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105TH CONGRESS
1ST SESSION

H. R. 2893

To amend the Native American Graves Protection and Repatriation Act to provide for appropriate study and repatriation of remains for which a cultural affiliation is not readily ascertainable.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 7, 1997

Mr. HASTINGS of Washington introduced the following bill: which was referred to the Committee on Resources

A BILL

To amend the Native American Graves Protection and Repatriation Act to provide for appropriate study and repatriation of remains for which a cultural affiliation is not readily ascertainable.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. OWNERSHIP.**

4 (a) REPEAL OF OWNERSHIP BASED ON ABORIGINAL
5 LANDS.—Paragraph (2) of section 3(a) of the Native
6 American Graves Protection and Repatriation Act (25
7 U.S.C. 3002(a)) is amended by inserting “or” at the end
8 of subparagraph (A), by striking “; or” at the end of sub-

1 paragraph (B) and inserting a period, and by striking sub-
2 paragraph (C).

3 (b) INADVERTENT DISCOVERY.—Subsection (d) of
4 section 3 of the Native American Graves Protection and
5 Repatriation Act (25 U.S.C. 3002) is amended—

6 (1) in paragraph (1), by inserting “those” be-
7 fore “Federal lands”; and

8 (2) in paragraph (2), by adding at the end the
9 following new sentence: “Any person or entity that
10 disposes of or controls a cultural item referred to in
11 the preceding sentence shall comply with the applica-
12 ble requirements of subsection (c).”

13 (c) RECORDING AND STATUS OF ITEMS EXCAVATED
14 OR DISCOVERED AFTER NOVEMBER 16, 1990.—Section
15 3 of the Native American Graves Protection and Repatri-
16 ation Act (25 U.S.C. 3002) is amended by adding at the
17 end the following new subsection:

18 “(f) RECORDING AND STATUS OF ITEMS EXCAVATED
19 OR DISCOVERED AFTER NOVEMBER 16, 1990.—Cultural
20 items excavated or discovered after November 16, 1990,
21 except those items whose ownership or control is estab-
22 lished under paragraph (1) or paragraph (2)(A) of sub-
23 section (a)—

24 “(1) shall be reasonably recorded according to
25 generally accepted scientific standards;

1 “(2) shall remain under the control of the agen-
2 cy having primary management authority for the
3 land on which the cultural item was excavated or
4 discovered until 90 days after the publication in the
5 Federal Register of a notice setting out a general
6 description of the item, its estimated age, and the
7 general area of discovery; and

8 “(3) are subject to the study provisions of sub-
9 section 7(b).”.

10 **SEC. 2. LIMITED AUTHORIZATION FOR STUDY.**

11 The last sentence of section 5(b) of the Native Amer-
12 ican Graves Protection and Repatriation Act (25 U.S.C.
13 3003(b)) is amended by inserting “, except as expressly
14 set forth in sections 3(f) and 7(b),” after “mean, and”.

15 **SEC. 2. STUDY AND RECORDING.**

16 Subsection (b) of section 7 of the Native American
17 Graves Protection and Repatriation Act (25 U.S.C. 3005)
18 is amended to read as follows:

19 “(b) STUDY AND RECORDING.—(1) In cases of
20 human remains and associated funerary objects for which
21 no lineal descendants have been identified and in cases of
22 other cultural items:

23 “(A) If the cultural affiliation of a cultural item
24 has not been established, studies may be conducted
25 in an attempt to establish such an affiliation or to

1 obtain scientific, historical, or cultural information.
2 If the cultural affiliation of a cultural item is deter-
3 mined pursuant to this subparagraph, the Federal
4 agency or museum having custody of the cultural
5 item shall, not later than 90 days after such deter-
6 mination, notify any culturally affiliated Indian tribe
7 or Native Hawaiian organization of their affiliation.
8 Such notice shall be given in the manner specified
9 in paragraphs (2) and (3) of section 5(d).

10 "(B) If the cultural affiliation of a cultural item
11 has been established with an Indian tribe or Native
12 Hawaiian organization, studies of such item may be
13 conducted if needed for the completion of a specific
14 scientific study, the outcome of which is reasonably
15 expected to provide significant new information con-
16 cerning the history or prehistory of the United
17 States. If the culturally affiliated tribe or organiza-
18 tion requests the return of the cultural item, the
19 Federal agency or museum shall return such item to
20 the Indian tribe or Native Hawaiian organization
21 not later than 90 days after the date on which the
22 scientific study is completed. Study of a cultural
23 item under this subparagraph shall not be permitted
24 to delay return of the item for more than 180 days
25 after the item is made available for study, unless a

1 longer period of study is agreed upon by the cul-
2 turally affiliated tribe or organization that has re-
3 quested return of the cultural item.

4 "(2) Not later than 180 days after a study conducted
5 under this subsection is completed, the Federal agency or
6 museum with custody of the cultural item shall provide
7 a report of the results of the study to any Indian tribe
8 or Native Hawaiian organization that has an established
9 cultural affiliation with the cultural item studied.

10 "(3) If study of a cultural item pursuant to subpara-
11 graph (A) or (B) of paragraph (1) is requested, the Fed-
12 eral agency or museum with custody of such item must
13 make such item reasonably available for such study unless
14 the Secretary determines that the Federal agency or mu-
15 seum has presented clear and convincing evidence that the
16 potential scientific benefit of the requested study is sub-
17 stantially outweighed under the circumstances by curato-
18 rial, cultural, or other reasonable considerations.

19 "(4) Nothing in this subsection shall be construed to
20 require any museum to undertake or permit any study of
21 a cultural item that is contrary to policies of the museum
22 or to its prior agreements."

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