

Like the others I have mentioned, I know PETE is eager to spend more time at home in Sugar Land with his wife Nancy and his extended family, but I hope he knows how much we will miss him in Congress.

If it isn't already obvious, the Texas delegation is losing some truly outstanding Members, and our new additions will have some big boots to fill. But I just want to tell you how much I appreciate the opportunity to express my gratitude to each of these six outstanding Congressmen for their friendship and service to our State and wish them and their families well as they take on new challenges ahead.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HEINRICH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

SAFEGUARD TRIBAL OBJECTS OF PATRIMONY ACT OF 2019

Mr. HEINRICH. Mr. President, as if in legislative session, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 608, S. 2165.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2165) to enhance protections of Native American tangible cultural heritage, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Indian Affairs, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Safeguard Tribal Objects of Patrimony Act of 2020".

SEC. 2. PURPOSES.

The purposes of this Act are—

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

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

(3) to stop the export, and facilitate the international repatriation, of cultural items prohibited from being trafficked by the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.) (including section 1170 of title 18, United States Code, as added by that Act) and archaeological resources prohibited from being trafficked by the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.) by—

(A) explicitly prohibiting the export;

(B) creating an export certification system; and

(C) confirming the authority of the President to request from foreign nations agreements or provisional measures to prevent irreparable damage to Native American cultural heritage;

(4) to establish a Federal framework in order to support the voluntary return by individuals

and organizations of items of tangible cultural heritage, including items covered by the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.) (including section 1170 of title 18, United States Code, as added by that Act) and the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.);

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

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

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

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

(B) information relating to an Item Requiring Export Certification for which an export certification was denied pursuant to this Act; and

(8) to encourage buyers to purchase legal contemporary art made by Native artists for commercial purposes.

SEC. 3. DEFINITIONS.

In this Act:

(1) **ARCHAEOLOGICAL RESOURCE.**—The term "archaeological resource" means an archaeological resource (as defined in section 3 of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470bb)) that is Native American.

(2) **CULTURAL AFFILIATION.**—The term "cultural affiliation" means that there is a relationship of shared group identity that can be reasonably traced historically or prehistorically between a present day Indian Tribe or Native Hawaiian organization and an identifiable earlier group.

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

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

(5) **ITEM PROHIBITED FROM EXPORTATION.**—The term "Item Prohibited from Exportation" means—

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

(i) section 1170(b) of title 18, United States Code, as added by the Native American 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 interstate 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 Requiring Export Certification" means—

(i) a cultural item; and

(ii) an archaeological resource.

(B) **EXCLUSION.**—The term "Item Requiring Export Certification" does not include an item

described in clause (i) or (ii) of subparagraph (A) for which an Indian Tribe or Native Hawaiian organization with a cultural affiliation with the item has provided a certificate authorizing exportation of the item.

(7) **NATIVE AMERICAN.**—The term "Native American" means—

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

(B) Native Hawaiian (as so defined).

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

(9) **SECRETARY.**—The term "Secretary" means the Secretary of the Interior.

(10) **TANGIBLE CULTURAL HERITAGE.**—The term "tangible cultural heritage" means—

(A) Native American human remains; or

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

SEC. 4. ENHANCED NAGPRA PENALTIES.

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

(1) by striking "5 years" each place it appears and inserting "10 years";

(2) in subsection (a), by striking "12 months" and inserting "1 year and 1 day"; and

(3) in subsection (b), by striking "one year" and inserting "1 year and 1 day".

SEC. 5. EXPORT PROHIBITIONS; EXPORT CERTIFICATION SYSTEM; INTERNATIONAL AGREEMENTS.

(a) **EXPORT PROHIBITIONS.**—

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

(A) to export, attempt to export, or otherwise transport from the United States any Item Prohibited from Exportation;

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

(C) to conceal an activity described in subparagraph (A).

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

(3) **DETENTION, FORFEITURE, AND REPATRIATION.**—

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

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

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

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

(C) **REPATRIATION.**—Any Item Prohibited from Exportation that is forfeited under subparagraph (B) shall be expeditiously repatriated to the appropriate Indian Tribe or Native Hawaiian organization in accordance with, as applicable—

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

(ii) the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.).

(b) EXPORT CERTIFICATION SYSTEM.—

(1) EXPORT CERTIFICATION REQUIREMENT.—

(A) IN GENERAL.—No Item Requiring Export Certification may be exported from the United States without first having obtained an export certification in accordance with this subsection.

(B) PUBLICATION.—The Secretary, in consultation with Indian Tribes and Native Hawaiian organizations, shall publish in the Federal Register a notice that includes—

(i) a description of characteristics typical of Items Requiring Export Certification, which shall—

(I) include the definitions of the terms—

(aa) “cultural items” in section 2 of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001); and

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

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

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

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

(III)(aa) include the definitions of the terms “Native American” and “Native Hawaiian” in section 2 of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001); and (bb) describe how those terms apply to archaeological resources under this Act; and

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

(aa) an export certification is required only for Items Requiring Export Certification; and

(bb) fair notice is given to exporters and other persons regarding which items require an export certification under this subsection; and

(ii) a description of characteristics typical of items that do not qualify as Items Requiring Export Certification and therefore do not require an export certification under this subsection, which shall clarify that—

(I) an item made solely for commercial purposes is presumed to not qualify as an Item Requiring Export Certification, unless an Indian Tribe or Native Hawaiian organization challenges that presumption; and

(II) in some circumstances, receipts or certifications issued by Indian Tribes or Native Hawaiian organizations with a cultural affiliation with an item may be used as evidence to demonstrate a particular item does not qualify as an Item Requiring Export Certification.

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

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

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

(C) the Item Requiring Export Certification—

(i) is not an Item Prohibited from Exportation;

(ii) was excavated or removed pursuant to a permit issued under section 4 of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470cc) and in compliance with section 3(c) of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3002(c)), if the permit for excavation or removal authorizes export; or

(iii) is accompanied by written confirmation from the Indian Tribe or Native Hawaiian organization with authority to alienate the Item Requiring Export Certification that—

(I) the exporter has a right of possession (as defined in section 2 of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001)) of the Item Requiring Export Certification; or

(II) the Indian Tribe or Native Hawaiian organization has relinquished title or control of the Item Requiring Export Certification in accordance with section 3 of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3002).

(3) EXPORT CERTIFICATION APPLICATION AND ISSUANCE PROCEDURES.—

(A) APPLICATIONS FOR EXPORT CERTIFICATION.—

(i) IN GENERAL.—An exporter seeking to export an Item Requiring Export Certification from the United States shall submit to the Secretary an export certification application in accordance with clause (iii).

(ii) CONSEQUENCES OF FALSE STATEMENT.—Any willful or knowing false statement made on an export certification application form under clause (i) shall—

(I) subject the exporter to criminal penalties pursuant to section 1001 of title 18, United States Code; and

(II) prohibit the exporter from receiving an export certification for any Item Requiring Export Certification in the future unless the exporter submits additional evidence in accordance with subparagraph (B)(iii)(I).

(iii) FORM OF EXPORT CERTIFICATION APPLICATION.—The Secretary, in consultation with Indian Tribes and Native Hawaiian organizations, and at the discretion of the Secretary, in consultation with third parties with relevant expertise, including institutions of higher education, museums, dealers, and collector organizations, shall develop an export certification application form, which shall require that an applicant—

(I) describe, and provide pictures of, each Item Requiring Export Certification that the applicant seeks to export;

(II) include all available information regarding the provenance of each such Item Requiring Export Certification; and

(III) include the attestation described in subparagraph (B)(i).

(B) EVIDENCE.—

(i) IN GENERAL.—In completing an export certification application with respect to an Item Requiring Export Certification that the exporter seeks to export, the exporter shall attest that, to the best of the knowledge and belief of the exporter, the exporter is not attempting to export an Item Prohibited from Exportation.

(ii) SUFFICIENCY OF ATTESTATION.—An attestation under clause (i) shall be considered to be sufficient evidence to support the application of the exporter under subparagraph (A)(iii)(III), on the condition that the exporter is not required to provide additional evidence under clause (iii)(I).

(iii) ADDITIONAL REQUIREMENTS.—

(I) IN GENERAL.—The Secretary shall give notice to an exporter that submits an export certification application under subparagraph (A)(i) that the exporter is required to submit additional evidence in accordance with subclause (III) if the Secretary has determined under subparagraph (A)(ii) that the exporter made a willful or knowing false statement on the application or any past export certification application.

(II) DELAYS OR DENIALS.—The Secretary shall give notice to an exporter that submits an export certification application under subparagraph (A)(i) that the exporter may submit additional evidence in accordance with subclause (III) if the issuance of an export certification is—

(aa) delayed pursuant to the examination by the Secretary of the eligibility of the Item Requiring Export Certification for an export certification; or

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

(III) ADDITIONAL EVIDENCE.—On receipt of notice under subclause (I), an exporter shall, on or receipt of a notice under subclause (II), an exporter may, provide the Secretary with such additional evidence as the Secretary may require

to establish that the Item Requiring Export Certification is eligible for an export certification under this subsection.

(C) DATABASE APPLICATIONS.—

(i) IN GENERAL.—The Secretary shall establish and maintain a secure central Federal database information system (referred to in this subparagraph as the “database”) for the purpose of making export certification applications available to Indian Tribes and Native Hawaiian organizations.

(ii) COLLABORATION REQUIRED.—The Secretary shall collaborate with Indian Tribes, Native Hawaiian organizations, and the interagency working group convened under section 7(a) in the design and implementation of the database.

(iii) AVAILABILITY.—Immediately on receipt of an export certification application, the Secretary shall make the export certification application available on the database.

(iv) DELETION FROM DATABASE.—On request by an Indian Tribe or Native Hawaiian organization, the Secretary shall delete an export certification application from the database.

(v) TECHNICAL ASSISTANCE.—If an Indian Tribe or Native Hawaiian organization lacks sufficient resources to access the database or respond to agency communications in a timely manner, the Secretary, in consultation with Indian Tribes and Native Hawaiian organizations, shall provide technical assistance to facilitate that access or response, as applicable.

(D) ISSUANCE OF EXPORT CERTIFICATION.—On receipt of an export certification application for an Item Requiring Export Certification that meets the requirements of subparagraphs (A) and (B), if the Secretary, in consultation with Indian Tribes and Native Hawaiian organizations with a cultural affiliation with the Item Requiring Export Certification, determines that the Item Requiring Export Certification is eligible for an export certification under paragraph (2), the Secretary may issue an export certification for the Item Requiring Export Certification.

(E) REVOCATION OF EXPORT CERTIFICATION.—

(i) IN GENERAL.—If credible evidence is provided that indicates that an item that received an export certification under subparagraph (D) is not eligible for an export certification under paragraph (2), the Secretary may immediately revoke the export certification.

(ii) DETERMINATION.—In determining whether a revocation is warranted under clause (i), the Secretary shall consult with Indian Tribes and Native Hawaiian organizations with a cultural affiliation with the affected Item Requiring Export Certification.

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

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

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

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

(B) FORFEITURE.—Any Item Requiring Export Certification that is detained under subparagraph (A)(i) shall be subject to forfeiture to the United States in accordance with chapter 46 of title 18, United States Code (including section 983(c) of that chapter).

(C) REPATRIATION OR RETURN TO EXPORTER.—

(i) IN GENERAL.—Not later than 60 days after the date of delivery to the Secretary of an Item Requiring Export Certification under subparagraph (A)(ii), the Secretary shall determine whether the Item Requiring Export Certification is an Item Prohibited from Exportation.

(ii) REPATRIATION.—If an Item Requiring Export Certification is determined by the Secretary to be an Item Prohibited from Exportation and

is forfeited under subparagraph (B), the item shall be expeditiously repatriated to the appropriate Indian Tribe or Native Hawaiian organization in accordance with, as applicable—

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

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

(iii) RETURN TO EXPORTER.—

(I) IN GENERAL.—If the Secretary determines that credible evidence does not establish that the Item Requiring Export Certification is an Item Prohibited from Exportation, or if the Secretary does not complete the determination by the deadline described in clause (i), the Secretary shall return the Item Requiring Export Certification to the exporter.

(II) EFFECT.—The return of an Item Requiring Export Certification to an exporter under subclause (I) shall not mean that the Item Requiring Export Certification is eligible for an export certification under this subsection.

(5) PENALTIES.—

(A) ITEMS REQUIRING EXPORT CERTIFICATION.—

(i) IN GENERAL.—It shall be unlawful for any person to export, attempt to export, or otherwise transport from the United States any Item Requiring Export Certification without first obtaining an export certification.

(ii) PENALTIES.—Except as provided in subparagraph (D), any person who violates clause (i) shall be—

(I) assessed a civil penalty in accordance with such regulations as the Secretary promulgates pursuant to section 10; and

(II) subject to any other applicable penalties under this Act.

(B) ITEMS PROHIBITED FROM EXPORTATION.—Whoever exports an Item Prohibited from Exportation without first securing an export certification shall be liable for a civil money penalty, the amount of which shall equal the total cost of storing and repatriating the Item Prohibited from Exportation.

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

(i) may be used by the Secretary—

(I) for fines collected under subparagraph (A)(ii)(I), to process export certification applications under this subsection; and

(II) for fines collected under subparagraph (B), to store and repatriate the Item Prohibited from Exportation;

(ii) shall supplement (and not supplant) any appropriations to the Secretary to carry out this subsection; and

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

(D) VOLUNTARY RETURN.—

(i) IN GENERAL.—Any person who attempts to export or otherwise transport from the United States an Item Requiring Export Certification without first obtaining an export certification, but voluntarily returns the Item Requiring Export Certification, or directs the Item Requiring Export Certification to be returned, to the appropriate Indian Tribe or Native Hawaiian organization in accordance with section 6 prior to the commencement of an active Federal investigation shall not be prosecuted for a violation of subparagraph (A) with respect to the Item Requiring Export Certification.

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

(I) The submission by the exporter of an export certification application for the Item Requiring Export Certification under paragraph (3)(A)(i).

(II) The detention of the Item Requiring Export Certification by the Secretary of Homeland Security, acting through the Commissioner of

U.S. Customs and Border Protection, under paragraph (4)(A)(i).

(III) The delivery to the Secretary of the Item Requiring Export Certification by the Secretary of Homeland Security, acting through the Commissioner of U.S. Customs and Border Protection, under paragraph (4)(A)(ii).

(IV) The seizure by the Secretary of the Item Requiring Export Certification under paragraph (4)(A)(ii).

(6) FEES.—

(A) IN GENERAL.—The Secretary may collect reasonable fees to process export certification applications under this subsection.

(B) AVAILABILITY OF AMOUNTS COLLECTED.—Any amounts collected by the Secretary under subparagraph (A)—

(i) shall supplement (and not supplant) any appropriations to the Secretary for the activities described in subparagraph (A); and

(ii) shall not be covered into the Treasury as miscellaneous receipts.

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

(8) TRAINING.—

(A) IN GENERAL.—The Secretary, the Secretary of State, the Attorney General, and the heads of all other relevant Federal agencies shall require all appropriate personnel to participate in training regarding applicable laws and consultations to facilitate positive government-to-government interactions with Indian Tribes and Native Hawaiian Organizations.

(B) U.S. CUSTOMS AND BORDER PROTECTION TRAINING.—The Secretary of Homeland Security, acting through the Commissioner of U.S. Customs and Border Protection, shall require all appropriate personnel of U.S. Customs and Border Protection to participate in training provided by the Secretary of the Interior or an Indian Tribe or Native Hawaiian organization to assist the personnel in identifying, handling, and documenting in a culturally sensitive manner Items Requiring Export Certification for purposes of this Act.

(C) CONSULTATION.—In developing or modifying and delivering trainings under subparagraphs (A) and (B), the applicable heads of Federal agencies shall consult with Indian Tribes and Native Hawaiian organizations.

(c) AGREEMENTS TO REQUEST RETURN FROM FOREIGN COUNTRIES.—The President may request from foreign nations agreements that specify concrete measures that the foreign nation will carry out—

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

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

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

SEC. 6. VOLUNTARY RETURN OF TANGIBLE CULTURAL HERITAGE.

(a) LIAISON.—The Secretary and the Secretary of State shall each designate a liaison to facilitate the voluntary return of tangible cultural heritage.

(b) TRAININGS AND WORKSHOPS.—The liaisons designated under subsection (a) shall offer to representatives of Indian Tribes and Native Hawaiian organizations and collectors, dealers, and other individuals and organizations trainings and workshops regarding the voluntary return of tangible cultural heritage.

(c) REFERRALS.—

(1) IN GENERAL.—The Secretary shall refer individuals and organizations to 1 or more Indian Tribes and Native Hawaiian organizations with a cultural affiliation to tangible cultural herit-

age for the purpose of facilitating the voluntary return of tangible cultural heritage.

(2) REFERRAL REPRESENTATIVES.—The Secretary shall compile a list of representatives from each Indian Tribe and Native Hawaiian organization for purposes of referral under paragraph (1).

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

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

(d) LEGAL LIABILITY.—Nothing in this section imposes on any individual or entity any additional penalties or legal liability.

(e) TAX DOCUMENTATION.—In facilitating the voluntary return of tangible cultural heritage under this section, the Secretary shall include provision of tax documentation for a deductible gift to an Indian Tribe or Native Hawaiian organization, if the recipient Indian Tribe or Native Hawaiian organization consents to the provision of tax documentation.

(f) REPATRIATION UNDER NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT.—The voluntary return provisions of this section shall apply to a specific item of tangible cultural heritage only to the extent that the repatriation provisions under section 7 of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3005) do not apply to the item of tangible cultural heritage.

SEC. 7. INTERAGENCY WORKING GROUP.

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

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

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

(2) to protect tangible cultural heritage, cultural items, and archaeological resources still in the possession of Indian Tribes and Native Hawaiian organizations; and

(3) to improve the implementation by the applicable Federal agencies of—

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

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

(C) other relevant Federal laws.

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

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

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

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

(2) collaborate with—

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

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

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

(D) any other relevant committees and working groups.

SEC. 8. NATIVE WORKING GROUP.

(a) *IN GENERAL.*—The Secretary shall convene a Native working group consisting of not fewer than 12 representatives of Indian Tribes and Native Hawaiian organizations with relevant expertise, who shall be nominated by Indian Tribes and Native Hawaiian organizations, to advise the Federal Government in accordance with this section.

(b) *RECOMMENDATIONS.*—The Native working group convened under subsection (a) may provide recommendations regarding—

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

(2) the elimination of illegal commerce of cultural items and archaeological resources in the United States and foreign markets.

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

(1) the Department of Justice initiate judicial proceedings domestically or abroad to aid in the repatriation cultural items and archaeological resources; and

(2) the Department of State initiate dialogue through diplomatic channels to aid in that repatriation.

(d) *AGENCY AND COMMITTEE ASSISTANCE.*—

(1) *IN GENERAL.*—On request by the Native working group convened under subsection (a), the agencies and committees described in paragraph (2) shall make efforts to provide information and assistance to the Native working group.

(2) *DESCRIPTION OF AGENCIES AND COMMITTEES.*—The agencies and committees referred to in paragraph (1) are the following:

- (A) The Department of the Interior.
- (B) The Department of Justice.
- (C) The Department of Homeland Security.
- (D) The Department of State.
- (E) The review committee established under section 8(a) of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3006(a)).

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

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

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

SEC. 9. TREATMENT UNDER FREEDOM OF INFORMATION ACT.

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

(1) Information that a representative of an Indian Tribe or Native Hawaiian organization—

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

(B) designates as sensitive or private according to Native American custom, law, culture, or religion.

(2) Information that any person submits to a Federal agency pursuant to this Act or an amendment made by this Act that relates to an item for which an export certification is denied under this Act.

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

(c) *EXCEPTION.*—An Indian Tribe or Native Hawaiian organization may request and shall receive its own information, as described in subsection (a), from the Federal agency to which the Indian Tribe or Native Hawaiian organization submitted the information.

SEC. 10. REGULATIONS.

(a) *IN GENERAL.*—Not later than 1 year after the date of enactment of this Act, the Secretary, in consultation with the Secretary of State, the

Secretary of Homeland Security, and the Attorney General, and after consultation with Indian Tribes and Native Hawaiian organizations, shall promulgate rules and regulations to carry out this Act.

(b) *INCLUSION.*—The regulations promulgated by the Secretary pursuant to subsection (a) shall include a reasonable deadline by which the Secretary shall approve or deny an export certification application under section 5(b).

SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this Act \$3,000,000 for each of fiscal years 2021 through 2026.

Mr. HEINRICH. I further ask unanimous consent that the Heinrich amendment to the committed-reported substitute amendment at the desk be considered and agreed to and that the committee-reported substitute amendment, as amended, be agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 2712) was agreed to as follows

(Purpose: To modify certain penalties)

On page 28, strike lines 15 through 23 and insert the following:

SEC. 4. ENHANCED NAGPRA PENALTIES.

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

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

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

The committee-reported amendment in the nature of a substitute, as amended, was agreed to.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. HEINRICH. I know of no further debate on the bill, as amended.

The PRESIDING OFFICER. Is there further debate?

If not, the bill having been read the third time, the question is, Shall the bill pass, as amended?

The bill (S. 2165), as amended, was passed.

(The bill (S. 2165), as amended, is printed in the Record of January 22, 2021.)

Mr. HEINRICH. I ask unanimous consent that the motion to reconsider be considered made and laid upon the table with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

INDIAN COMMUNITY ECONOMIC ENHANCEMENT ACT OF 2020

Mr. HEINRICH. Mr. President, as if in legislative session, I ask that the Chair lay before the Senate the message to accompany S. 212.

The Presiding Officer laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 212) entitled “An Act to amend the Native American Business Development, Trade Promotion, and Tourism Act of 2000, the Buy Indian Act, and the Native American Programs Act of 1974 to provide industry and economic development opportunities to Indian communities.”, do pass with an amendment.

MOTION TO CONCUR

Mr. HEINRICH. I move to concur in the House amendment, and I know of no further debate on the motion.

The PRESIDING OFFICER. Is there further debate?

Hearing none, the question is on agreeing to the motion.

The motion was agreed to.

Mr. HEINRICH. I ask unanimous consent that the motion to reconsider be considered made and laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HEINRICH. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BRAUN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION**MORNING BUSINESS**

Mr. BRAUN. Mr. President, I ask unanimous consent that the Senate proceed to legislative session and be in a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered

BICENTENNIAL OF LYNNVILLE, KENTUCKY

Mr. McCONNELL. Mr. President, over the course of this year, dedicated citizens in a small Jackson Purchase community have poured through their hometown's historical record. The bicentennial of Lynnville, KY, was coming, and they wanted to celebrate every detail. Today, it is my privilege to join these passionate Kentuckians in marking 200 years of Bluegrass history and heritage.

Lynnville is no ordinary town. Near the Tennessee border in Graves County, this agricultural community has survived all-consuming fires, devastating tornadoes, and even the Black Patch Tobacco War. Through perseverance and grit, Lynnville has certainly earned its nickname “The Little Town That Won't Die.”

For 200 years, stalwart Kentuckians have overcome challenges, come together to rebuild, and made Lynnville a wonderful place to live. I am proud of their resilient spirit, and I look forward to this community's bright future.

Unfortunately, the ongoing coronavirus pandemic canceled some aspects of Lynnville's bicentennial celebrations, but the Kentucky Historical Society joined the festivities with a special commemoration. They delivered a new historical marker to Lynnville to detail this community's rich heritage. It is a well-deserved tribute. I am grateful to everyone who made the historical marker and this