

House Bill 1337 (AS PASSED HOUSE AND SENATE)

By: Representatives Sholar of the 179th, Royal of the 164th, Byrd of the 170th, Smith of the 12th, Pinholster of the 15th and others

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 recognized
5 by general law for recommendations on membership to such council; to change the
6 membership of such council; to provide for additional powers and duties of such council; to
7 amend Article 3 of Chapter 13 of Title 45 of the Official Code of Georgia Annotated, relating
8 to the department of archives and history, so as to repeal certain duties of such department
9 relating to Indian affairs and the preservation of Indian culture and heritage; to repeal
10 conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 Article 7 of Chapter 12 of Title 44 of the Official Code of Georgia Annotated, relating to the
14 protection of American Indian human remains and burial objects, is amended by striking in
15 its entirety Code Section 44-12-264, relating to penalties for the violation of certain Code
16 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 or
19 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; and
23 (3) The number of violations that have occurred

24 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 imposition
 2 of a civil penalty under this Code section, ~~he~~ the council shall notify such person in writing:

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

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

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

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

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

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

26 SECTION 2.

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

31 "44-12-280.

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

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

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

1 (A) Is a member of or meets the criteria for membership in the Society of Professional
 2 Archaeologists and can demonstrate experience or formal training in the excavation and
 3 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 consult the ~~Georgia Tribes of Eastern~~
 15 ~~Cherokee, Inc.~~ tribal groups located in the state recognized by general law, the Human
 16 Relations Commission, the Georgia Council of Professional Archaeologists, the Society
 17 for Georgia Archaeology, and the Department of Natural Resources for recommendations
 18 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."

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.' The council is expressly prohibited from engaging in any activity which
 16 would tend to assist the implementation of Indian gaming in this state, and the council shall
 17 immediately notify in writing the Governor, the President of the Senate, and the Speaker
 18 of the House of Representatives of any communication it may receive from any source
 19 relating to such subject."

20 SECTION 4.

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

25 "45-13-42.

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

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

10 **SECTION 5.**

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

14 "45-13-43.

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

20 **SECTION 6.**

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