

The House Committee on State Planning and Community Affairs offered the following substitute to HB 1337:

A BILL TO BE ENTITLED  
AN ACT

To amend Article 7 of Chapter 12 of Title 44 of the Official Code of Georgia Annotated, relating to the protection of American Indian human remains and burial objects, so as to provide that the Council on American Indian Concerns may impose a civil penalty under certain circumstances; to provide that the Governor may consult all Indian tribes recognized by general law for recommendations on membership to such council; to change the membership of such council; to provide for additional powers and duties of such council; to amend Article 3 of Chapter 13 of Title 45 of the Official Code of Georgia Annotated, relating to the department of archives and history, so as to repeal certain duties of such department relating to Indian affairs and the preservation of Indian culture and heritage; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Article 7 of Chapter 12 of Title 44 of the Official Code of Georgia Annotated, relating to the protection of American Indian human remains and burial objects, is amended by striking in its entirety Code Section 44-12-264, relating to penalties for the violation of certain Code sections, and inserting in lieu thereof the following:

"44-12-264.

(a) Any museum which fails to comply with the provisions of Code Section 44-12-261 or 44-12-262 shall be subject to a civil penalty to be imposed by the ~~Secretary of State~~ council. The amount of such penalty shall be based upon:

- (1) The archeological, historical, or commercial value of the item involved;
- (2) The damages suffered, both economic and noneconomic, by an aggrieved party; and
- (3) The number of violations that have occurred

but in no event shall the aggregate amount of such civil penalty exceed \$5,000.00.

(b) Whenever the ~~Secretary of State~~ council proposes to subject a person to the imposition of a civil penalty under this Code section, ~~he~~ the council shall notify such person in writing:

1 (1) Setting forth the date, facts, and nature of each act or omission with which the person  
2 is charged;

3 (2) Specifically identifying the particular provision or provisions of the Code section,  
4 rule, regulation, order, license, or registration certificate involved in the violation; and

5 (3) Advising of each penalty which the ~~Secretary of State~~ council proposes to impose  
6 and its amount.

7 Such written notice shall be sent by registered or certified mail or statutory overnight  
8 delivery by the ~~Secretary of State~~ council to the last known address of such person. The  
9 person so notified shall be granted an opportunity to show in writing, within such  
10 reasonable period as the ~~Secretary of State~~ council shall by rule or regulation prescribe,  
11 why such penalty should not be imposed. The notice shall also advise such person that,  
12 upon failure to pay the civil penalty subsequently determined by the ~~Secretary of State~~  
13 council, if any, the penalty may be collected by civil action. Any person upon whom a civil  
14 penalty is imposed may appeal such action pursuant to Chapter 13 of Title 50, the 'Georgia  
15 Administrative Procedure Act.'

16 (c) A civil penalty finally determined under this Code section may be collected by civil  
17 action in the event that such penalty is not paid as required. On the request of the ~~Secretary~~  
18 ~~of State~~ council, the Attorney General is authorized to institute a civil action to collect a  
19 penalty imposed pursuant to this Code section. The Attorney General shall have the  
20 exclusive power to compromise, mitigate, or remit such civil penalties as are referred to the  
21 Attorney General for collection.

22 (d) All moneys collected from civil penalties shall be paid to the state for deposit in the  
23 general fund."

## 24 SECTION 2.

25 Said article is further amended by striking in its entirety Code Section 44-12-280, relating  
26 to the Council on American Indian Concerns, its membership, its assignment for  
27 administrative purposes, the terms of office of its members, and the removal of members for  
28 failure to attend meetings, and inserting in lieu thereof the following:

29 "44-12-280.

30 (a) As used in this Code section, the term:

31 (1) 'Anthropologist' means a physical anthropologist who holds a Ph.D. in physical  
32 anthropology with demonstrated experience in on-site identification of human skeletal  
33 remains and who is currently active in the profession.

34 (2) 'Archeologist' means any person who:

1 (A) Is ~~a member of~~ registered or meets the criteria for registration by the Register  
 2 ~~membership in the Society~~ of Professional Archaeologists and can demonstrate  
 3 experience or formal training in the excavation and interpretation of human graves; or

4 (B) Was employed on July 1, 1992, by the state or by any county or municipal  
 5 governing authority as an archeologist.

6 (b) There is created the Council on American Indian Concerns, which shall consist of nine  
 7 members to be appointed by the Governor. ~~Four~~ Five members shall be American Indians.  
 8 Three members shall represent the scientific community and shall include at least one  
 9 archeologist and one anthropologist; provided, however, that if no anthropologist can be  
 10 identified who is willing to serve, then the membership reserved to an anthropologist shall  
 11 be filled by a person who holds a master's degree or a higher degree in the field of  
 12 anthropology and is currently active in the profession. ~~Two members~~ One member shall  
 13 be selected from the general public at large. All members of the council shall be legal  
 14 residents of the State of Georgia. The Governor ~~shall~~ may consult the ~~Georgia Tribes of~~  
 15 ~~Eastern Cherokee, Inc.~~ tribal groups located in the state recognized by general law, the  
 16 Human Relations Commission, the Georgia Council of Professional Archaeologists, the  
 17 Society for Georgia Archaeology, and the Department of Natural Resources for  
 18 recommendations before appointing members of the council.

19 (c) The council is assigned to the Governor's Office of Planning and Budget for  
 20 administrative purposes only, as specified in Code Section 50-4-3.

21 (d) The terms of appointment for members of the council shall be as follows: two  
 22 American Indians, one scientist, and one representative of the general public shall be  
 23 appointed for an initial term of three years; two American Indians, one scientist, and one  
 24 representative of the general public shall be appointed for an initial term of two years; and  
 25 one scientist shall be appointed for an initial term of one year. The member who represents  
 26 the general public and who has the least time left in his or her term on July 1, 2002, shall  
 27 cease to be a member on that date, and a member who is an American Indian shall be  
 28 appointed to take office on that day for a term of three years. The Governor shall specify  
 29 the length of the initial term of the councilmembers in their initial appointments. After such  
 30 initial terms, all councilmembers shall be appointed for terms of three years. Active and  
 31 continued participation by members of the council is needed. The Governor may remove  
 32 any member who fails to attend three regularly scheduled consecutive meetings.  
 33 Councilmembers may succeed themselves."

**SECTION 3.**

Said article is further amended by striking in its entirety Code Section 44-12-283, relating to the powers and duties of the Council on American Indian Concerns, and inserting in lieu thereof the following:

"44-12-283.

The council shall have the following powers and duties:

(1) To serve as a resource for the notification of relatives under paragraph (4) of Code Section 36-72-5, relating to notification of relatives pursuant to obtaining a permit for land use change or disturbance; provided, however, that failure of the council to respond within 30 days to a request to serve as a resource for the notification shall not prevent the notification process or any permit process from taking place;

(2) To receive notice of permits issued and contracts issued under subsection (c) of Code Section 12-3-52 that affect aboriginal, prehistoric, or American Indian burial sites;

(3) To monitor the inventory and identification process conducted under Code Section 44-12-261 to ensure a fair, objective consideration and assessment of all available relevant information and evidence;

(4) To facilitate the resolution of disputes among American Indian tribes, lineal descendants of American Indians, and museums relating to the return of American Indian remains and burial objects pursuant to Code Section 44-12-262, including convening the parties to the dispute;

(5) To advise the Department of Natural Resources, the General Assembly, the Human Relations Commission, the Secretary of State, local political subdivisions, ~~and~~ state and local law enforcement agencies, and other appropriate agencies and individuals regarding policy matters relating to issues affecting American Indians; ~~and~~

(6) To apply for and receive grants, gifts, and direct appropriations from the federal government; the state government; any county, municipal, or local government; any board, bureau, commission, agency, or establishment of any such government; any other organization, public or private; and any individual or groups of individuals; and

(7) To preserve and foster the culture and heritage of Indians and Indian descendants in this state and to be the agency to deal with specific federal programs which are required to be dealt with only by an Indian agency or organization.

44-12-283.1

In addition to any other powers granted by law, the council may, in its discretion, study, consider, accumulate, compile, assemble, and disseminate information on any aspect of Indian affairs; investigate relief needs of Indians in Georgia and provide technical assistance in the preparation of plans for the alleviation of such needs; confer with appropriate officials of local, state, and federal governments, and agencies of these

1 governments, and with such congressional committees that may be concerned with Indian  
 2 affairs, in order to encourage and implement coordination of applicable resources to meet  
 3 the needs of Indians in Georgia; cooperate with and secure the assistance of the local,  
 4 state, and federal governments, or any agencies thereof, in formulating any such programs  
 5 and coordinate such programs with any programs regarding Indian affairs adopted or  
 6 planned by the federal government, to the end that the department secures the full benefit  
 7 of such programs; review all proposed or pending state legislation and amendments to  
 8 existing state legislation affecting Indians in Georgia; conduct public hearings on matters  
 9 relating to Indian affairs; study the existing status of recognition of all Indian groups,  
 10 tribes, and communities presently existing in the state; expend funds in compliance with  
 11 state regulations; and make legislative recommendations.

12 44-12-283.2.

13 The council is authorized to promulgate rules and regulations to accomplish the provisions  
 14 of this article in accordance with Chapter 13 of Title 50, the 'Georgia Administrative  
 15 Procedure Act.'

#### 16 SECTION 4.

17 Article 3 of Chapter 13 of Title 45 of the Official Code of Georgia Annotated, relating to the  
 18 department of archives and history, is amended by striking in its entirety Code Section  
 19 45-13-42, relating to the duties of department with respect to Indians generally, and inserting  
 20 in lieu thereof the following:

21 "45-13-42.

22 ~~It shall be the duty of the department to study, consider, accumulate, compile, assemble,~~  
 23 ~~and disseminate information on any aspect of Indian affairs; to investigate relief needs of~~  
 24 ~~Indians of Georgia and to provide technical assistance in the preparation of plans for the~~  
 25 ~~alleviation of such needs; to confer with appropriate officials of local, state, and federal~~  
 26 ~~governments, and agencies of these governments, and with such congressional committees~~  
 27 ~~that may be concerned with Indian affairs, in order to encourage and implement~~  
 28 ~~coordination of applicable resources to meet the needs of Indians in Georgia; to cooperate~~  
 29 ~~with and secure the assistance of the local, state, and federal governments, or any agencies~~  
 30 ~~thereof, in formulating any such programs and to coordinate such programs with any~~  
 31 ~~programs regarding Indian affairs adopted or planned by the federal government, to the end~~  
 32 ~~that the department secures the full benefit of such programs; to review all proposed or~~  
 33 ~~pending state legislation and amendments to existing state legislation affecting Indians in~~  
 34 ~~Georgia; to conduct public hearings on matters relating to Indian affairs; to subpoena any~~  
 35 ~~information or documents deemed necessary by the department; to study the existing status~~  
 36 ~~of recognition of all Indian groups, tribes, and communities presently existing in the state;~~

1 ~~to establish appropriate procedures to provide for legal recognition by the state of presently~~  
2 ~~unrecognized groups and to initiate procedures for their recognition by the federal~~  
3 ~~government, to expend funds in compliance with state regulations, to make legislative~~  
4 ~~recommendations; and to make and publish reports of findings and recommendations~~  
5 Reserved.

#### 6 **SECTION 5.**

7 Said article is further amended by striking in its entirety Code Section 45-13-43, relating to  
8 the preservation and fostering of Indian culture and heritage, and inserting in lieu thereof the  
9 following:

10 "45-13-43.

11 ~~A further purpose of the department shall be to preserve and foster the culture and heritage~~  
12 ~~of Indians and Indian descendants in this state and to be the agency to deal with specific~~  
13 ~~federal programs which are required to be dealt with only by an Indian agency or~~  
14 ~~organization. It is not the purpose of the department to deal with programs already~~  
15 ~~administered by other agencies~~ Reserved.

#### 16 **SECTION 6.**

17 All laws and parts of laws in conflict with this Act are repealed.