

SENATE SUBSTITUTE TO HB1337

AS PASSED SENATE

A BILL TO BE ENTITLED
AN ACT

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

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

17 "44-12-264.

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

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

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

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

- 4 (1) Setting forth the date, facts, and nature of each act or omission with which the
 5 person is charged;
- 6 (2) Specifically identifying the particular provision or provisions of the Code section,
 7 rule, regulation, order, license, or registration certificate involved in the violation; and
- 8 (3) Advising of each penalty which the ~~Secretary of State~~ council proposes to impose
 9 and its amount.

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

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

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

27 SECTION 2.

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

32 "44-12-280.

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

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

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

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

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

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

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

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

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

13 44-12-283.2.

14 The council is authorized to promulgate rules and regulations to accomplish the
 15 provisions of this article in accordance with Chapter 13 of Title 50, the 'Georgia
 16 Administrative Procedure Act.' The council is expressly prohibited from engaging in any
 17 activity which would tend to assist the implementation of Indian gaming in this state, and
 18 the council shall immediately notify in writing the Governor, the President of the Senate,
 19 and the Speaker of the House of Representatives of any communication it may receive
 20 from any source relating to such subject."

21 **SECTION 4.**

22 Article 3 of Chapter 13 of Title 45 of the Official Code of Georgia Annotated, relating to
 23 the department of archives and history, is amended by striking in its entirety Code Section
 24 45-13-42, relating to the duties of department with respect to Indians generally, and
 25 inserting in lieu thereof the following:

26 "45-13-42.

27 ~~It shall be the duty of the department to study, consider, accumulate, compile, assemble,~~
 28 ~~and disseminate information on any aspect of Indian affairs; to investigate relief needs~~
 29 ~~of Indians of Georgia and to provide technical assistance in the preparation of plans for~~
 30 ~~the alleviation of such needs; to confer with appropriate officials of local, state, and~~
 31 ~~federal governments, and agencies of these governments, and with such congressional~~
 32 ~~committees that may be concerned with Indian affairs, in order to encourage and~~
 33 ~~implement coordination of applicable resources to meet the needs of Indians in Georgia;~~
 34 ~~to cooperate with and secure the assistance of the local, state, and federal governments,~~
 35 ~~or any agencies thereof, in formulating any such programs and to coordinate such~~
 36 ~~programs with any programs regarding Indian affairs adopted or planned by the federal~~

1 ~~government, to the end that the department secures the full benefit of such programs; to~~
 2 ~~review all proposed or pending state legislation and amendments to existing state~~
 3 ~~legislation affecting Indians in Georgia; to conduct public hearings on matters relating~~
 4 ~~to Indian affairs; to subpoena any information or documents deemed necessary by the~~
 5 ~~department; to study the existing status of recognition of all Indian groups, tribes, and~~
 6 ~~communities presently existing in the state; to establish appropriate procedures to provide~~
 7 ~~for legal recognition by the state of presently unrecognized groups and to initiate~~
 8 ~~procedures for their recognition by the federal government; to expend funds in~~
 9 ~~compliance with state regulations; to make legislative recommendations; and to make and~~
 10 ~~publish reports of findings and recommendations~~ Reserved."

11 **SECTION 5.**

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

15 "45-13-43.

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

21 **SECTION 6.**

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