The Problem.
The original intent of the Native American Graves Protection and Repatriation Act (NAGPRA) is to protect indigenous human remains, funerary objects, sacred objects, and objects of cultural patrimony that belong to Indian Tribes and Native Hawaiian communities. However, the existing monetary fines under NAGPRA for removing indigenous cultural items and remains from Federal or tribal lands are minimal, which has led to tens of thousands of items of cultural patrimony being stolen by federally-funded local government agencies, universities, and museums without tribal consent or measurable consequences leading to the loss of numerous, irreplaceable cultural items that have yet to be returned to Tribes.

The solution.
The purpose of this NAGPRA amendment enhances the civil penalty for perpetrators who unlawfully violate existing protections under NAGPRA by increasing the existing monetary fines for those who excavate and steal indigenous funerary objects, sacred objects, and other cultural patrimony from tribal sites. This bill also creates efficiency in the administration and oversight of NAGPRA by transferring enforcement authority from the Interior’s U.S. Fish and Wildlife Service to the Bureau of Indian Affairs (BIA) — the appropriate Interior department that works more closely with Tribes.

Background.
Congress recognized this and created the Native American Graves Protection and Repatriation Act (NAGPRA) in 1990 to address the rights of lineal descendants, Indian Tribes, and Native Hawaiian organizations to Native American cultural items, including human remains, funerary objects, sacred objects, and objects of cultural patrimony. As part of these protections, NAGPRA originally created civil penalties for perpetrators who unlawfully excavate funerary object, sacred objects, and other cultural patrimony from tribal sites.

The current NAGPRA penalty is merely a “slap on the wrist” at a fixed rate of either a 0.25% of the institution’s budget or $6,533, whichever amount is less. This penalty has not been sufficient to stop museums or individuals from violating this law. However, increasing these civil fines for criminals who wrongfully excavate and remove these items will reinforce the original intent to treat culturally sensitive humans remains and cultural objects with respect they deserve.

For example, the University of California, Berkeley’s Phoebe A. Hearst Museum of Anthropology, has failed to comply with NAGPRA, resulting in the return of only 20 percent of approximately 500,000 of the cultural items that were taken from indigenous gravesites. Sadly, this is just one example of how the existing NAGPRA fines are not sufficient to discourage archeologist and museums persisting to violate the federal statute. The current NAGPRA penalty is only a “slap on the wrist” at a fixed rate of .25% of the museum’s budget or $6,533, whichever is less.

The amendment to the Native American Graves Protection and Repatriation Act (NAGPRA) specifically:
- Amends existing penalties by increasing the monetary fine for violating NAGPRA protections to either 5% of the museum’s annual budget or 25,000, whichever is less for each substantiated failure to comply.
- Transfers NAGPRA’s jurisdiction, enforcement, and all other activities delegated by the Secretary of the Interior from the U.S. Fish and Wildlife Service to the Bureau of Indian Affairs (BIA).
- Creates new section to protect Tribes’ culturally sensitive information when it is deemed “confidential” to prohibit public disclosure by the Secretary, museum, or federal agency.
- Establishes additional public disclosure protections for confidential information that is submitted to the review committee provided that the affected party seeks to keep the information confidential.