

117TH CONGRESS
2D SESSION

H. R. 6716

To amend the Water Resources Development Act of 2000 to protect Native American burial sites, village sites, and cultural resources discovered at civil works projects of the Corps of Engineers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 11, 2022

Mr. LAMALFA (for himself and Mr. GARAMENDI) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To amend the Water Resources Development Act of 2000 to protect Native American burial sites, village sites, and cultural resources discovered at civil works projects of the Corps of Engineers, and for other purposes.

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. SHORT TITLE.**

4 This Act may be cited as the “Native American Bur-
5 ial Sites and Cultural Resources Protection Act”.

1 **SEC. 2. REBURIAL AND CONVEYANCE AUTHORITY.**

2 (a) DEFINITIONS.—Section 208(a) of the Water Re-
3 sources Development Act of 2000 (33 U.S.C. 2338(a)) is
4 amended to read as follows:

5 “(a) DEFINITIONS.—In this section:

6 “(1) AFFECTED INDIAN TRIBE.—The term ‘af-
7 fected Indian Tribe’ means any Indian Tribe that
8 attaches religious or other significance to any burial
9 site, village site, or cultural resources identified or
10 discovered at a covered civil works project.

11 “(2) BURIAL SITE.—The term ‘burial site’
12 means any natural or prepared physical location,
13 whether originally below, on, or above the surface of
14 the earth, where Native American cultural resources
15 are present as a result of a death rite or ceremony
16 of a culture.

17 “(3) COVERED CIVIL WORKS PROJECT.—The
18 term ‘covered civil works project’ means a civil
19 works project—

20 “(A) that is being carried out, or operated
21 and maintained, using Federal funds; and

22 “(B) that is owned, authorized, permitted,
23 carried out, or operated and maintained by the
24 Department of the Army, including a project
25 carried out by a non-Federal interest under sec-
26 tion 204 of the Water Resources Development

1 Act of 1986 (33 U.S.C. 2232) or section 1043
2 of the Water Resources Reform and Develop-
3 ment Act of 2014 (33 U.S.C. 2201 note).

4 “(4) CULTURAL RESOURCES.—The term ‘cul-
5 tural resources’ means—

6 “(A) human remains; or

7 “(B) funerary objects or other ceremonial
8 objects.

9 “(5) FUNERARY OBJECTS.—The term ‘funerary
10 objects’ means items that are associated with the
11 death rite or ceremony of a culture.

12 “(6) HUMAN REMAINS.—The term ‘human re-
13 mains’ means the physical remains of a human body,
14 including such remains that have been cremated and
15 that may be in any state of decomposition or skeletal
16 completeness (including ashes or small bone frag-
17 ments).

18 “(7) INDIAN TRIBE.—The term ‘Indian Tribe’
19 has the meaning given that term in section 4(e) of
20 the Indian Self-Determination and Education Assist-
21 ance Act (25 U.S.C. 5304(e)).

22 “(8) RIGHTFULLY CLAIMED.—The term ‘right-
23 fully claimed’ means claimed by—

24 “(A) with respect to cultural resources
25 identified or discovered on Federal or Tribal

1 lands at the site of a covered civil works
2 project—

3 “(i) the person or entity with owner-
4 ship or control of the cultural resources
5 under section 3 of the Native American
6 Graves Protection and Repatriation Act
7 (25 U.S.C. 3002); or

8 “(ii) with respect to cultural resources
9 not subject to such Act, the appropriate
10 person or entity determined in accordance
11 with the priority order established by such
12 section; and

13 “(B) with respect to cultural resources
14 identified or discovered on other lands at the
15 site of a covered civil works project—

16 “(i) in the case of Native American
17 human remains and funerary objects asso-
18 ciated with such remains, the lineal de-
19 scendants of the Native American, as de-
20 termined in accordance with the laws of
21 the State in which the site is located; or

22 “(ii) in any case in which such lineal
23 descendants cannot be ascertained, and in
24 the case of other funerary objects or other
25 ceremonial objects—

1 “(I) the Indian Tribe with the
2 highest priority under the priority
3 order established by the laws of the
4 State in which the site is located; or

5 “(II) if the State in which the
6 site is located has not so established a
7 priority order—

8 “(aa) the Indian Tribe that
9 has the closest cultural affiliation
10 with the cultural resources; or

11 “(bb) if the cultural affili-
12 ation of the cultural resources
13 cannot be reasonably
14 ascertained—

15 “(AA) the Indian Tribe
16 that is recognized as aborigi-
17 nally occupying the area in
18 which the cultural resources
19 were identified or discov-
20 ered; or

21 “(BB) if it can be
22 shown by a preponderance
23 of the evidence that a dif-
24 ferent Indian Tribe has a
25 stronger cultural relation-

1 ship with the cultural re-
2 sources than the Indian
3 Tribe specified in subitem
4 (AA), the Indian Tribe that
5 has the strongest dem-
6 onstrated relationship with
7 such cultural resources.

8 “(9) VILLAGE SITE.—The term ‘village site’
9 means any natural or prepared physical location,
10 whether below, on, or above the surface of the earth,
11 where a Native American village has been present.”.

12 (b) RECOVERY AND REBURIAL REQUIREMENTS.—
13 Section 208(b) of the Water Resources Development Act
14 of 2000 (33 U.S.C. 2338(b)) is amended to read as fol-
15 lows:

16 “(b) REBURIAL.—

17 “(1) REBURIAL AREAS.—In consultation with
18 and with the consent of each affected Indian Tribe,
19 the Secretary shall identify, and, as applicable, co-
20 operate with appropriate property owners to set
21 aside, areas that may be used for the reburial of Na-
22 tive American human remains and funerary objects
23 that—

24 “(A) have been identified or discovered at
25 the site of a covered civil works project;

1 “(B) have been rightfully claimed by any
2 affected Indian Tribe; and

3 “(C) can be reburied in such areas in a
4 manner secure from future disturbances, with
5 the consent of the property owner or owners, as
6 applicable.

7 “(2) RECOVERY AND REBURIAL STANDARDS.—

8 “(A) TIMING OF RECOVERY.—

9 “(i) REQUIREMENTS.—The Secretary
10 shall work in good faith with each affected
11 Indian Tribe, and each owner of property
12 affected by the recovery process, to ensure
13 that—

14 “(I) the recovery from the site of
15 a covered civil works project of Native
16 American cultural resources under
17 this section is completed, pursuant to
18 a written plan or protocol, not later
19 than 45 days after the initiation of re-
20 covery from the site; and

21 “(II) with respect to a burial site,
22 village site, or cultural resources iden-
23 tified at the site of a covered civil
24 works project before construction of
25 the covered civil works project com-

1 mences, such recovery is completed
2 before such construction commences
3 on the portion of the covered civil
4 works project affected by the recovery
5 process.

6 “(ii) ALTERNATIVE TIMETABLE.—
7 Notwithstanding the deadlines established
8 by clause (i), the Secretary, each relevant
9 non-Federal interest for the covered civil
10 works project, each affected Indian Tribe,
11 and each owner of property affected by the
12 recovery process may negotiate and agree
13 to an alternative timetable for recovery
14 other than that required by such clause,
15 based on the circumstances of the applica-
16 ble covered civil works project.

17 “(B) GUIDANCE.—Not later than 180 days
18 after the date of enactment of the Native Amer-
19 ican Burial Sites and Cultural Resources Pro-
20 tection Act, the Secretary shall develop and
21 issue written guidance for recovery and reburial
22 under this section that meets or exceeds the re-
23 covery and reburial standards in policy state-
24 ments and guidance issued by the Advisory
25 Council on Historic Preservation.

1 “(C) EMINENT DOMAIN PROHIBITION.—
2 The Secretary may not exercise the power of
3 eminent domain to acquire any property to be
4 used for reburial under this section.

5 “(3) RECOVERY AND REBURIAL.—

6 “(A) RECOVERY AND REBURIAL BY SEC-
7 RETARY.—In consultation with and with the
8 consent of each affected Indian Tribe, the Sec-
9 retary shall at Federal expense, with appro-
10 priate dignity and in accordance with the guid-
11 ance developed under paragraph (2)—

12 “(i) recover any cultural resources
13 identified or discovered at the site of a cov-
14 ered civil works project and rightfully
15 claimed by any affected Indian Tribe;

16 “(ii) rebury any human remains and
17 funerary objects so recovered at the appli-
18 cable areas identified and set aside under
19 paragraph (1); and

20 “(iii) repatriate any other cultural re-
21 sources so recovered to the affected Indian
22 Tribe that has rightfully claimed such cul-
23 tural resources.

24 “(B) TRIBAL DELEGATION.—

1 “(i) IN GENERAL.—Upon the request
2 of an affected Indian Tribe, the Secretary
3 shall delegate to the Indian Tribe recovery
4 and reburial responsibilities under this sec-
5 tion of cultural resources that have been
6 rightfully claimed by the affected Indian
7 Tribe, and shall reimburse the affected In-
8 dian Tribe for costs directly related to such
9 recovery and reburial.

10 “(ii) MEMORANDUM OF AGREE-
11 MENT.—In carrying out clause (i)—

12 “(I) with respect to a burial site,
13 village site, or cultural resources iden-
14 tified at a covered civil works project
15 before construction of the project
16 commences, the Secretary shall, upon
17 request by the affected Indian Tribe,
18 enter into a written memorandum of
19 agreement with the affected Indian
20 Tribe before such construction com-
21 mences; and

22 “(II) with respect to a burial site,
23 village site, or cultural resources dis-
24 covered at a covered civil works
25 project after construction of the

1 project commences, the Secretary
2 shall, upon request by the affected In-
3 dian Tribe, enter into a written
4 memorandum of agreement with the
5 affected Indian Tribe not later than
6 45 days after such discovery.

7 “(iii) LIMITATION.—Reimbursement
8 under clause (i) shall not exceed 1 percent
9 of the total cost of construction of the ap-
10 plicable covered civil works project.

11 “(4) TRIBAL MONITORS.—

12 “(A) IN GENERAL.—During the construc-
13 tion of any covered civil works project, the Sec-
14 retary may hire a Tribal monitor or monitors,
15 and shall allow any affected Indian Tribe to
16 hire a Tribal monitor or monitors, at Federal
17 expense, for each area of construction, including
18 for each burial site and village site with respect
19 to which Native American cultural resources
20 are being recovered for reburial.

21 “(B) QUALIFICATIONS.—The Secretary or
22 affected Indian Tribe, as applicable, shall en-
23 sure that preference in hiring Tribal monitors
24 under this paragraph is provided to qualified
25 Native Americans, including individuals who—

1 “(i) have a professional relationship
2 with the affected Indian Tribe; or

3 “(ii) possess knowledge of, and exper-
4 tise in, the customs of the affected Indian
5 Tribe.

6 “(C) LIMITATION.—The Federal expense
7 of Tribal monitors hired under this paragraph
8 shall not exceed 1 percent of the total cost of
9 construction of the applicable covered civil
10 works project.

11 “(5) IDENTIFICATION AND INVENTORY.—The
12 Secretary shall accept identifications made by an af-
13 fected Indian Tribe of Native American burial sites
14 and village sites at the site of a covered civil works
15 project, and include such identifications in any in-
16 ventory document for such project.

17 “(6) TIMING OF PAYMENTS.—The Secretary
18 shall enter into a contract or other agreement to
19 make a payment to an affected Indian Tribe for re-
20 imbursement of costs under paragraph (3)(B) or ex-
21 penses under paragraph (4), which payment shall be
22 made not later than 90 days after the affected In-
23 dian Tribe submits an invoice for such costs or ex-
24 penses to the Secretary.”.

1 (c) CONVEYANCE AUTHORITY.—Section 208(c)(1) of
2 the Water Resources Development Act of 2000 (33 U.S.C.
3 2338(c)(1)) is amended by striking “the Secretary may
4 convey to an Indian tribe for use as a cemetery an area
5 at a civil works project that is identified and set aside by
6 the Secretary under subsection (b)(1)” and inserting “the
7 Secretary may convey to an affected Indian Tribe for use
8 as a cemetery or reburial area any area that is located
9 on land owned by the Department of the Army and is
10 identified and set aside under subsection (b)(1)”.

11 (d) CONFIDENTIALITY; AVOIDANCE OF DUPLICA-
12 TION.—Section 208 of the Water Resources Development
13 Act of 2000 (33 U.S.C. 2338) is amended by adding at
14 the end the following:

15 “(d) CONFIDENTIALITY OF INFORMATION PRO-
16 VIDED.—

17 “(1) IN GENERAL.—The Secretary shall develop
18 and issue written guidance regarding the confiden-
19 tiality of information provided to the Department of
20 the Army by Indian Tribes in connection with any
21 covered civil works project.

22 “(2) APPLICABILITY OF FOIA.—Information
23 provided to the Department of the Army by an In-
24 dian Tribe under this section shall be exempt from
25 public disclosure under section 552(b)(3) of title 5,

1 United States Code, to protect Native American bur-
2 ial sites, village sites, and cultural resources, and
3 their locations, from unauthorized excavation, dese-
4 cration, or vandalism.

5 “(e) AVOIDANCE OF DUPLICATION.—In carrying out
6 this section, the Secretary shall avoid, to the maximum
7 extent practicable, duplication of efforts relating to com-
8 pliance with this section and any other applicable provision
9 of law.”.

10 (e) APPLICABILITY.—Any requirement of subsection
11 (b) of section 208 of the Water Resources Development
12 Act of 2000 resulting from the amendments made by this
13 section shall not affect any contract relating to a covered
14 civil works project (as defined in such section 208) entered
15 into by the Secretary of the Army before the date of enact-
16 ment of this Act.

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