Requir-
8 ing Export Certification; and

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

14 (ii) a description of characteristics
15 typical of items that do not qualify as
16 Items Requiring Export Certification and
17 therefore do not require an export certifi-
18 cation under this subsection, which shall
19 clarify that—

20 (I) an item made solely for com-
21 mercial purposes is presumed to not
22 qualify as an Item Requiring Export
23 Certification, unless an Indian Tribe
24 or Native Hawaiian organization chal-
25 lenges that presumption; and

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

9 (2) ELIGIBILITY FOR EXPORT CERTIFI-
10 CATION.—An Item Requiring Export Certification is
11 eligible for an export certification under this sub-
12 section if—

13 (A) the Item Requiring Export Certifi-
14 cation is not under ongoing Federal investiga-
15 tion;

16 (B) the export of the Item Requiring Ex-
17 port Certification would not otherwise violate
18 any 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

1 Act of 1979 (16 U.S.C. 470cc) and in
2 compliance with section 3(c) of the Native
3 American Graves Protection and Repatri-
4 ation Act (25 U.S.C. 3002(c)), if the per-
5 mit for excavation or removal authorizes
6 export; or

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

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

18 (II) the Indian Tribe or Native
19 Hawaiian organization has relin-
20 quished title or control of the Item
21 Requiring Export Certification in ac-
22 cordance with section 3 of the Native
23 American Graves Protection and Re-
24 patriation Act (25 U.S.C. 3002).

1 (3) EXPORT CERTIFICATION APPLICATION AND
2 ISSUANCE PROCEDURES.—

3 (A) APPLICATIONS FOR EXPORT CERTIFI-
4 CATION.—

5 (i) IN GENERAL.—An exporter seek-
6 ing to export an Item Requiring Export
7 Certification from the United States shall
8 submit to the Secretary an export certifi-
9 cation application in accordance with
10 clause (iii).

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

15 (I) subject the exporter to crimi-
16 nal penalties pursuant to section 1001
17 of title 18, United States Code; and

18 (II) prohibit the exporter from
19 receiving an export certification for
20 any Item Requiring Export Certifi-
21 cation in the future unless the ex-
22 porter submits additional evidence in
23 accordance with subparagraph
24 (B)(iii)(I).

1 (iii) FORM OF EXPORT CERTIFICATION
2 APPLICATION.—The Secretary, in consulta-
3 tion with Indian Tribes and Native Hawai-
4 ian organizations, and at the discretion of
5 the Secretary, in consultation with third
6 parties with relevant expertise, including
7 institutions of higher education, museums,
8 dealers, and collector organizations, shall
9 develop an export certification application
10 form, which shall require that an appli-
11 cant—

12 (I) describe, and provide pictures
13 of, each Item Requiring Export Cer-
14 tification that the applicant seeks to
15 export;

16 (II) include all available informa-
17 tion regarding the provenance of each
18 such Item Requiring Export Certifi-
19 cation; and

20 (III) include the attestation de-
21 scribed in subparagraph (B)(i).

22 (B) EVIDENCE.—

23 (i) IN GENERAL.—In completing an
24 export certification application with respect
25 to an Item Requiring Export Certification

1 that the exporter seeks to export, the ex-
2 porter shall attest that, to the best of the
3 knowledge and belief of the exporter, the
4 exporter is not attempting to export an
5 Item Prohibited from Exportation.

6 (ii) SUFFICIENCY OF ATTESTATION.—
7 An attestation under clause (i) shall be
8 considered to be sufficient evidence to sup-
9 port the application of the exporter under
10 subparagraph (A)(iii)(III), on the condition
11 that the exporter is not required to provide
12 additional evidence under clause (iii)(I).

13 (iii) ADDITIONAL REQUIREMENTS.—
14 (I) IN GENERAL.—The Secretary
15 shall give notice to an exporter that
16 submits an export certification applica-
17 tion under subparagraph (A)(i) that
18 the exporter is required to submit ad-
19 ditional evidence in accordance with
20 subclause (III) if the Secretary has
21 determined under subparagraph
22 (A)(ii) that the exporter made a will-
23 ful or knowing false statement on the
24 application or any past export certifi-
25 cation application.

1 (II) DELAYS OR DENIALS.—The
2 Secretary shall give notice to an ex-
3 porter that submits an export certifi-
4 cation application under subparagraph
5 (A)(i) that the exporter may submit
6 additional evidence in accordance with
7 subclause (III) if the issuance of an
8 export certification is—

9 (aa) delayed pursuant to the
10 examination by the Secretary of
11 the eligibility of the Item Requir-
12 ing Export Certification for an
13 export certification; or

14 (bb) denied by the Secretary
15 because the Secretary determined
16 that the Item Requiring Export
17 Certification is not eligible for an
18 export certification under this
19 subsection.

20 (III) ADDITIONAL EVIDENCE.—
21 On receipt of notice under subclause
22 (I), an exporter shall, or on receipt of
23 a notice under subclause (II), an ex-
24 porter may, provide the Secretary
25 with such additional evidence as the

1 Secretary may require to establish
2 that the Item Requiring Export Cer-
3 tification is eligible for an export cer-
4 tification under this subsection.

5 (C) DATABASE APPLICATIONS.—

6 (i) IN GENERAL.—The Secretary shall
7 establish and maintain a secure central
8 Federal database information system (re-
9 ferred to in this subparagraph as the
10 “database”) for the purpose of making ex-
11 port certification applications available to
12 Indian Tribes and Native Hawaiian organi-
13 zations.

14 (ii) COLLABORATION REQUIRED.—The
15 Secretary shall collaborate with Indian
16 Tribes, Native Hawaiian organizations,
17 and the interagency working group con-
18 vened under section 7(a) in the design and
19 implementation of the database.

20 (iii) AVAILABILITY.—Immediately on
21 receipt of an export certification applica-
22 tion, the Secretary shall make the export
23 certification application available on the
24 database.

1 (iv) DELETION FROM DATABASE.—On
2 request by an Indian Tribe or Native Ha-
3 waiian organization, the Secretary shall de-
4 lete an export certification application from
5 the database.

6 (v) TECHNICAL ASSISTANCE.—If an
7 Indian Tribe or Native Hawaiian organiza-
8 tion lacks sufficient resources to access the
9 database or respond to agency communica-
10 tions in a timely manner, the Secretary, in
11 consultation with Indian Tribes and Native
12 Hawaiian organizations, shall provide tech-
13 nical assistance to facilitate that access or
14 response, as applicable.

15 (D) ISSUANCE OF EXPORT CERTIFI-
16 CATION.—On receipt of an export certification
17 application for an Item Requiring Export Cer-
18 tification that meets the requirements of sub-
19 paragraphs (A) and (B), if the Secretary, in
20 consultation with Indian Tribes and Native Ha-
21 waiian organizations with a cultural affiliation
22 with the Item Requiring Export Certification,
23 determines that the Item Requiring Export Cer-
24 tification is eligible for an export certification
25 under paragraph (2), the Secretary may issue

1 an export certification for the Item Requiring
2 Export Certification.

3 (E) REVOCATION OF EXPORT CERTIFI-
4 CATION.—

5 (i) IN GENERAL.—If credible evidence
6 is provided that indicates that an item that
7 received an export certification under sub-
8 paragraph (D) is not eligible for an export
9 certification under paragraph (2), the Sec-
10 retary may immediately revoke the export
11 certification.

12 (ii) DETERMINATION.—In deter-
13 mining whether a revocation is warranted
14 under clause (i), the Secretary shall con-
15 sult with Indian Tribes and Native Hawai-
16 ian organizations with a cultural affiliation
17 with the affected Item Requiring Export
18 Certification.

19 (4) DETENTION, FORFEITURE, REPATRIATION,
20 AND RETURN.—

21 (A) DETENTION AND DELIVERY.—The
22 Secretary of Homeland Security, acting through
23 the Commissioner of U.S. Customs and Border
24 Protection, shall—

1 (i) detain any Item Requiring Export
2 Certification that an exporter attempts to
3 export or otherwise transport without an
4 export certification; and

5 (ii) deliver the Item Requiring Export
6 Certification to the Secretary, for seizure
7 by the Secretary.

8 (B) FORFEITURE.—Any Item Requiring
9 Export Certification that is detained under sub-
10 paragraph (A)(i) shall be subject to forfeiture
11 to the United States in accordance with chapter
12 46 of title 18, United States Code (including
13 section 983(c) of that chapter).

14 (C) REPATRIATION OR RETURN TO EX-
15 PORTER.—

16 (i) IN GENERAL.—Not later than 60
17 days after the date of delivery to the Sec-
18 retary of an Item Requiring Export Cer-
19 tification under subparagraph (A)(ii), the
20 Secretary shall determine whether the Item
21 Requiring Export Certification is an Item
22 Prohibited from Exportation.

23 (ii) REPATRIATION.—If an Item Re-
24 quiring Export Certification is determined
25 by the Secretary to be an Item Prohibited

1 from Exportation and is forfeited under
2 subparagraph (B), the item shall be expe-
3 ditiously repatriated to the appropriate In-
4 dian Tribe or Native Hawaiian organiza-
5 tion in accordance with, as applicable—

6 (I) the Native American Graves
7 Protection and Repatriation Act (25
8 U.S.C. 3001 et seq.) (including sec-
9 tion 1170 of title 18, United States
10 Code, as added by that Act); or

11 (II) the Archaeological Resources
12 Protection Act of 1979 (16 U.S.C.
13 470aa et seq.).

14 (iii) RETURN TO EXPORTER.—

15 (I) IN GENERAL.—If the Sec-
16 retary determines that credible evi-
17 dence does not establish that the Item
18 Requiring Export Certification is an
19 Item Prohibited from Exportation, or
20 if the Secretary does not complete the
21 determination by the deadline de-
22 scribed in clause (i), the Secretary
23 shall return the Item Requiring Ex-
24 port Certification to the exporter.

1 (II) EFFECT.—The return of an
2 Item Requiring Export Certification
3 to an exporter under subclause (I)
4 shall not mean that the Item Requir-
5 ing Export Certification is eligible for
6 an export certification under this sub-
7 section.

8 (5) PENALTIES.—

9 (A) ITEMS REQUIRING EXPORT CERTIFI-
10 CATION.—

11 (i) IN GENERAL.—It shall be unlawful
12 for any person to export, attempt to ex-
13 port, or otherwise transport from the
14 United States any Item Requiring Export
15 Certification without first obtaining an ex-
16 port certification.

17 (ii) PENALTIES.—Except as provided
18 in subparagraph (D), any person who vio-
19 lates clause (i) shall be—

20 (I) assessed a civil penalty in ac-
21 cordance with such regulations as the
22 Secretary promulgates pursuant to
23 section 10; and

24 (II) subject to any other applica-
25 ble penalties under this Act.

1 (B) ITEMS PROHIBITED FROM EXPOR-
2 TATION.—Whoever exports an Item Prohibited
3 from Exportation without first securing an ex-
4 port certification shall be liable for a civil
5 money penalty, the amount of which shall equal
6 the total cost of storing and repatriating the
7 Item Prohibited from Exportation.

8 (C) USE OF FINES COLLECTED.—Any
9 amounts collected by the Secretary as a civil
10 penalty under subparagraph (A)(ii)(I) or (B)—

11 (i) may be used by the Secretary—

12 (I) for fines collected under sub-
13 paragraph (A)(ii)(I), to process export
14 certification applications under this
15 subsection; and

16 (II) for fines collected under sub-
17 paragraph (B), to store and repatriate
18 the Item Prohibited from Exportation;

19 (ii) shall supplement (and not sup-
20 plant) any appropriations to the Secretary
21 to carry out this subsection; and

22 (iii) shall not be covered into the
23 Treasury as miscellaneous receipts.

24 (D) VOLUNTARY RETURN.—

1 (i) IN GENERAL.—Any person who at-
2 tempts to export or otherwise transport
3 from the United States an Item Requiring
4 Export Certification without first obtaining
5 an export certification, but voluntarily re-
6 turns the Item Requiring Export Certifi-
7 cation, or directs the Item Requiring Ex-
8 port Certification to be returned, to the ap-
9 propriate Indian Tribe or Native Hawaiian
10 organization in accordance with section 6
11 prior to the commencement of an active
12 Federal investigation shall not be pros-
13 ecuted for a violation of subparagraph (A)
14 with respect to the Item Requiring Export
15 Certification.

16 (ii) ACTIONS NOT COMMENCING A
17 FEDERAL INVESTIGATION.—For purposes
18 of clause (i), the following actions shall not
19 be considered to be actions that commence
20 an active Federal investigation:

21 (I) The submission by the ex-
22 porter of an export certification appli-
23 cation for the Item Requiring Export
24 Certification under paragraph
25 (3)(A)(i).

1 (II) The detention of the Item
2 Requiring Export Certification by the
3 Secretary of Homeland Security, act-
4 ing through the Commissioner of U.S.
5 Customs and Border Protection,
6 under paragraph (4)(A)(i).

7 (III) The delivery to the Sec-
8 retary of the Item Requiring Export
9 Certification by the Secretary of
10 Homeland Security, acting through
11 the Commissioner of U.S. Customs
12 and Border Protection, under para-
13 graph (4)(A)(ii).

14 (IV) The seizure by the Secretary
15 of the Item Requiring Export Certifi-
16 cation under paragraph (4)(A)(ii).

17 (6) FEES.—

18 (A) IN GENERAL.—The Secretary may col-
19 lect reasonable fees to process export certifi-
20 cation applications under this subsection.

21 (B) AVAILABILITY OF AMOUNTS COL-
22 LECTED.—Any amounts collected by the Sec-
23 retary under subparagraph (A)—

24 (i) shall supplement (and not sup-
25 plant) any appropriations to the Secretary

1 for the activities described in subparagraph
2 (A); and
3 (ii) shall not be covered into the
4 Treasury as miscellaneous receipts.

5 (7) ADMINISTRATIVE APPEAL.—If the Secretary
6 denies an export certification or an Item Requiring
7 Export Certification is detained under this sub-
8 section, the exporter, on request, shall be given a
9 hearing on the record in accordance with such rules
10 and regulations as the Secretary promulgates pursu-
11 ant to section 10.

12 (8) TRAINING.—

13 (A) IN GENERAL.—The Secretary, the Sec-
14 retary of State, the Attorney General, and the
15 heads of all other relevant Federal agencies
16 shall require all appropriate personnel to par-
17 ticipate in training regarding applicable laws
18 and consultations to facilitate positive govern-
19 ment-to-government interactions with Indian
20 Tribes and Native Hawaiian Organizations.

21 (B) U.S. CUSTOMS AND BORDER PROTEC-
22 TION TRAINING.—The Secretary of Homeland
23 Security, acting through the Commissioner of
24 U.S. Customs and Border Protection, shall re-
25 quire all appropriate personnel of U.S. Customs

1 and Border Protection to participate in training
2 provided by the Secretary of the Interior or an
3 Indian Tribe or Native Hawaiian organization
4 to assist the personnel in identifying, handling,
5 and documenting in a culturally sensitive man-
6 ner Items Requiring Export Certification for
7 purposes of this Act.

8 (C) CONSULTATION.—In developing or
9 modifying and delivering trainings under sub-
10 paragraphs (A) and (B), the applicable heads of
11 Federal agencies shall consult with Indian
12 Tribes and Native Hawaiian organizations.

13 (c) AGREEMENTS TO REQUEST RETURN FROM FOR-
14 EIGN COUNTRIES.—The President may request from for-
15 eign nations agreements that specify concrete measures
16 that the foreign nation will carry out—

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

19 (2) to encourage the voluntary return of tan-
20 gible cultural heritage; and

21 (3) to expand the market for the products of
22 Indian art and craftsmanship in accordance with
23 section 2 of the Act of August 27, 1935 (49 Stat.
24 891, chapter 748; 25 U.S.C. 305a) (commonly
25 known as the “Indian Arts and Crafts Act”).

1 **SEC. 6. VOLUNTARY RETURN OF TANGIBLE CULTURAL**
2 **HERITAGE.**

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

6 (b) TRAININGS AND WORKSHOPS.—The liaisons des-
7 igned under subsection (a) shall offer to representatives
8 of Indian Tribes and Native Hawaiian organizations and
9 collectors, dealers, and other individuals and organizations
10 trainings and workshops regarding the voluntary return
11 of tangible cultural heritage.

12 (c) REFERRALS.—

13 (1) IN GENERAL.—The Secretary shall refer in-
14 dividuals and organizations to 1 or more Indian
15 Tribes and Native Hawaiian organizations with a
16 cultural affiliation to tangible cultural heritage for
17 the purpose of facilitating the voluntary return of
18 tangible cultural heritage.

19 (2) REFERRAL REPRESENTATIVES.—The Sec-
20 retary shall compile a list of representatives from
21 each Indian Tribe and Native Hawaiian organization
22 for purposes of referral under paragraph (1).

23 (3) CONSULTATION.—The Secretary shall con-
24 sult with Indian Tribes, Native Hawaiian organiza-
25 tions, and the Native working group convened under

1 section 8(a) before making a referral under para-
2 graph (1).

3 (4) THIRD-PARTY EXPERTS.—The Secretary
4 may use third parties with relevant expertise, includ-
5 ing institutions of higher education, museums, deal-
6 ers, and collector organizations, in determining to
7 which Indian Tribe or Native Hawaiian organization
8 an individual or organization should be referred
9 under paragraph (1).

10 (d) LEGAL LIABILITY.—Nothing in this section im-
11 poses on any individual or entity any additional penalties
12 or legal liability.

13 (e) TAX DOCUMENTATION.—In facilitating the vol-
14 untary return of tangible cultural heritage under this sec-
15 tion, the Secretary shall include provision of tax docu-
16 mentation for a deductible gift to an Indian Tribe or Na-
17 tive Hawaiian organization, if the recipient Indian Tribe
18 or Native Hawaiian organization consents to the provision
19 of tax documentation.

20 (f) REPATRIATION UNDER NATIVE AMERICAN
21 GRAVES PROTECTION AND REPATRIATION ACT.—The vol-
22 untary return provisions of this section shall apply to a
23 specific item of tangible cultural heritage only to the ex-
24 tent that the repatriation provisions under section 7 of the
25 Native American Graves Protection and Repatriation Act

1 (25 U.S.C. 3005) do not apply to the item of tangible cul-
2 tural heritage.

3 **SEC. 7. INTERAGENCY WORKING GROUP.**

4 (a) IN GENERAL.—The Secretary shall designate a
5 coordinating office to convene an interagency working
6 group consisting of representatives from the Departments
7 of the Interior, Justice, State, and Homeland Security.

8 (b) GOALS.—The goals of the interagency working
9 group convened under subsection (a) are—

10 (1) to facilitate the repatriation to Indian
11 Tribes and Native Hawaiian organizations of items
12 that have been illegally removed or trafficked in vio-
13 lation of applicable law;

14 (2) to protect tangible cultural heritage, cul-
15 tural items, and archaeological resources still in the
16 possession of Indian Tribes and Native Hawaiian or-
17 ganizations; and

18 (3) to improve the implementation by the appli-
19 cable Federal agencies of—

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

24 (B) the Archaeological Resources Protec-
25 tion Act of 1979 (16 U.S.C. 470aa et seq.); and

1 (C) other relevant Federal laws.

2 (c) RESPONSIBILITIES.—The interagency working
3 group convened under subsection (a) shall—

4 (1) aid in implementation of this Act and the
5 amendments made by this Act, including by aiding
6 in—

7 (A) the voluntary return of tangible cul-
8 tural heritage under section 6; and

9 (B) halting international sales of items
10 that are prohibited from being trafficked under
11 Federal law; and

12 (2) collaborate with—

13 (A) the Native working group convened
14 under section 8(a);

15 (B) the review committee established under
16 section 8(a) of the Native American Graves
17 Protection and Repatriation Act (25 U.S.C.
18 3006(a));

19 (C) the Cultural Heritage Coordinating
20 Committee established pursuant to section 2 of
21 the Protect and Preserve International Cultural
22 Property Act (Public Law 114–151; 19 U.S.C.
23 2601 note); and

24 (D) any other relevant committees and
25 working groups.

1 **SEC. 8. NATIVE WORKING GROUP.**

2 (a) IN GENERAL.—The Secretary shall convene a Na-
3 tive working group consisting of not fewer than 12 rep-
4 resentatives of Indian Tribes and Native Hawaiian organi-
5 zations with relevant expertise, who shall be nominated by
6 Indian Tribes and Native Hawaiian organizations, to ad-
7 vise the Federal Government in accordance with this sec-
8 tion.

9 (b) RECOMMENDATIONS.—The Native working group
10 convened under subsection (a) may provide recommenda-
11 tions regarding—

12 (1) the voluntary return of tangible cultural
13 heritage by collectors, dealers, and other individuals
14 and non-Federal organizations that hold such tan-
15 gible cultural heritage; and

16 (2) the elimination of illegal commerce of cul-
17 tural items and archaeological resources in the
18 United States and foreign markets.

19 (c) REQUESTS.—The Native working group convened
20 under subsection (a) may make formal requests to initiate
21 certain agency actions, including requests that—

22 (1) the Department of Justice initiate judicial
23 proceedings domestically or abroad to aid in the re-
24 patriation cultural items and archaeological re-
25 sources; and

1 (2) the Department of State initiate dialogue
2 through diplomatic channels to aid in that repatri-
3 ation.

4 (d) AGENCY AND COMMITTEE ASSISTANCE.—

5 (1) IN GENERAL.—On request by the Native
6 working group convened under subsection (a), the
7 agencies and committees described in paragraph (2)
8 shall make efforts to provide information and assist-
9 ance to the Native working group.

10 (2) DESCRIPTION OF AGENCIES AND COMMIT-
11 TEES.—The agencies and committees referred to in
12 paragraph (1) are the following:

13 (A) The Department of the Interior.

14 (B) The Department of Justice.

15 (C) The Department of Homeland Secu-
16 rity.

17 (D) The Department of State.

18 (E) The review committee established
19 under section 8(a) of the Native American
20 Graves Protection and Repatriation Act (25
21 U.S.C. 3006(a)).

22 (F) The Cultural Heritage Coordinating
23 Committee established pursuant to section 2 of
24 the Protect and Preserve International Cultural

1 Property Act (Public Law 114–151; 19 U.S.C.
2 2601 note).

3 (G) Any other relevant Federal agency,
4 committee, or working group.

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

9 **SEC. 9. TREATMENT UNDER FREEDOM OF INFORMATION**
10 **ACT.**

11 (a) IN GENERAL.—Except as provided in subsection
12 (c), the following information shall be exempt from dislo-
13 sure under section 552 of title 5, United States Code:

14 (1) Information that a representative of an In-
15 dian Tribe or Native Hawaiian organization—

16 (A) submits to a Federal agency pursuant
17 to this Act or an amendment made by this Act;
18 and

19 (B) designates as sensitive or private ac-
20 cording to Native American custom, law, cul-
21 ture, or religion.

22 (2) Information that any person submits to a
23 Federal agency pursuant to this Act or an amend-
24 ment made by this Act that relates to an item for

1 which an export certification is denied under this
2 Act.

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

6 (c) EXCEPTION.—An Indian Tribe or Native Hawai-
7 ian organization may request and shall receive its own in-
8 formation, as described in subsection (a), from the Federal
9 agency to which the Indian Tribe or Native Hawaiian or-
10 ganization submitted the information.

11 **SEC. 10. REGULATIONS.**

12 (a) IN GENERAL.—Not later than 1 year after the
13 date of enactment of this Act, the Secretary, in consulta-
14 tion with the Secretary of State, the Secretary of Home-
15 land Security, and the Attorney General, and after con-
16 sultation with Indian Tribes and Native Hawaiian organi-
17 zations, shall promulgate rules and regulations to carry
18 out this Act.

19 (b) INCLUSION.—The regulations promulgated by the
20 Secretary pursuant to subsection (a) shall include a rea-
21 sonable deadline by which the Secretary shall approve or
22 deny an export certification application under section 5(b).

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 2021 through
4 2026.