

ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979

MAY 15 (legislative day, APRIL 9), 1979.—Ordered to be printed

Mr. BUMPERS, from the Committee on Energy and Natural
Resources, submitted the following

REPORT

[To accompany S. 490]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 490) a bill to protect archeological resources owned by the United States, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

1. Strike out all after the enacting clause and insert in lieu thereof the following:

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Archaeological Resources Protection Act of 1979".

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FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that—

- (1) archaeological resources on public lands and Indian lands are an accessible and irreplaceable part of the Nation's heritage;
- (2) these resources are increasingly endangered because of their commercial attractiveness; and

- (3) existing Federal laws do not provide adequate protection to prevent the loss and destruction of these archaeological resources and sites resulting from uncontrolled excavations and pillage.
- (b) The purpose of this Act is to protect, for the present and future benefit of the American people, the archaeological resources and sites which are on public lands and Indian lands.

DEFINITIONS

Sec. 3. As used in this Act—

(a) The term "archaeological resource" means any material remains of past human life or activities which are of archaeological interest, as determined under uniform regulations promulgated pursuant to this Act. Such archaeological resources shall include, but not be limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, nonfossilized and fossilized paleontological specimens when found in an archaeological context, and any portion or piece of any of the foregoing items. No item shall be treated as an archaeological resource under regulations under this paragraph unless such item is at least fifty years of age.

(b) The term "Federal land manager" means, with respect to any public lands, the Secretary of the department, or the head of any other agency or instrumentality of the United States, having primary management authority over such lands. In the case of any public lands or Indian lands with respect to which no department, agency, or instrumentality has primary management authority, such term means the Secretary of the Interior. If the Secretary of the Interior consents, the responsibilities (in whole or in part) under this Act of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary of the Interior with respect to any land managed by such other Secretary or agency head, and in any such case, the term "Federal land manager" means the Secretary of the Interior.

(c) The term "public lands" means—

- (1) lands or interests in lands which are administered as part of:
 - (A) the National Park System,
 - (B) the National Wildlife Refuge System, or
 - (C) the National Forest System; and

(2) all other lands the fee title to which is held by the United States other than lands on the Outer Continental Shelf;

(d) The term "Indian lands" means lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States.

(e) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 688).

(f) The term "person" means an individual, corporation, partnership, trust, institution, association, or any other private entity or any officer, employee, agent, department, or instrumentality of the United States, of an Indian tribe or of any State or political subdivision thereof.

(g) The term "State" means any of the fifty States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

EXCAVATION AND REMOVAL

Sec. 4. (a) Any person may apply to the Federal land manager for a permit to excavate or remove any archaeological resource located on public lands or Indian lands and to carry out activities associated with such excavation or removal. The application shall be required, under uniform regulations under this Act, to contain such information as the Federal land manager deems necessary, including information concerning the time, scope, and location and specific purpose of the proposed work.

(b) A permit may be issued pursuant to an application under subsection (a) if the Federal land manager determines, pursuant to uniform regulations under this Act, that—

- (1) the applicant is qualified to carry out the permitted activity;

(2) the activity is undertaken for the purpose of furthering archaeological knowledge in the public interests;

(3) the archaeological resources derived from public lands will remain the property of the United States, and such resources and copies of associated archaeological records and data will be preserved by a suitable university, museum, or other scientific or educational institution; and

(4) the activity pursuant to such permit is not inconsistent with any management plan applicable to the public lands concerned.

(c) If a permit issued under this section may result in harm to, or destruction of, any religious or cultural site, as determined by the Secretary of the Interior, before issuing such permit the Secretary shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 10.

(d) Any permit under this section shall contain such terms and conditions, pursuant to uniform regulations promulgated under this Act, as the Federal land manager concerned deems necessary to carry out the purposes of this Act, to insure compliance with other applicable provisions of law, and to protect other resources involved.

(e) Each permit under this section shall identify the individual who shall be responsible for carrying out the terms and conditions of the permit and for otherwise complying with this Act and other law applicable to the permitted activity.

(f) Any permit issued under this section may be suspended by the Federal land manager upon his determination that the permittee has violated any provision of section 6, or the terms and conditions of the permit. Any such permit may be revoked by such Federal land manager upon assessment of a civil penalty under section 7(a) against the permittee or upon the permittee's conviction under section 7(b).

(g) (1) No permit shall be required under this section or under the Act of June 8, 1906 (16 U.S.C. 431) for the excavation or removal by any Indian tribe or member thereof of any archaeological resource located on Indian lands of such Indian tribe: *Provided*, That, in the absence of tribal law regulating the excavation or removal of archaeological resources on Indian lands, an individual tribal member shall be required to obtain a permit under this section or under the Act of June 8, 1906 (16 U.S.C. 431).

(2) In the case of any permits for the excavation or removal of any archaeological resource located on Indian lands, the permit may be granted only after obtaining the consent of the Indian or Indian tribe owning such lands. The permit shall include such terms and conditions as may be requested by such Indian or Indian tribe.

(h) (1) No permit or other permission shall be required under the Act of June 8, 1906 (16 U.S.C. 431-433) for any activity for which a permit is issued under this section.

(2) Any permit issued under the Act of June 8, 1906, shall remain in effect according to its terms and conditions following the enactment of this Act. No permit under this Act shall be required to carry out any activity under a permit issued under the Act of June 8, 1906, before the date of the enactment of this Act which remains in effect as provided in this paragraph, and nothing in this Act shall modify or affect any such permit.

(i) Issuance of a permit in accordance with this section and applicable regulations shall not require compliance with section 108 of the Act of October 15, 1906 (80 Stat. 917, 16 U.S.C. 470f).

CUSTODY OF RESOURCES

SEC. 5. The Secretary of the Interior may promulgate regulations providing for—

(a) the exchange, where appropriate, between suitable universities, museums, or other scientific or educational institutions, of archaeological resources removed from public lands and, with the consent of the Indian or Indian tribe, Indian lands pursuant to this Act, and

(b) the ultimate disposition of such resources and other resources removed pursuant to the Act of June 27, 1900 (16 U.S.C. 469-469c) or the Act of June 8, 1906 (16 U.S.C. 431-433).

Following promulgation of regulations under this section, notwithstanding any other provision of law, such regulations shall govern the disposition of archaeological resources removed from public lands and Indian lands pursuant to this Act.

PROHIBITED ACTS

Sec. 6 (a) No person may excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under section 4, a permit referred to in section 4(h) (2), or the exemption contained in section 4(g) (1).

(b) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange any archaeological resource if such resource was excavated, or removed from public lands or Indian lands in violation of—

(1) the prohibition contained in subsection (a); or

(2) any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

(c) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange, in interstate or foreign commerce, any archaeological resource excavated, removed, sold, purchased, exchanged, transported, or received in violation of any provision, rule, regulation, ordinance, or permit in effect under State or local law.

(d) The prohibitions contained in this section shall take effect on the date of the enactment of this Act.

PENALTIES

Sec. 7. (a) (1) Any person who violates any prohibition contained in a regulation or permit issued under this Act may be assessed a civil penalty by the Federal land manager concerned. No penalty may be assessed under the subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Federal land manager concerned.

(2) The amount of such penalty shall be determined under regulations promulgated pursuant to this Act, taking into account—

(A) the archaeological or commercial value of the archaeological resource involved; and

(B) the cost of restoration and repair of the resource and the archaeological site involved. Such regulations shall provide that, in the case of a second or subsequent violation by any person, the amount of such civil penalty may be double the amount which would have been assessed if such violation were the first violation by such person.

The amount of any penalty assessed under this subsection shall not exceed \$1,000 for each violation or \$2,000 in the case of a second or subsequent violation.

(3) Any person aggrieved by an order assessing a civil penalty under paragraph (1) may file a petition for judicial review of such order with the United States District Court for the District of Columbia or for any other district in which such a person resides or transacts business. Such a petition may only be filed within the thirty-day period beginning on the date the order making such assessment was issued. The court shall hear such action on the record made before the Federal land manager and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(4) If any person fails to pay an assessment of a civil penalty—

(A) after the order making the assessment has become a final order and such person has not filed a petition for judicial review of the order in accordance with paragraph (3); or

(B) after a court in an action brought under paragraph (3) has entered a final judgment upholding the assessment of a civil penalty, the Federal land managers may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. In such action, the validity and amount of such penalty shall not be subject to review.

(5) Hearings held during proceedings for the assessment of civil penalties authorized by paragraph (1) of this subsection shall be conducted in accordance with section 554 of title 5 of the United States Code. The Federal land manager may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or

resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Federal land manager or to appear and produce documents before the Federal land manager, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) Any person who knowingly violates, or solicits or employs any other person to violate, any prohibition contained in section 6 shall, upon conviction, be fined not more than \$10,000 or imprisoned not more than one year, or both. If the commercial or archaeological value of the archaeological resources involved and the cost of restoration and repair of such resources exceeds the sum of \$5,000, any person who knowingly violates, or solicits or employs any other person to violate, any prohibition contained in section 6 shall be fined not more than \$20,000 or imprisoned not more than two years, or both. In the case of a second or subsequent violation under this subsection the penalty shall be \$100,000 or five years, or both.

CIVIL DAMAGES

SEC. 8. (a) Any person who violates a prohibition contained in section 6 shall be liable to the United States for any damage to the archaeological resource involved and may be sued civilly in the United States district court for the district in which the resource is located.

(b) For purposes of this section, damages to an archaeological resource include—

- (1) the archaeological value of the resource;
- (2) the commercial value of the resource; and
- (3) the cost of restoration and repair of the resource and the site involved.

REWARDS; FORFEITURE

SEC. 9. (a) Upon the certification of the Federal land manager concerned, the Secretary of the Treasury is directed to pay, from penalties and fines collected under section 7, an amount equal to one-half of such penalty or fine, but not to exceed \$500, to any person who furnishes information which leads to the finding of civil violation or the conviction of criminal violation with respect to which such penalty or fine was paid. If several persons provided such information, such amount shall be divided among such persons. No officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall be eligible for payment under this subsection.

(b) All archaeological resources with respect to which a violation of section 6 occurred and which are in the possession of any person, and all vehicles and equipment of any person which were used in connection with such violation, may be (in the discretion of the court or administrative law judge, as the case may be) subject to forfeiture to the United States upon—

- (1) such person's conviction of such violation under section 7(b);
- (2) assessment of a civil penalty against such person under section 7(a) with respect to such violation; or
- (3) a determination by any court that such archaeological resources, vehicles, or equipment were involved in such violation.

(c) In cases in which a violation of the prohibition contained in section 6 involve archaeological resources excavated or removed from Indian lands, the Federal land manager or the court, as the case may be, shall provide for the payment in an Indian or Indian tribe involved of all damages collected pursuant to section 8 and forfeitures under this section.

CONFIDENTIALITY

SEC. 10. Information concerning the nature and location of any archaeological resource for which the excavation or removal requires a permit or other permission under this Act or under any other provision of Federal law may not be made available to the public under subchapter II of chapter 5 of title 5 of the United States Code or under any other provision of law unless the Federal land manager concerned determines that such disclosure would—

- (a) further the purposes of this Act or the Act of June 27, 1950 (16 U.S.C. 469-469c); and
- (b) not create a risk of harm to such resources or to the site at which such resources are located.

REGULATIONS; INTERGOVERNMENTAL COORDINATION

SEC. 11. (a) The Secretaries of the Interior, Agriculture, and Defense, after consultation with other Federal land manager, Indian tribes, and representatives of concerned State agencies, and after public notice and hearing, shall promulgate such uniform rules and regulations as may be appropriate to carry out the purposes of this Act. Such rules and regulations may be promulgated only after consideration of the provisions of the American Indian Religious Freedom Act (92 Stat. 469; 42 U.S.C. 1906).

(b) Each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations under subsection (a), as may be appropriate for the carrying out of his functions and authorities under this Act.

SAVINGS PROVISIONS; MINING; ROCK COLLECTION

SEC. 12. (a) Nothing in this Act shall be construed to repeal or modify the mining or mineral leasing laws of the United States.

(b) Nothing in this Act applies to, or requires a permit for, the collection for private purposes of any rock or mineral which is not an archaeological resource, as determined under uniform regulations promulgated pursuant to this Act.

REPORT

SEC. 13. As part of the annual report submitted to the Congress under section 506 of the Archaeological Recovery Act of 1960 (74 Stat. 220; 16 U.S.C. 469-469a), the Secretary of the Interior shall include a report to the Congress respecting the activities carried out under this Act.

2. Amend the title to read as follows:

A bill to protect archaeological resources on public lands and Indian lands, and for other purposes.

PURPOSE OF THE MEASURE

S. 490, as amended, would provide greater protection than now exists for archaeological resources on public lands and Indian lands of the United States. This protection would be accomplished by providing penalties commensurate with the value of the resource damaged or removed from public lands and/or Indian lands without a permit. In addition, information concerning the nature and location of any archaeological resource which might create a risk to such resource would be exempt under the Freedom of Information Act.

SUMMARY OF MAJOR PROVISIONS

Section 3 contains definitions of terms used in the Act. Of major importance is the definition for "archaeological resource" which was not defined by an earlier Act (Antiquities Act of 1906). This definition would cure the problem of unconstitutional vagueness, created by the lack of definition, found by the United States Court of Appeals for the Ninth Circuit. (*U.S. v. Diaz*, 449 F. 2d 113 (9th Cir. 1971).)

Section 5 provides for regulations which would allow for the exchange of archaeological resources removed from public lands and Indian lands between museums and other institutions and the disposition of such resources by the Secretary of the Interior.

Section 6 lists those activities which would be prohibited by this Act. The prohibited acts in this section would extend beyond existing law (Antiquities Act of 1906) to include persons who would deal in stolen artifacts.

Section 7 sets forth the penalties. Subsection (a) provides for civil penalties with a maximum fine of \$1,000 for each violation or \$2,000 for subsequent violations. Subsection (b) provides for criminal penalties for persons who knowingly violate the prohibitions contained in the Act.

Section 9 directs the Secretary of the Treasury, at the recommendation of the appropriate Federal agency, to pay up to one-half of the civil or criminal penalty not to exceed \$500, to persons furnishing information leading to the finding of a civil violation or criminal conviction.

Section 10 provides a specific exemption from the Freedom of Information Act for the location of archaeological sites on public lands and Indian lands. It would place discretionary disclosure authority with the appropriate Federal agency.

BACKGROUND AND NEED

Archaeological resources of the United States have been protected since 1906 by the Antiquities Act (16 U.S.C. 431-433). Under that Act, persons convicted of excavating, removing, injuring or destroying any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned or controlled by the United States, without a permit, could be fined \$500, imprisoned up to 90 days, or both.

Certain deficiencies in the existing law which have surfaced in recent years, prompted House and Senate Members to introduce separate legislation to deal with circumstances which were not contemplated by the 1906 Act.

In a recent decision, the United States Court of Appeals for the Ninth Circuit held that the 1906 Act was unconstitutional. The court held that the definitional portion of the Act was unconstitutionally vague, and that the Act, therefore, is unenforceable in the Ninth Circuit. The States affected by this decision are Arizona, California, Nevada, Oregon, Washington, Montana, Idaho, Alaska, Hawaii, and Guam.

The science of archaeology has changed significantly since the enactment of the Antiquities Act of 1906 when protection of artifacts, "the objects of antiquity" was the ultimate goal. With the current technology associated with archaeological excavation, the entire archaeological site provides a wide range of potential information about the past.

The increased number of incidents of illegal excavations on public lands and Indian lands for personal profit are leaving certain sites totally useless for any scientific investigations. The current excavation techniques involving destructive earth-moving differ greatly from the manual technique employed when the act was passed in 1906.

The current penalties for destruction or removal of archaeological resources, \$500 fine, imprisonment for up to 90 days, or both, no longer serve as a deterrent to commercial looters who are able to market certain Indian pots for thousands of dollars. For many of the commercial looters, a \$500 fine is considered a cost of doing business.

LEGISLATIVE HISTORY

S. 490 was introduced on February 26, 1979 by Senators Domenici, Schmitt, DeConcini, Goldwater, and Eagleton. The Parks, Recreation and Renewable Resources Subcommittee held a hearing on May 1, 1979.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources in open business session on May 15, 1979, by unanimous vote of a quorum present recommends that the Senate pass S. 490, if amended as described herein.

COMMITTEE AMENDMENTS

During consideration of S. 490, the Committee adopted an amendment in the nature of a substitute. While the majority of the changes in the substitute text constitute technical changes, the following is a discussion of those provisions that differ from S. 490, as introduced.

The Committee deleted possession as a prohibited act. Current holders of archaeological resources obtained before the effective date of this Act may own, possess, buy, sell, trade or exchange archaeological resources without violating this Act. In other words, after enactment of this legislation a person may own, possess, buy, sell, trade or exchange archaeological artifacts if held prior to enactment regardless of origin or proof of ownership, and not be subject to any penalty under this Act, unless the archaeological resource was excavated or removed in violation of any other Federal or State law.

As introduced, S. 490 contained a separate Indian section which would direct the Secretary of the Interior to study all aspects of excavation of archaeological resources from Indian lands. Other provisions also contained in that section were retained in the bill, as amended.

As the bill was amended, what formerly constituted a separate distinct Indian section of the legislation would now be incorporated throughout the provisions of the bill. This change is reflected in the amended title which would read, "A bill to protect archaeological resources on public lands and Indian land, and for other purposes".

The following additional provisions dealing specifically with Indians were adopted by the Committee in the substitute text:

Section 4(c) recognizes that certain locations outside of Indian lands may be of religious significance to an existing tribe. The Secretary of the Interior would make such determination prior to issuing a permit. In compliance with the American Indian Religious Freedom Act (92 Stat. 469, 42 U.S.C. 1996), the Committee believes that this precaution should be taken by the Secretary to ensure that sites of religious significance are protected from those seeking permits to excavate.

Section 4(g)(1) provides that no permit would be required by any Indian tribe or member of such tribe to excavate archaeological resources on the lands occupied by such tribe provided that the existing tribal law monitors such activity. Should a tribe not have laws regulating archaeological activities, then the provision of S. 490, as amended, would apply.

Section 4(g)(2) provides that permits to excavate on Indian lands may only be granted at the consent of the affected Indian or Indian tribe, and such consent may include additional terms requested by such Indian or Indian tribe.

Section 9(c) would return artifacts and make payments of damages to an Indian or Indian tribe for archaeological resources taken from Indian Lands. This provision would allow partial or full restoration of a site or area as well as the return of all archaeological resources.

The Committee adopted a civil penalties section based on existing procedures in the Endangered Species Act. This section would give the Federal land manager "ticket writing" authority for minor offenses which do not involve a knowing violation of the prohibitions in the act. The Committee agreed that enforcement authority which did not involve the stigma of a criminal violation would be useful to the Federal land manager as a deterrent for illegal activities and for users of the public lands who might unknowingly violate the act.

A person assessed a civil penalty under this section would be afforded full due process rights of notice and a hearing to contest the penalty before an administrative law judge and judicial review of administrative decision. The Committee is aware that there may exist potential for abuse of this citation authority.

The Committee recognizes the difficulties associated with adopting civil penalties for the enforcement of provisions of this Act. The Members expressed concern that the protection of individuals afforded by the presumption of innocence could be eroded by an arbitrary or excessive administrative application of civil penalties in contested situations.

However, the Committee believes it is necessary to provide Federal land managers with a variety of enforcement measures appropriate to the situations encountered in the field.

The Committee cautions that civil penalties should be sparingly used, and then only in situations which clearly warrant an enforcement action and not to harass citizens in normal use of public lands or who inadvertently infringe on regulations in minor ways.

In addition, the Committee modified the original penalties section of S. 490 by providing for a misdemeanor penalty for violations involving archaeological resources with a value of less than \$5,000. Felony prosecutions would therefore be limited to major violations of the act.

The Committee retained language in the criminal section which would make violations under this Act general intent crimes rather than specific intent crimes.

The Committee understands that federal land managers have general authority under existing regulations to issue citations for petty misdemeanors for a variety of offenses, including those encompassed by this legislation. The reported bill does not affect this existing authority.

The Committee urges federal land managers to publish the appropriate prohibitions and warnings in their respective brochures, maps, visitor guides, and to post signs at entrances to public lands. The Committee does not intend that specific sites be signed, rather general

signing should be done at popular access points to public lands. The Committee feels that the education of the visitor, may, in the long run, reduce the number of incidents on public lands.

The Committee felt that S. 490, as introduced, did not adequately deal with the cost of restoring the resources and/or the sites on public lands or Indian lands which have suffered significant damage through illegal activities. Therefore, section 8 of the Committee amendment would also make violators of the prohibitions contained in section 6 liable to the United States for the archaeological value of the resource lost through an illegal activity, the commercial value of the resource, and the cost of restoration of the site.

Section 9(a) (b) and (c) were changed to direct the Secretary of the Treasury to pay rewards from penalties and fines collected under Section 7. The reward payments would be a direct function, not subject to appropriations, and would come from fines collected under the act.

The Committee reduced the maximum amount payable as a reward to discourage frivolous allegations aimed at obtaining a large reward. The \$500.00 figure was arrived at as a just, compensatory amount for time and troubles incurred by persons furnishing information leading to a finding of civil violation or the conviction of criminal violation.

Further, Section 9 of S. 490, as amended, modifies the original language to provide that the court or the administrative law judge has discretion to decide whether vehicles or equipment used illegally to remove or destroy archaeological sites or cultural resources should be forfeited to the United States or to an Indian or Indian tribe as the case may be.

By providing such discretion, it is the Committee's understanding that those who unknowingly or unwillingly have their vehicle or equipment used in an illegal activity would be protected against their loss by forfeiture.

In clarifying the intent regarding the possession of cultural resources the Committee adopted a new section 5 which provides that those establishments or agencies that maintain exhibition artifacts should be able, as they have in the past, to exchange their cultural resources with other establishments or agencies for the scientific and educational benefit of the public.

Section 5 also authorizes the Secretary of the Interior to promulgate regulation which would provide for the ultimate disposition of resources recovered pursuant to the Act of June 27, 1960 (16 U.S.C. 469-469c) or the Act of June 8, 1906 (16 U.S.C. 431-433). Such regulations would govern the disposition of resources acquired pursuant to S. 490, as amended.

Section 11 of S. 490, as amended, modifies the regulations section of the measure as introduced. The original provision would have required the Secretary of the Interior, in consultation with any other Secretary having primary authority for the management of lands affected by this Act, to promulgate regulations to carry out the purposes of this act.

The Committee amendment would require the Secretaries of the Interior, Agriculture, and Defense, whose land managing responsibilities incorporate the majority of lands affected by this legislation, to promulgate uniform rules and regulations. It was felt that the uniform

regulation approach would afford each of those major departments equal input into rules and regulations under which they all must ultimately comply.

It is the intent of the Committee that the uniform regulations be developed as expeditiously as possible. However, it should be noted that basic agreement should be reached among the departments prior to publication of proposed uniform regulations by any one department.

Section 12 makes it clear that this Act does not impose any additional permitting system for collection of rocks or minerals which are not archaeological resources. Other acts which provide for archaeological review, mitigation, and salvage provide protection before, during, and after these other activities.

COST AND BUDGETARY CONSIDERATIONS

S. 490, as amended by the Committee, contains no authorization. The only cost which would be associated with the passage of this legislation would be administrative expenses incurred through the enforcement and administration of the civil procedures within the affected Federal land managing agencies, and through the promulgation of regulations.

The following estimate of costs of this measure has been provided by the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., May 15, 1979.

HON. HENRY M. JACKSON,
Chairman, Committee on Energy and Natural Resources, U.S. Senate,
Dirksen Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 490, the Archaeological Resources Protection Act of 1979, as ordered reported by the Senate Committee on Energy and Natural Resources May 15, 1979.

The bill provides for the protection of archaeological resources on public and Indian lands by prohibiting unauthorized removal or sale of antiquities and outlines a means of assessing penalties to be imposed on violators. Costs incurred by the federal government as a result of enactment of this bill will stem from enforcement and administration of the civil penalty process, promulgation of regulations, and the review of applications. Based on information available from the Department of the Interior, it is estimated that these costs will total approximately \$4 million for fiscal years 1980 through 1984.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

REGULATORY IMPACT STATEMENT

In compliance with paragraph 5 of the Rule XXIX of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 490.

This bill is not a regulatory measure in the sense of imposing Government established standards or significant economic responsibilities on private individuals and business.

While some personal information may be required on permit applications developed pursuant to regulations promulgated under this Act for access to the public lands for archaeological research purposes, there would be little impact on personal privacy. A minimum of additional paperwork would result from the enactment of S. 490, as ordered reported.

EXECUTIVE COMMUNICATIONS

The pertinent legislative reports and communications received by the Committee from the Office of Management and Budget and from the Department of the Interior setting forth executive agency recommendations relating to S. 490 are set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., April 26, 1979.

HON. HENRY M. JACKSON,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to the request of your Committee for the views of this Department on S. 490, a bill to protect archaeological resources owned by the United States, and for other purposes.

We recommend that S. 490 be enacted if it is amended as described herein.

S. 490 would supplement our authorization to control archaeological excavations on Federally owned or controlled lands, and to remove objects of antiquity from such lands for scholarly purposes. In general, the bill will solve a number of problems in present authorizations and will provide much greater protection of the archaeological resources of the United States.

Specifically, S. 490 would: (1) be of broader application than the Antiquities Act by allowing the archaeological permits to be issued to any qualified individual or private entity as well as any officer, employee, agent, department or instrumentality of the United States or a State or political subdivision thereof; (2) define "archaeological resource" as any material remains of past human life or activities which are at least 50 years of age and of archaeological interest; (3) set forth certain qualifications to be met by permit applications and the conditions under which the appropriate Secretary could either refuse to issue a permit or suspend or revoke issued permits; (4) prohibit commercial trade in archaeological resources obtained in violation of Federal, State or local laws; (5) authorize the appropriate Secretary to assess civil penalties, subject to judicial review, for violations of the prohibitions contained in the bill or regulations or permits; (6) provide greatly increased criminal penalties for violations of the prohibitions contained in the bill (up to \$20,000 fine or two years imprisonment, or both, for a first offense and up to \$100,000 fine or five years imprisonment, or both, for second and subsequent offenses versus a maximum \$500 fine or 90 days imprisonment, or both, for violations

of the 1906 Act); (7) authorize the appropriate Secretary to recommend the payment of up to $\frac{1}{2}$ of any fine or civil penalty, but not more than \$2,500, to any person furnishing information leading to the finding of a civil violation or criminal conviction; (8) direct the Secretary of the Interior to report to the Congress by June 1, 1980, on the regulation of the excavation and removal of archaeological resources from Indian lands; (9) provide a specific exemption from the Freedom of Information Act for site location information concerning archaeological resources covered by the bill, unless the appropriate Secretary found the disclosure of this information would further the purposes of the bill and not create risk of harm to the resources or the site location; (10) authorize the Secretary of the Interior, after consultation with other land management departments, to promulgate the rules and regulations to be followed by all such departments in carrying out the purposes of the bill; and (11) require the Secretary of the Interior to report annually to the Congress on the activities carried out by him under the bill.

This Administration wholeheartedly endorses the purposes of S. 490. In recent years, the Antiquities Act of 1906, 16 U.S.C. 431-433, has had the application of its criminal sanctions severely circumscribed. The result has been a corresponding decrease in the effectiveness of its protection of archaeological resources on Federal lands. The most severe problem is the holding in *United States v. Diaz*, 499 F.2d 113 (9th Cir. 1974), that the criminal penalty provisions of the Antiquities Act are unconstitutionally vague. Another problem is that in light of the increased commercial trade in archaeological treasures, the penalties provided in the Act are insufficient to provide the deterrent effect necessary to protect these resources. Finally, we have found it increasingly a problem that information on permit applications and other cultural resource information, particularly relating to site location, must be released under the Freedom of Information Act leading to an increased threat of vandalism of archaeological sites.

This bill reflects the need demonstrated by these problems for a new comprehensive statute to deal with each of these issues. It provides a much clearer direction as to what resources Congress intends to be protected, and specifically grants to the Secretary of the Interior regulatory authority to further define those resources. This would overcome the vagueness problem of *Diaz*. It also provides for a full range of enforcement tools running from civil penalties to felony provisions for particularly serious offenses. An additional facet is that it makes criminal the commercial trade in archaeological resources which were obtained in violation of either Federal, State, or local law. While recognizing that the problem of proof of how the object was initially obtained is a difficult one, we support this additional layer of protection for the valuable resources which would be protected by this bill. These two aspects of the bill would significantly improve the effectiveness of the cultural resources protection program of this Department.

Finally, the bill would provide a specific exemption from the Freedom of Information Act for site location information regarding archaeological resources covered by the bill, unless the Secretary finds that the release of such information would further the purposes of the bill and would not create a risk of harm to such resources or the site in

which they are located. While this provision would be a positive step, we would suggest that it is unnecessary and, probably unintentionally, limited. Because the only archaeological resources covered are those on Federal land, where, in the course of cultural resource surveys or other activities required by other laws, information is collected regarding sites not on Federal land, it would not be exempted from release. We believe that this provision should be redrafted to protect information relating to any archaeological site.

We strongly support the overall purposes of S. 490. We would like to recommend, however, a number of amendments to the bill which will eliminate certain problems of language, interpretation and administration. If so amended, we recommend the enactment of S. 490. Our proposed amendments are attached to this report.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

ROBERT HERBST.
Secretary.

Enclosure.

SUGGESTED AMENDMENTS TO S. 490

1. Sec. 2(n)(2), page 2: On line 6, after "resources" insert "which are the property of the United States".

Reason: We believe the bill should make it clear that these archaeological resources are in public ownership.

2. Sec. 3(1), page 2: Delete paragraph (1) and insert the following new paragraph:

"(1) The term "archaeological resource" means any material remains of past human life or activities which are at least fifty years of age and which are of archaeological interest, as determined under regulations promulgated by the Secretary of the Interior. The Secretary of the Interior shall promulgate regulations under this paragraph after consultation with other Federal land managers, the professional archaeological community, representatives of concerned States and all other interested parties."

Reason: This change will eliminate a partial listing of archaeological resources, which may be confusing. Instead, this can be handled through regulations.

3. Sec. 3(2), page 3: Delete lines 13-21 and insert:

"(2) The term "Secretary" means, except where otherwise specifically provided, the Secretary of the Department or the head of any agency of the United States (as defined by section 531 of Title 5, U.S.C.) having primary management authority over the land concerned."

Reason: We believe this clarifies the intent of the definition and will also clarify the provisions of the bill where the term is used.

4. Sec. 3(3), page 3: Delete all of section 3(3), and insert the following:

"The term 'Indian lands' means lands of Indian tribes or Indian individuals which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States."

Reason: The term "Indian lands" is defined to include all lands within the exterior boundaries of any Federal Indian reservation. This may be somewhat broader than is intended for there are situations in which either private or State owned lands may be included within these boundaries. Also, lands are often held in trust for individuals. The intent of this bill seemingly would be achieved by defining "Indian lands" as suggested.

5. Sec. 3(4), page 4, line 2: Between "trust," and "association", insert "institution,".

Reason: Technical amendment.

6. Sec. 3(5), page 4: Add new subparagraph (5) as follows:

"An archaeological survey means a physical inspection, inventory, and/or assessment which has the potential for physically impacting archaeological resources located within a prescribed geographical area."

Reason: Required to further explain terminology in reference to Sections 4 and 8.

7. Sec. 3(6), page 4: Insert a new subparagraph (6) as follows:

"(6) The term "States" means any of the fifty States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands."

Reason: The term "State", which appears several places in the bill, needs to be defined to clarify the application of this bill to land areas which are not strictly States.

8. Sec. 4 page 4: Section 4 of H.R. 1825 should be revised as indicated below. We have completely rewritten this section:

"Excavation and Removal from Federal land—(a) Any person may apply to the Secretary for a permit for archaeological survey, excavation, or removal of any archaeological resources located on land owned or controlled by the United States or to carry out any or all such activities.

(b) A permit may only be issued pursuant to an application under subsection (a) permitting archaeological surveys, excavation, or removal of any archaeological resource, or permitting any or all such activities, if the Secretary to whom such application is made determines, under regulations promulgated by the Secretary of the Interior, that

(1) the research is important to the acquisition of data related to significant archaeological concerns, and

(2) capability exists to recover, analyze, synthesize or disseminate the results of the work; to meet curatorial responsibilities for the archaeological materials and resources removed; and to provide for appropriate preservation measures onsite, and

(3) a work plan is submitted meeting current professional standards (including necessary logistical, financial and project management data) which demonstrates the applicant and principal investigator have sufficient experience and capability to complete the work in accordance with purposes of this Act.

Such permit shall contain such terms and conditions as the Secretary concerned deems necessary (pursuant to regulations promulgated by the Secretary of the Interior) to carry out the

purposes of this Act, to insure compliance with other applicable provisions of law, and to protect other resources involved. The Secretary of the Interior shall promulgate interim regulations within 90 days of the passage of this Act and shall promulgate final regulations within one year of the passage of this Act. Promulgation of final regulations under this subsection will occur only after consultation with—

(1) other departments, bureaus, and agencies of the United States having primary responsibility for management of land owned or controlled by the United States, and

(2) representatives of concerned State agencies.

(c) Systematic collections of archaeological resources and related physical and scientific evidences, archaeological resources with inherent data potential, and associated documentation shall be retained in a manner to assure their scientific integrity. The United States shall retain a proprietary interest in such collections and their conservation for public benefit.

(d) The Secretary to whom an application is made under subsection (a) may refuse to issue a permit under this section to any applicant—

(1) against whom a civil penalty has been assessed under section 6(a) or

(2) who has been convicted of a violation under sections 6(b) or 6(c) or under the Act of June 8, 1906 (34 Stat. 225; 16 U.S.C. 431-433).

Any permit issued under this section may be suspended by the Secretary to whom an application is made for not more than two years for each instance that he determines that the permittee has violated the terms of the permit or the prohibition contained in section 5. Any such permit may be revoked by such Secretary upon assessment of a civil penalty under section 6(a) against the permittee or upon the permittee's conviction of a violation under section 6(b) or 6(c).

(e) No permit or other permission shall be required under the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431-433) for any activity for which a permit is issued under this section. Nothing in this Act shall modify or affect any existing permit validly issued under the Act of June 8, 1906.

(f) Nothing contained in this section shall require any officer, employee, agent, department or instrumentality of the United States with land management responsibilities to acquire a permit to survey, excavate or remove archaeological resources, provided such activities are a part of the authorized duties of such officer, employee, agent, department or instrumentality of the United States, are undertaken with the consent of the land management agency, and are carried out in accordance with the purposes and intent of this Act, and in accordance with other applicable laws.

(g) Issuance of a permit in accordance with this section and applicable regulations shall not require compliance with section 106 of the Act of October 15, 1966 (80 Stat. 917, 16 U.S.C. 470f).

(h) The responsibilities and duties under this Act of any Secretary may, with the consent of the Secretary of the Interior, be delegated to the Secretary of the Interior.

Reason: These recommendations are designed to clarify the policy of the Act by recognizing that archaeological resources are a diminishing resource in this nation today. Archaeological excavation is itself a process of study that destroys the resource. Because of this, and because archaeological resources are finite and non-renewable, the objective should be to manage these resources for their long-term conservation while at the same time allowing the necessary consumption of them in the interests of advancing knowledge about the past or to illustrate or interpret to the public the human history of this nation. The purpose of the recommended changes in this section is to strike a balance between this generation's consumption of the archaeological resources on Federal lands and the conservation of these resources for future generations when new research problems and advanced research methods of a less destructive nature will be available.

Four additional provisions are recommended for inclusion: (1) to continue in force existing Antiquities Act permits issued under section 3 of the Antiquities Act of 1906; (2) language to clarify that any employee or agent of the Federal government does not need a permit under this act, provided the employee or agent is carrying out authorized, agency-related duties, in accordance with other applicable laws, such as the Archeological and Historic Preservation Act of 1974 and the Historic Preservation Act of 1966; (3) that compliance with the permitting provision of this act would excuse compliance with section 106 of the National Historic Preservation Act of 1966; and (4) authorization for any Secretary to delegate to the Secretary of the Interior, where he consents, the authority to issue permits under this act.

9. Sec. 5(a), page 6: Delete line 10, and insert in lieu thereof:

"Sec. 5. (a) Except as provided in section 4(f), no person may excavate, remove, injure or destroy any ar."

Reason: Technical amendment to make the language of this section consistent with 16 U.S.C. 433, and to clarify the relationship of this prohibition to the disclaimer in section 4(f).

10. Sec. 5(b), page 6, line 18, and sec. 5(c), page 7, line 2: Delete "possess."

Reason: there are Constitutional problems inherent in making the possession of an object a criminal offense in light of the effective date provisions in (d)(2). The deprivation of property and due process clauses require that in such a situation the criminal offense be tied to an intervening act. The way the bill is presently drafted, a person possessing an object legally the day before the bill was passed could be put into criminal violation the day the bill became effective. The simplest remedy is to delete possession as a crime. Insofar as overall enforcement is concerned, this deletion does not seem to weaken the bill significantly.

11. Sec. 5(b)(2), page 6: Reword paragraph (2) on lines 22-24 to read as follows: "any other Federal law, rule, regulation, or permit."

Reason: Technical amendment.

12. Sec. 5(c) and (d)(2), page 7: Following the word "any" on line 5, reword as follows, "State or local law, ordinance, rule, regulation, or permit." On line 15, following the word "any", reword to read "State or local law, ordinance, rule, regulation, or permit or of any other Federal law before, on or after the date of the enactment of the Act."

Reason: Technical amendment.

13. Sec. 6(a)(2), page 8, lines 3-14: We believe that the Congress should set an upper limit on the penalty which may be provided by the Secretary of the Interior. This is the clearest way for the Secretary to establish a system of penalties which most closely reflects the will of the Congress and which therefore, would withstand judicial review as reasonable. Failure to establish such a ceiling may well result in any system of penalties succumbing to judicial challenge. We feel that under the bill as drafted the Secretary could not impose a civil penalty higher than \$20,000, since the maximum fine provided in section 6(1) is \$20,000. Because of the extreme value of the properties involved, we believe that both of these figures should be raised to more adequately provide the deterrent we need.

14. Sec. 6(a)(2), page 8, lines 4 and 10: Delete the word "guidelines" and insert the word "regulations" in lieu thereof.

Reason: Technical amendment.

15. Sec. 6(a)(2), page 8, line 12: Change the word "shall" to "may".

Reason: To provide additional flexibility in the penalty assessment process.

16. Sec. 6(a)(3): In lines 17-18, delete "Court of Appeals for the District of Columbia Circuit or for any other circuit in". Insert in lieu thereof "District Court for the District of Columbia or for any other district in".

Reason: Review of the assessments of civil penalties is well within the province of the District Courts. To allocate the function to the already crowded Circuit Court calendars will only further delay resolution of the civil penalty assessment. Additionally, to require a person against whom a civil penalty has been assessed to seek his relief in the Circuit Court may well discharge meritorious appeals because of the distance to the courts and the expense involved.

17. Sec. 6(a)(4)(A) and (B), page 9: Section 6(a)(4)(A) and (B) should refer to paragraph (3) instead of paragraph (2).

Reason: Technical amendment.

18. Sec. 6(c), page 9: Delete all of lines 17-20 and insert in lieu thereof:

"(c) Any person who commits a second or subsequent violation of any prohibition contained in section 5"

Reason: Technical amendment.

19. Sec. 7(a), page 9: In line 24, delete the word "recommendation", and insert in lieu thereof the word "certification".

Reason: Technical amendment. The Department of Treasury indicates that it needs a certification and not just a recommendation.

20. Sec. 7(a), page 10: After line 10, insert this sentence:

"There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this subsection."

Reason: Without this amendment, funds from a fined person would go to the general fund of Treasury. This amendment would put the money raised from fines into an account for that purpose, so that rewards could be paid out of that account.

21. Sec. 7(a), page 10, line 6: Change the word "shall" to "may" and delete the word "equally".

Reason: To allow the Secretary to provide for a division among persons which reflects the value of their contribution to the enforcement effort.

22. Sec. 7(b)(1), page 10, line 17: Insert "or (c)" between "6(b)" and "7".

Reason: Technical amendment.

23. Sec. 8, page 10: Throughout sec. 8 of the bill, insert after "Secretary" the words "of the Interior".

Reason: Technical amendment.

24. Sec. 8(a), page 11, line 5: Delete the words "proposed legislation designed to allow" and insert the words "consideration of the feasibility of authorizing".

Reason: This amendment gives the Secretary discretion in the study process and does not prejudice the outcome of the study.

25. Sec. 8(b), page 11, line 10: Delete the words "drafts of proposed legislation and".

Reason: Same reason as in amendment number 24 above.

26. Sec. 8(b), page 11, line 12: Delete "1980" and insert "1982".

Reason: We believe the Indian lands study required by this section will require an additional two years than allowed by the bill.

27. Sec. 8(c), page 11, line 13: Delete "After the date of the enactment of this Act", and after "all", insert "archaeological surveys".

Reason: All such archaeological resources are presently protected by the Antiquities Act. This subsection's design is to reinforce in clear language that during the interim time prior to the Secretary's report to Congress, such lands shall continue to receive equal protection under this statute when enacted.

28. Sec. 8(d), page 11, lines 16-19: Delete all of section 8(d) and insert in lieu thereof the following:

"The Secretary shall not issue a permit under this Act with respect to Indian lands if the Indian tribe objects to such issuance and such objections are consistent with section 202 of the Civil Rights Act of 1968 (82 Stat. 77). With respect to permits issued under this Act with respect to Indian lands, the Secretary shall include and enforce terms and conditions in addition to those required by this Act as may be requested by the Indian tribe, consistent with section 202 of the Civil Rights Act of 1968 and other statutory responsibilities."

Reason: This amendment requires the tribes' objections to be consistent with section 202 of the Civil Rights Act of 1968. In addition, the terms and conditions requested by a tribe should not be inconsistent with other statutory requirements imposed on the Secretary.

29. Sec. 9, page 12: Delete all of lines 5-8, and insert the following:

"Sec. 9. Information obtained by the Federal government under this Act or under any other provision of Federal law concerning the location of any archaeological resource may not be made."

Reason: We believe that in order to protect archaeological resources site location information regarding any archaeological resources obtained by the government under any law should not be disclosed unless the proper finding is made.

30. Sec. 9(1), page 12: In line 13, delete "this" and insert in its place "the relevant".

Reason: Technical amendment.

31. Sec. 11(a), page 13, line 5: Delete existing line 5, and substitute "repeal or modify".

Reason: We would suggest that section 11(a), as introduced, might preclude any cultural resource protection under this bill in the con-

text of mining or mineral leasing. To remove such protection completely seems unnecessary. The provisions of the mining and mineral leasing laws can be preserved from modification or repeal, while at the same time giving a reasonable level of protection to cultural resources which might otherwise be endangered.

32. Add new section 11 (c) as follows:

"(c) A permit under this Act shall not be required when an archaeological survey in compliance with section 106 of the National Historic Preservation Act of 1966 has been made and it has been determined that the subject project will not adversely affect archaeological resources. However, this shall not be deemed to exempt an agency from compliance with this act or the Archaeological and Historic Preservation Act of 1974 when new or additional archaeological resources are discovered."

Reason: To protect private contractors from criminal liability in the event of an inadvertant discovery and/or destruction of an archaeological resource, after there has been agency compliance with section 106.

33. Sec. 12, page 13, lines 13 and 14: Delete the words "annually, submit" and insert in lieu thereof the words "as a part of the annual report submitted to the Congress pursuant to section 5(c) of the Archaeology and Historic Preservation Act of 1974 (74 Stat. 220) as amended."

Reason: We believe a separate report to the Congress should not be required under this bill since an archaeology report is already being submitted annually to the Congress under the 1974 Act, and the reports can easily be consolidated.

EXECUTIVE OFFICE OF THE PRESIDENT.

OFFICE OF MANAGEMENT AND BUDGET.

Washington, D.C., May 8, 1979.

HON. HENRY M. JACKSON.

Chairman, Committee on Energy and Natural Resources,

U.S. Senate,

New Senate Office Building,

Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of March 23, 1979, for the views of the Office of Management and Budget on S. 490, the "Archaeological Resources Protection Act of 1979."

The Office of Management and Budget would have no objection to the enactment of S. 490 if amended as recommended by the Department of the Interior in its letter to you, dated April 26, 1979.

Sincerely,

JAMES M. FREY.

Assistant Director for

Legislative Reference.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of Rule XXIX of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 490 as reported.

**ARCHEOLOGICAL RESOURCES
PROTECTION ACT OF 1979**

Mr. UDALL. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1825) to protect archeological resources owned by the United States, and for other purposes, as amended.

The Clerk read as follows:

H.R. 1825

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Archaeological Resources Protection Act of 1979".

FINDING AND PURPOSE

Sec. 2. (a) The Congress finds that—

(1) archaeological resources on public lands and Indian lands are an accessible and irreplaceable part of the Nation's heritage;

(2) these resources are increasingly endangered because of their commercial attractiveness;

(3) existing Federal laws do not provide adequate protection to prevent the loss and destruction of these archaeological resources and sites resulting from uncontrolled excavations and pillage; and

(4) there is a wealth of archaeological information which has been legally obtained by private individuals for noncommercial purposes and which could voluntarily be made available to professional archaeologists and institutions.

(b) The purpose of this Act is to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data which were obtained before the date of the enactment of this Act.

DEFINITIONS

Sec. 3. As used in this Act—

(1) The term "archaeological resource" means any material remains of past human life or activities which are of archaeological interest, as determined under uniform regulations promulgated pursuant to this Act. Such regulations shall include, but not be limited to: pottery, basketry, bottles, weapons, weapon projectiles (other than arrowheads and bullets), tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, nonfossilized and fossilized paleontological specimens, or any portion or piece of any of the foregoing things when found in an archaeological context. No item shall be treated as an archaeological

resource under regulations under this paragraph unless such item is at least one hundred years of age.

(2) The term "Federal land manager" means, with respect to any public lands, the Secretary of the department, or the head of any other agency or instrumentality of the United States, having primary management authority over such lands. In the case of any public lands or Indian lands with respect to which no department, agency, or instrumentality has primary management authority, such term means the Secretary of the Interior. If the Secretary of the Interior consents, the responsibilities (in whole or in part) under this Act of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary of the Interior with respect to any land managed by such other Secretary or agency head, and in any such case, the term "Federal land manager" means the Secretary of the Interior.

(3) The term "public lands" means—

(A) lands which are publicly owned and administered as part of—

(i) the national park system,

(ii) the national wildlife refuge system, or

(iii) the national forest system; and

(B) all other lands the fee title to which is held by the United States other than lands on the Outer Continental Shelf.

(4) The term "Indian lands" means lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States.

(5) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or Regional or Village Corporation as defined in, or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688).

(6) The term "person" means an individual, corporation, partnership, trust, institution, association, or any other private entity or any officer, employee, agent, department, or instrumentality of the United States, of any Indian tribe, or of any State or political subdivision thereof.

(7) The term "State" means any of the fifty States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

EXCAVATION AND REMOVAL

Sec. 4. (a) Any person may apply to the Federal land manager for a permit to excavate or remove any archeological resource located on public lands or Indian lands and to carry out activities associated with such excavation or removal. The application shall be required, under uniform regulations under this Act, to contain such information as the Federal land manager deems necessary, including information concerning the time, scope, and location and specific purpose of the proposed work.

(b) A permit may be issued pursuant to an application under subsection (a) if the Federal land manager determines, pursuant to uniform regulations under this Act, that—

(1) the applicant is qualified, to carry out the permitted activity,

(2) the activity is undertaken for the purpose of furthering archeological knowledge in the public interest,

(3) The archeological resources which are excavated or removed from public lands will remain the property of the United States and such resources and copies of associated archeological records and data will be preserved by a suitable university, museum, or other scientific or educational institution, and

(4) the activity pursuant to such permit is not inconsistent with any management plan applicable to the public lands concerned.

(c) If a permit issued under this section may result in harm to, or destruction of, any religious or cultural site, as determined by the Secretary of the Interior, before issuing such permit the Secretary shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for the purposes of section 9.

(d) Any permit under this section shall contain such terms and conditions, pursuant to uniform regulations promulgated under this Act, as the Federal land manager concerned deems necessary to carry out the purposes of this Act.

(e) Each permit under this section shall identify the individual who shall be responsible for carrying out the terms and conditions of the permit and for otherwise complying with this Act and other law applicable to the permitted activity.

(f) Any permit issued under this section may be suspended by the Federal land manager upon his determination that the permittee has violated any provision of subsection (a), (b), or (c) of section 4. Any such permit may be revoked by such Federal land manager upon assessment of a civil penalty under section 7 against the permittee or upon the permittee's conviction under section 6.

(g)(1) No permit shall be required under this section or under the Act of June 8, 1906 (16 U.S.C. 431) for the excavation or removal by any Indian tribe or member thereof of any archeological resource located on Indian lands of such Indian tribe, except that in the absence of tribal law regulating the excavation or removal of archeological resources on Indian lands, an individual tribal member shall be required to obtain a permit under this section.

(2) In the case of any permits for the excavation or removal of any archeological resource located on Indian lands, the permit may be granted only after obtaining the consent of the Indian or Indian tribe owning or having jurisdiction over such lands. The permit shall include such terms and conditions as may be requested by such Indian or Indian tribe.

(h)(1) No permit or other permission shall be required under the Act of June 8, 1906 (16 U.S.C. 431-433) for any activity for which a permit is issued under this section.

(2) Any permit issued under the Act of June 8, 1906, shall remain in effect according to its terms and conditions following the enactment of this Act. No permit under this Act shall be required to carry out any activity under a permit issued under the Act of June 8, 1906, before the date of the enactment of this Act which remains in effect as provided in this paragraph, and nothing in this Act shall modify or affect any such permit.

(i) Issuance of a permit in accordance with this section and applicable regulations shall not require compliance with section 106 of the Act of October 15, 1966 (80 Stat. 917; 16 U.S.C. 470f).

(j) Upon the written request of the Governor of any State, the Federal land manager shall issue a permit, subject to the provisions of subsections (b)(3), (b)(4), (c), (g), (h), and (i) of this section for the purpose of conducting archeological research, excavation, removal, and curation, on behalf of the State or its educational institutions, to such Governor or to such designee as the Governor deems qualified to carry out the intent of this Act.

CUSTODY OF RESOURCES

Sec. 5. The Secretary of the Interior may promulgate regulations providing for—

(1) the exchange, where appropriate, between suitable universities, museums, or other scientific or educational institutions, of archeological resources removed from public lands and Indian lands pursuant to this Act, and

(2) the ultimate disposition of such resources and other resources removed pursuant to the Act of June 27, 1960 (16 U.S.C. 488-489c) or the Act of June 8, 1906 (16 U.S.C. 431-433).

Any exchange or ultimate disposition under such regulation of archeological resources excavated or removed from Indian lands shall be subject to the consent of the Indian or Indian tribe which owns or has jurisdiction over such lands. Following promulgation of regulations under this section, notwithstanding any other provision of law, such regulations shall govern the disposition of archeological resources removed from public lands and Indian lands pursuant to this Act.

PROHIBITED ACTS AND CRIMINAL PENALTIES

Sec. 6. (a) No person may excavate, remove, damage, or otherwise alter or deface any archeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under section 4, a permit referred to in section 4(h)(2), or the exemption contained in section 4(g)(1).

(b) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange any archeological resource if such resource was excavated or removed from public lands or Indian lands in violation of—

(1) the prohibition contained in subsection (a), or

(2) any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

(c) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange, in interstate or foreign commerce, any archeological resource excavated, removed, sold, purchased, exchanged, transported, or received in violation of any provision, rule, regulation, ordinance, or permit in effect under State or local law.

(d) Any person who knowingly violates, or counsels, procures, solicits, or employs any other person to violate, any prohibition contained in subsection (a), (b), or (c) of this section shall, upon conviction, be fined not more than \$10,000 or imprisoned not more than one year, or both: *Provided, however,* That if the commercial or archeological value of the archeological resources involved and the cost of restoration and repair of such resources exceeds the sum of \$5,000, such person shall be fined not more than \$20,000 or imprisoned not more than one year, or both. In the case of a second or subsequent such violation upon conviction such person shall be fined not more than \$100,000, or imprisoned not more than five years, or both.

(e) The prohibitions contained in this section shall take effect on the date of the enactment of this Act.

(f) Nothing in subsection (b)(1) of this section shall be deemed applicable to any person with respect to an archeological resource which was in the lawful possession of such person prior to the date of the enactment of this Act.

CIVIL PENALTIES

Sec. 7. (a)(1) Any person who violates any prohibition contained in a regulation or permit issued under this Act may be assessed a civil penalty by the Federal land manager concerned. No penalty may be assessed under the subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Federal land manager concerned.

(2) The amount of such penalty shall be determined under regulations promulgated pursuant to this Act, taking into account, in addition to other factors—

(A) the archeological or commercial value of the archeological resource involved, and

(B) the cost of restoration and repair of the resource and the archaeological site involved.

Such regulations shall provide that, in the case of a second or subsequent violation by any person, the amount of such civil penalty may be double the amount which would have been assessed if such violation were the first violation by such person. The amount of any penalty assessed under this subsection for any violation shall not exceed an amount equal to double the cost of restoration and repair of resources and archaeological sites damaged and double the fair market value of resources destroyed or not recovered plus \$1,000 in the case of a first violation, or \$2,000 in the case of a second or subsequent violation.

(b) (1) Any person aggrieved by an order assessing a civil penalty under subsection (1) may file a petition for judicial review of such order with the United States District Court for the District of Columbia or for any other district in which such a person resides or transacts business. Such a petition may only be filed within the thirty-day period beginning on the date the order making such assessment was issued. The court shall hear such action on the record made before the Federal land manager and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) If any person fails to pay an assessment of a civil penalty—

(A) after the order making the assessment has become a final order and such person has not filed a petition for judicial review of the order in accordance with paragraph (1), or

(B) after the court in an action brought under paragraph (1) has entered a final judgment upholding the assessment of a civil penalty,

the Federal land manager may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. In such action, the validity and amount of such penalty shall not be subject to review.

(c) Hearings held during proceedings for the assessment of civil penalties authorized by subsection (a) shall be conducted in accordance with section 564 of title 5 of the United States Code. The Federal land manager may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Federal land manager or to appear and produce documents before the Federal land manager, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

REWARDS; FORFEITURE

Sec. 8. (a) Upon the certification of the Federal land manager concerned, the Secretary of the Treasury is directed to pay an amount equal to one-half of any penalty assessed under section 7, but not to exceed \$1,500, to any person who furnishes information which leads to the finding of civil violation with respect to which such penalty was assessed. If several persons provided such

information, such amount shall be divided among such persons. No officer or employee of the United States or of any State or local government who furnished information or renders service in the performance of his official duties shall be eligible for payment under this subsection.

(b) All archaeological resources with respect to which a violation of subsection (a), (b), or (c) of section 6 occurred and which are in the possession of any person, and all vehicles and equipment of any person which were used in connection with such violation, may be (in the discretion of the court or administrative law judge, as the case may be) subject to forfeiture to the United States upon—

(1) such person's conviction of such violation under section 6.

(2) assessment of a civil penalty against such person under section 7 with respect to such violation, or

(3) a determination by any court that such archaeological resources, vehicles, or equipment were involved in such violation.

(c) In cases in which a violation of the prohibition contained in subsection (a), (b), or (c) of section 6 involve archaeological resources excavated or removed from Indian lands, the Federal land manager or the court, as the case may be, shall provide for the payment to the Indian or Indian tribe involved of all penalties collected pursuant to section 7 and for the transfer to such Indian or Indian tribe of all items forfeited under this section.

CONFIDENTIALITY

Sec. 9. (a) Information concerning the nature and location of any archaeological resource for which the excavation or removal requires a permit or other permission under this Act or under any other provision of Federal law may not be made available to the public under subchapter II of chapter 5 of title 5 of the United States Code or under any other provision of law unless the Federal land manager concerned determines that such disclosure would—

(1) further the purposes of this Act or the Act of June 27, 1960 (16 U.S.C. 469-469c), and

(2) not create a risk of harm to such resources or to the site at which such resources are located.

(b) Notwithstanding the provisions of subsection (a), upon the written request of the Governor of any State, which request shall state—

(1) the specific site or area for which information is sought,

(2) the purpose for which such information is sought,

(3) a commitment by the Governor to adequately protect the confidentiality of such information to protect the resource from commercial exploitation,

the Federal land manager concerned shall provide to the Governor information concerning the nature and location of archaeological resources within the State of the requesting Governor.

REGULATIONS; INTERGOVERNMENTAL COORDINATION

Sec. 10. (a) The Secretaries of the Interior, Agriculture, and Defense, after consultation with other Federal land managers, Indian tribes, representatives of concerned State agencies, and after public notice and hearing, shall promulgate such uniform rules and regulations as may be appropriate to carry out the purposes of this Act. Such rules and regulations may be promulgated only after consideration of the provisions of the American Indian Religious Freedom Act (92 Stat. 469; 42 U.S.C. 1996).

(b) Each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regula-

tions under subsection (a), as may be appropriate for the carrying out of his functions and authorities under this Act.

COOPERATION WITH PRIVATE INDIVIDUALS

Sec. 11. The Secretary of the Interior shall take such action as may be necessary, consistent with the purposes of this Act, to foster and improve the communication, cooperation, and exchange of information between—

(1) private individuals having collections of archaeological resources and data which were obtained before the date of the enactment of this Act, and

(2) Federal authorities responsible for the protection of archaeological resources on the public lands and Indian lands and professional archaeologists and associations of professional archaeologists.

In carrying out this section, the Secretary shall, to the extent practicable and consistent with the provisions of this Act, make efforts to expand the archaeological data base for the archaeological resources of the United States through increased cooperation between private individuals referred to in paragraph (1) and professional archaeologists and archaeological organizations.

SAVINGS PROVISIONS

Sec. 12. (a) Nothing in this Act shall be construed to repeal, modify, or impose additional restrictions on the activities permitted under existing laws and authorities relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands.

(b) Nothing in this Act applies to, or requires a permit for, the collection for private purposes of any rock, coin, or mineral which is not an archaeological resource, as determined under uniform regulations promulgated under section 3(l).

(c) Nothing in this Act shall be construed to affect any land other than public land or Indian land or to affect the lawful recovery, collection, or sale of archaeological resources from land other than public land or Indian land.

REPORT

Sec. 13. As part of the annual report required to be submitted to the specified committees of the Congress pursuant to section 5(c) of the Act of June 27, 1960 (74 Stat. 220; 16 U.S.C. 469-469a), the Secretary of the Interior shall comprehensively report as a separate component on the activities carried out under the provisions of this Act, and he shall make such recommendations as he deems appropriate as to changes or improvements needed in the provisions of this Act. Such report shall include a brief summary of the actions undertaken by the Secretary under section 11 of this Act (relating to cooperation with private individuals).

The SPEAKER pro tempore. Is a second demand?

Mr. CLAUSEN. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Arizona (Mr. UDALL) will be recognized for 20 minutes; and the gentleman from California (Mr. CLAUSEN) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Arizona (Mr. UDALL).

Mr. UDALL. Mr. Speaker, I yield myself such time as I may consume.

GENERAL LEAVE

Mr. UDALL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise

and extend their remarks on bill, H.R. 1825.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

(Mr. UDALL asked and was given permission to revise and extend his remarks.)

Mr. UDALL. Mr. Speaker, I join in support of the adoption of H.R. 1825, as recommended by the Interior Committee.

I commend our minority leader (Mr. RHODES) and our colleagues on the committee, Mr. CLAUSEN and Mr. SISKIYOU, who have helped develop a measure which will solve this growing problem.

I want to commend the chairman of the subcommittee, Mr. PHILIP BURTON, who has spent a good deal of time and effort in perfecting this bill. Without his assistance, it would have been difficult to have this measure before the House in the form it is today.

I want to take just a moment to explain to the House why this legislation is needed. In the West, where most of the public lands of the United States are located, and where the archeological resources are rich, there is a growing tendency on the part of a few industrious entrepreneurs to locate likely sites of ancient ruins to move in a backhoe or similar equipment, and to proceed to mine the area for any artifacts they might unearth.

It does not seem to matter to these thoughtless persons that these buried remains could help unravel the mysteries of past civilizations or that their activities are unlawful. They simply see an opportunity to make a fast buck with relatively little risk. This situation was exacerbated by the decision of the Ninth Circuit Court of Appeals which held the criminal provisions of the Antiquities Act unconstitutionally vague.

The bill now before the House attempts to correct this situation.

It prohibits the wanton destruction of archeological sites and resources located on the public domain or on Indian lands.

It provides a reasonable procedure for responsible persons to request permission to scientifically and systematically excavate archeological sites.

It requires the consent of Indian tribes, or individual Indians under appropriate circumstances, before permits may be issued for the excavation of sites on Indian lands.

It provides that recovered archeological resources will remain the property of the United States and requires appropriate action for their documentation, preservation, care and custody.

It establishes effective penalties for those who knowingly violate the prohibitions in the act.

I want to emphasize in the boldest terms possible what this bill does not do:

It specifically does not interject any new procedure, requirement, or restriction on any activity permitted under existing laws.

It does not apply to the collection of arrowheads, bullets, rocks, coins, or minerals.

It does not affect any lands other than the public lands of the United States and lands held in trust by the United States for Indian tribes or individual Indian allottees.

Certainly, no sponsor of this legislation and probably no reasonable person would want some overzealous bureaucrat to arrest a Boy Scout who finds an arrowhead along a trail or a purple bottle out in the desert. The bill is not drafted for this purpose at all. It is expected that those responsible for the administration and enforcement of the act will use good judgment and exercise moral persuasion where violations unwittingly occur. The thrust of this act is not to harass the casual visitor who happens to find some exposed artifact, but to stop the needless, careless, and intentional destruction of archeological sites and the organized and intentional theft of the valuable remains of previous civilizations.

Mr. Speaker, H.R. 1825, as perfected by the committee amendment, should accomplish this result. It will put everyone on notice that these national treasures are not to be disrupted without following proper procedures for their excavation, documentation, and preservation. Those who knowingly violate the law will be subject to substantial penalties and may, upon conviction, be incarcerated. Only by providing such enforcement will the thieves be deterred.

I urge my colleagues to join me in support of the adoption of H.R. 1825, as amended.

Mr. CLAUSEN. Mr. Speaker, I yield myself such time as I may consume.

(Mr. CLAUSEN asked and was given permission to revise and extend his remarks.)

Mr. CLAUSEN. Mr. Speaker, I rise in support of H.R. 1825, the Archaeological Resources Protection Act of 1979. As an original cosponsor of the bill and as the ranking minority member of the Interior Committee, I have worked in close cooperation with the distinguished chairman (Mr. UDALL), and the minority leader, Mr. RHODES, in an effort to produce a balanced piece of legislation which protects irreplaceable archeologic resources, yet does not infringe on the people's use and enjoyment of the public lands. I believe the bill before the House today accomplishes that goal and I wish to commend the efforts of all my colleagues who have contributed to this end.

H.R. 1825 was introduced to provide a strong deterrent to the activities of a relatively small group of persons who illegally excavate and remove for private gain priceless archeological resources from the public and Indian lands. Under the Antiquities Act of 1906, the penalties for such activities amount to a maximum of \$500 and 90 days in jail. Coupled with the unlikelihood of being caught in the vastness of western Federal lands and the holdings by the Ninth Circuit Court of Appeals that the Antiquities Act was unconstitutionally vague, the potential profit to be gained by illegal excavation far outweighed any potential risk.

As introduced, H.R. 1825 remedied this problem by establishing stiff new criminal and civil sanctions as a deterrent would-be offenders. However, the com-

mittee recognized that the original language of the legislation could potentially adversely affect the overwhelming majority of the public who use the Federal lands in appropriate ways for recreation as well as other important multiple uses, activities, such as grazing, flood control, timber harvesting, mineral leasing, reclamation, and so forth. For this reason the committee adopted several amendments which significantly improved and tightened the scope of the legislation thereby addressing the concerns voiced by constituents in the Western States.

In order to clarify the intent of these amendments, many of which were offered by the minority with bipartisan support I will briefly summarize their effect for the legislative history:

First. Three significant amendments were adopted to narrow the range of the objects which could be considered as "archeological resources." First, the minimum age of items covered by the bill was raised from 50 to 100 years. In other words, nothing can be considered an archeological resource unless it is at least 100 years of age.

Concern has been expressed that many items of importance to the history of the western frontier would not be included under this act with a 100-year requirement. A distinction must be made, however, between items of historic significance and items of archeological interest. Historic buildings and objects are to a large degree afforded protection under such statutes as the National Historic Preservation Act of 1966 and the Historic Sites, Buildings and Antiquities Act of 1935. In contrast, this act intends to protect "archeological resources" which are usually thought of as being much older—often prehistoric. The 100-year time frame therefore imposes a more reasonable reference within common perception and cures the vagueness problems delineated in the Diaz decision as well.

The definition of items to be covered was amended by excluding "arrowheads and bullets" from the definition of "weapon projectiles" to allow the continued collection of these objects as souvenirs of American history.

Finally, an amendment was adopted which clarifies the intent of the bill to cover only objects which are found in an "archeological context." Isolated bottles, coins, arrowheads, pottery, and so forth (or any piece or portion of such items), should not require a permit to be legally removed from public lands. As a practical matter, including such artifacts under the bill would create a virtually unenforceable provision. The precise definition of what constitutes an archeological context has been left subject to further regulation, but it is clear that scattered, isolated objects not associated with an archeological site of a context evidencing a grouping or collections of artifacts, are not intended to be included under this legislation.

Second. The term "public land" was amended to clarify that only lands which are owned in fee title by the United States are covered by this act. State and private lands, including inholdings in

conservation units such as parks, are not included within the definition.

Third. The committee adopted a so-called grandfather amendment—subsection 6(f)—to remedy the concerns expressed regarding legally obtained collections of artifacts which are possessed by private individuals, museums, and other institutions. The committee does not intend for these collections to be jeopardized by the provisions of this act. As long as the collections have been legally obtained they may be sold, exchanged, donated, and so forth, without being subject to this bill's prohibitions. In addition, the rewards provisions of the bill are not intended to be used to encourage harassment of individuals or institutions with such collections.

Fourth. The committee adopted a provision—subsection 12(a)—which protects multiple use activities on the public lands. The committee recognized that existing laws and regulations already require surveys, mitigation measures, and salvage of archeological resources in relation to multiple uses of the Federal lands and federally assisted projects. Concern was expressed that this legislation could be interpreted to add new impediments to recreational uses, timber harvesting, reclamation projects, flood control, mining and mineral leasing activities to give just a few examples.

By adopting subsection 12(a), the intent and language of the bill clearly indicate that it is not to be construed to require new permits to carry out the provisions of the Archeological Recovery Act of 1960 for example, or as requiring a permit to conduct archeological surveys prior to oil or gas drilling activities. In short, provisions of existing law and regulations were deemed sufficient by the committee as they relate to multiple uses of the public lands and by passing this act there is no intention to add a new layer of administrative or procedural delay which would impede approved activities or projects on the public lands.

Fifth. Finally, several other amendments were adopted by the committee which improved the bill's provisions regarding: The right of a State Governor to obtain otherwise confidential information about sites within his or her jurisdiction; the ability of a Governor to obtain permits in a facilitated manner for qualified persons to conduct excavation and curation of resources for the benefit of the State; the applicability of felony provisions to second time offenders only; fostering increased cooperation among private individuals, the archeological community, institutions, States and the Federal Government; recognizing the rights of Indians and Indian tribes in relation to their own lands; and finally clarifying the civil penalties sections to eliminate redundant provisions.

Mr. Speaker, the amendments which have been adopted by the Interior Committee and incorporated into the bill before the House today, are all very important. They have eliminated to a great extent the potential for controversy regarding this bill, as can be judged by

the use of "suspension" procedures for consideration.

Again, I commend my colleagues on both sides of the aisle for their efforts in producing a balanced bill which gives needed protection to archeological resources, but remains sensitive to the people's need for use and enjoyment of public lands, particularly in the West.

The committee adopted a provision (subsection 12(A)) which protects multiple use activities on public lands. (This is the amendment to avoid any misunderstanding that this act cannot be used to delay Federal flood control or reclamation project.) Obviously, with the adoption of this amendment the committee has recognized that existing laws and regulations already require surveys, mitigation measures, and salvage of archeological resources in relation to multiple uses of the Federal lands. Therefore, by adopting subsection 12(A) the committee and this body clearly interpret this legislation not to be construed to require new permits prior to construction of Federal reclamation, flood control, or any other type of permissible activity on Federal lands. This amendment states precisely that there is no intention to add a new layer of administrative or procedural review which would impede approved activities or projects on public lands.

An important amendment was adopted which clarifies the definition section of what is an archeological resource. This relates to the language that states that the bill is intended to cover only objects which are found "in an archeological context." Isolated bottles, coins, arrowheads, pottery, and the like (or any piece or portion of such items), should not require a permit to be legally removed from public lands. As a practical matter if such objects were included under the bill then "archeological resources" would mean public lands. If this was the case, nothing would have been accomplished by this legislation since this would be an unenforceable provision. By narrowing the scope of the bill to include only objects when found in an archeological context, we have gotten at the primary objective of this act which is to protect valuable archeological sites from ruinous pillaging and excavation. Clearly, this is what this legislation was designed to protect, and this was the intention of the committee by emphasizing that "archeological resources" pertain to objects when found in an archeological context.

Mr. Speaker, at this time I am happy to yield such time as he may consume to the distinguished minority leader, the gentleman from Arizona (Mr. RHODES).

(Mr. RHODES asked and was given permission to revise and extend his remarks.)

Mr. RHODES. Mr. Speaker, I thank my colleague from California. This is a good bill and I am pleased and privileged to have had the opportunity of working with my distinguished friend and colleague from Arizona (Mr. UDALL), and with the distinguished ranking minority member (Mr. CLAUSEN).

I think the bill will provide some pro-

tection to archeological findings on public lands which have been long needed. As the gentleman from Arizona has said, the bill stands on its facts and does not go into other areas. It will not be the vehicle by which lawsuits can be brought to stop other activities on public lands. It was not intended that way. In fact, we have worked very hard to make sure that the legislative history is abundantly clear that no such peripheral activities or meanings are intended.

It would be my hope, Mr. Speaker, that the bill would pass.

Mr. CLAUSEN. Mr. Speaker, will the gentleman from Arizona yield for two questions concerning section 4(c).

Mr. UDALL. I yield to the gentleman from California.

Mr. CLAUSEN. Mr. Speaker, there has been some questions raised about the ambiguity in section 4(c), relating to the protection of Indian religious sites on public lands, and I would like to raise two questions with the chairman of the Interior and Insular Affairs Committee.

First, it is my understanding that section 4(c) is not meant to impose a positive duty upon the Secretary of the Interior to be independently aware of sites of religious significance to any Indian tribe, but, rather, requires him to notify and consult with the appropriate tribe or tribes where he has some previous knowledge of possible religious significance concerning a proposed excavation site. Does the gentleman agree with this understanding?

Mr. UDALL. The gentleman correctly states the intent of the subsection.

Mr. CLAUSEN. Secondly, Mr. Speaker, it has been brought to my attention that some Indian tribes are reluctant to specifically identify sites of religious significance, either because secrecy is a part of their traditional religious practice or because they fear that identifying a site will bring the very desecration they wish to prevent.

Is it the understanding of the chairman that section 4(c) would permit an Indian tribe or tribes and the Secretary to enter into a prior agreement that the Secretary would notify a tribe of an application for an excavation permit within a general area identified in the agreement to determine if the specific application site infringed upon religious rights?

Mr. UDALL. I think section 4(c) would permit this approach.

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Mr. UDALL. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Arizona (Mr. UDALL) that the House suspend the rules and pass the bill, H.R. 1825, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title was amended so as to read: "A bill to protect archeological resources on public lands and Indian lands, and for other purposes."

A motion to reconsider was laid on the table.

ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 1090.

Mr. BAKER. Mr. President, reserving the right to object—and I will not object—this item has been cleared on our side. It will take a few minutes to get the Senator here who will manage the bill on this side, and I assume the situation is the same on the other side.

Mr. ROBERT C. BYRD. I will be glad to put in a quorum call, with the time not to be charged to either side.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows: A bill (S. 490) to protect archeological resources owned by the United States, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Energy and Natural Resources with an amendment to strike all after the enacting clause and insert the following:

SHORT TITLE AND TABLE OF CONTENTS
Section 1. This Act may be cited as the "Archaeological Resources Protection Act of 1979".

TABLE OF CONTENTS

- Sec. 1. Short title and table of contents
- Sec. 2. Findings and purpose.
- Sec. 3. Definitions.
- Sec. 4. Excavation and removal
- Sec. 5. Custody of resources.
- Sec. 6. Prohibited acts.
- Sec. 7. Penalties.
- Sec. 8. Civil damages.
- Sec. 9. Rewards, forfeiture.
- Sec. 10. Confidentiality.
- Sec. 11. Regulations; intergovernmental coordination.
- Sec. 12. Savings provisions; mining; rock collection.
- Sec. 13. Report.

FINDINGS AND PURPOSE
Sec. 2. (a) The Congress finds that—
(1) archaeological resources on public lands and Indian lands are an accessible and irreplaceable part of the Nation's heritage;
(2) these resources are increasingly endangered because of their commercial attractiveness; and
(3) existing Federal laws do not provide adequate protection to prevent the loss and destruction of these archaeological resources and sites resulting from uncontrolled excavations and pillage.

(b) The purpose of this Act is to protect, for the present and future benefit of the American people, the archaeological resources and sites which are on public lands and Indian lands.

DEFINITIONS
Sec. 3. As used in this Act—
(a) The term "archaeological resource" means any material remains of past human life or activities which are of archaeological interest, as determined under uniform regulations promulgated pursuant to this Act. Such archaeological resources shall include:

but not be limited to: pottery, basketry, tools, weapons, weapon projectiles, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, nonfossilized and fossilized paleontological specimens when found in an archaeological context, and any portion or piece of any of the foregoing items. No item shall be treated as an archaeological resource under regulations under this paragraph unless such item is at least fifty years of age.

(b) The term "Federal land manager" means, with respect to any public lands, the Secretary of the department, or the head of any other agency or instrumentality of the United States, having primary management authority over such lands. In the case of any public lands or Indian lands with respect to which no department, agency, or instrumentality has primary management authority, such term means the Secretary of the Interior. If the Secretary of the Interior consents, the responsibilities (in whole or in part) under this Act of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary of the Interior with respect to any land managed by such other Secretary or agency head, and in any such case, the term "Federal land manager" means the Secretary of the Interior.

(c) The term "public lands" means—
(1) lands or interests in lands which are administered as part of—
(A) the National Park System,
(B) the National Wildlife Refuge System, or
(C) the National Forest System; and
(2) all other lands the fee title to which is held by the United States other than lands on the Outer Continental Shelf;

(d) The term "Indian lands" means lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States.

(e) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 688).

(f) The term "person" means an individual, corporation, partnership, trust, institution, association, or any other private entity or any officer, employee, agent, department, or instrumentality of the United States, of an Indian tribe or of any State or political subdivision thereof.

(g) The term "State" means any of the fifty States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

EXCAVATION AND REMOVAL
Sec. 4. (a) Any person may apply to the Federal land manager for a permit to excavate or remove any archaeological resource located on public lands or Indian lands and to carry out activities associated with such excavation or removal. The application shall be required, under uniform regulations under this Act, to contain such information as the Federal land manager deems necessary, including information concerning the time, scope, and location and specific purpose of the proposed work.

(b) A permit may be issued pursuant to an application under subsection (a) if the Federal land manager determines, pursuant to uniform regulations under this Act, that—

- (1) the applicant is qualified to carry out the permitted activity;
- (2) the activity is undertaken for the purpose of furthering archaeological knowledge in the public interests;
- (3) the archaeological resources derived from public lands will remain the property

of the United States, and such resources as copies of associated archaeological records and data will be preserved by a suitable university, museum, or other scientific or educational institution; and

(4) the activity pursuant to such permit is not inconsistent with any management plan applicable to the public lands concerned.

(c) If a permit issued under this section may result in harm to, or destruction of, any religious or cultural site, as determined by the Secretary of the Interior, before issuing such permit the Secretary shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 10.

(d) Any permit under this section shall contain such terms and conditions, pursuant to uniform regulations promulgated under this Act, as the Federal land manager concerned deems necessary to carry out the purposes of this Act, to insure compliance with other applicable provisions of law, and to protect other resources involved.

(e) Each permit under this section shall identify the individual who shall be responsible for carrying out the terms and conditions of the permit and for otherwise complying with this Act and other law applicable to the permitted activity.

(f) Any permit issued under this section may be suspended by the Federal land manager upon his determination that the permittee has violated any provision of section 6, or the terms and conditions of the permit. Any such permit may be revoked by such Federal land manager assessment of a civil penalty under section 7(a) against the permittee or upon the permittee's conviction under section 7(b).

(g) (1) No permit shall be required under this section or under the Act of June 8, 1906 (16 U.S.C. 431) for the excavation or removal by any Indian tribe or member thereof of any archaeological resource located on Indian lands of such Indian tribe: Provided, That in the absence of tribal law regulating the excavation or removal of archaeological resources on Indian lands, an individual tribal member shall be required to obtain a permit under this section or under the Act of June 8, 1906 (16 U.S.C. 431).

(2) In the case of any permits for the excavation or removal of any archaeological resource located on Indian lands, the permit may be granted only after obtaining the consent of the Indian or Indian tribe owning such lands. The permit shall include such terms and conditions as may be requested by such Indian or Indian tribes.

(h) (1) No permit or other permission shall be required under the Act of June 8, 1906 (16 U.S.C. 431-433) for any activity for which a permit is issued under this section.

(2) Any permit issued under the Act of June 8, 1906, shall remain in effect according to its terms and conditions following the enactment of this Act. No permit under this Act shall be required to carry out any activity under a permit issued under the Act of June 8, 1906, before the date of the enactment of this Act which remains in effect as provided in this paragraph, and nothing in this Act shall modify or affect any such permit.

(i) Issuance of a permit in accordance with this section and applicable regulations shall not require compliance with section 106 of the Act of October 15, 1966 (80 Stat. 917, 16 U.S.C. 470f).

CUSTODY OF RESOURCES
Sec. 5. The Secretary of the Interior may promulgate regulations providing for—
(a) the exchange, where appropriate, between suitable universities, museums, or other scientific or educational institutions

of archaeological resources removed from public lands and, with the consent of the Indian or Indian tribe, Indian lands pursuant to this Act, and

(b) the ultimate disposition of such resources and other resources removed pursuant to the Act of June 27, 1960 (16 U.S.C. 469-469c) or the Act of June 8, 1906 (16 U.S.C. 431-433).

Following promulgation of regulations under this section notwithstanding any other provision of law, such regulations shall govern the disposition of archaeological resources removed from public lands and Indian lands pursuant to this Act.

PROMITTED ACTS

Sec. 6. (a) No person may excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under section 4, a permit referred to in section 4(b)(2), or the exemption contained in section 4(g)(1).

(b) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange any archaeological resource if such resource was excavated or removed from public lands or Indian lands in violation of—

(1) the prohibition contained in subsection (a); or

(2) any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

(c) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange, in interstate or foreign commerce, any archaeological resource excavated, removed, sold, purchased, exchanged, transported, or received in violation of any provision, rule, regulation, ordinance, or permit in effect under State, or local law.

(d) The prohibitions contained in this section shall take effect on the date of the enactment of this Act.

PENALTIES

Sec. 7. (a) (1) Any person who violates any prohibition contained in a regulation or permit issued under this Act may be assessed a civil penalty by the Federal land manager concerned. No penalty may be assessed under the subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Federal land manager concerned.

(2) The amount of such penalty shall be determined under regulations promulgated pursuant to this Act, taking into account—

(A) the archaeological or commercial value of the archaeological resource involved; and

(B) the cost of restoration and repair of the resource and the archaeological site involved. Such regulations shall provide that, in the case of a second or subsequent violation by any person, the amount of such civil penalty may be double the amount which would have been assessed if such violation were the first violation by such person.

The amount of any penalty assessed under this subsection shall not exceed \$1,000 for each violation or \$2,000 in the case of a second or subsequent violation.

(3) Any person aggrieved by an order assessing a civil penalty under paragraph (1) may file a petition for judicial review of such order with the United States District Court for the District of Columbia or for any other district in which such a person resides or transacts business. Such a petition may only be filed within the thirty-day period beginning on the date the order making such assessment was issued. The court shall hear such action on the record made before the Federal land manager and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(4) If any person fails to pay an assessment of a civil penalty—

(A) after the order making the assessment has become a final order and such person has not filed a petition for judicial review of the order in accordance with paragraph (3); or

(B) after a court in an action brought under paragraph (3) has entered a final judgment upholding the assessment of a civil penalty, the Federal land manager may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. In such action, the validity and amount of such penalty shall not be subject to review.

(5) Hearings held during proceedings for the assessment of civil penalties authorized by paragraph (1) of this subsection shall be conducted in accordance with section 554 of title 5 of the United States Code. The Federal land manager may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Federal land manager or to appear and produce documents before the Federal land manager, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) Any person who knowingly violates, or solicits or employs any other person to violate, any prohibition contained in section 6 shall, upon conviction, be fined not more than \$10,000 or imprisoned not more than one year, or both. If the commercial or archaeological value of the archaeological resources involved and the cost of restoration and repair of such resources exceeds the sum of \$5,000, any person who knowingly violates, or solicits or employs any other person to violate, any prohibition contained in section 6 shall be fined not more than \$20,000 or imprisoned not more than two years, or both. In the case of a second or subsequent violation under this subsection the penalty shall be \$100,000, or five years, or both.

CIVIL DAMAGES

Sec. 8. (a) Any person who violates a prohibition contained in section 6 shall be liable to the United States for any damage to the archaeological resource involved and may be sued civilly in the United States district court for the district in which the resource is located.

(b) For purposes of this section, damages to an archaeological resource include—

(1) the archaeological value of the resource;

(2) the commercial value of the resource; and

(3) the cost of restoration and repair of the resource and the site involved.

REWARDS; FORFEITURE

Sec. 9. (a) Upon the certification of the Federal land manager concerned, the Secretary of the Treasury is directed to pay, from penalties and fines collected under section 7, an amount equal to one-half of such penalty or fine, but not to exceed \$500, to any person who furnishes information which leads to the finding of civil violation or the conviction of criminal violation with respect

to which such penalty or fine was paid. If several persons provided such information, such amount shall be divided among such persons. No officer or employee of the United States or of any State or local government who furnishes information or renders services in the performance of his official duties shall be eligible for payment under this subsection.

(b) All archaeological resources with respect to which a violation of section 6 occurred and which are in the possession of any person, and all vehicles and equipment of any person which were used in connection with such violation, may be (in the discretion of the court or administrative law judge, as the case may be) subject to forfeiture to the United States upon—

(1) such person's conviction of such violation under section 7(b);

(2) assessment of a civil penalty against such person under section 7(a) with respect to such violation; or

(3) a determination by any court that such archaeological resources, vehicles, or equipment were involved in such violation.

(c) In cases in which a violation of the prohibition contained in section 6 involve archaeological resources excavated or removed from Indian lands, the Federal land manager or the court, as the case may be, shall provide for the payment to an Indian or Indian tribe involved of all damages collected pursuant to section 6 and forfeitures under this section.

CONFIDENTIALITY

Sec. 10. Information concerning the nature and location of any archaeological resource for which the excavation or removal requires a permit or other permission under this Act or under any other provision of Federal law may not be made available to the public under subchapter II of chapter 5 of title 5 of the United States Code or under any other provision of law unless the Federal land manager concerned determines that such disclosure would—

(a) further the purposes of this Act or the Act of June 27, 1960 (16 U.S.C. 469-469c); and

(b) not create a risk of harm to such resources or to the site at which such resources are located.

REGULATIONS; INTERGOVERNMENTAL COORDINATION

Sec. 11. (a) The Secretaries of the Interior, Agriculture, and Defense, after consultation with other Federal land managers, Indian tribes, and representatives of concerned State agencies, and other public notice and hearing, shall promulgate such uniform rules and regulations as may be appropriate to carry out the purposes of this Act. Such rules and regulations may be promulgated only after consideration of the provisions of the American Indian Religious Freedom Act (92 Stat. 469; 42 U.S.C. 1996).

(b) Each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations under subsection (a), as may be appropriate for the carrying out of his functions and authorities under this Act.

SAVINGS PROVISIONS; MINING; ROCK COLLECTION

Sec. 12. (a) Nothing in this Act shall be construed to repeal or modify the mining or mineral leasing laws of the United States.

(b) Nothing in this Act applies to, or requires a permit for, the collection for private purposes of any rock or mineral which is not an archaeological resource, as determined under uniform regulations promulgated pursuant to this Act.

REPORT

Sec. 13. As part of the annual report submitted to the Congress under section 5(c)

of the Archaeological Recovery Act of 1960 (74 Stat. 220; 16 U.S.C. 469-469a) the Secretary of the Interior shall include a report to the Congress respecting the activities carried out under this Act.

Mr. ROBERT C. BYRD, Mr. President, I ask unanimous consent that I may suggest the absence of a quorum, without the time being charged to either side.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BUMPERS, Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BUMPERS, Mr. President, I ask unanimous consent that Daniel Dreyfus, Michael Harvey, Tom Williams, Laura Beaty, and Tony Bevinetto of the Energy and Natural Resources Committee staff have the privilege of the floor during the consideration of S. 490.

The PRESIDING OFFICER. Without objection, it is so ordered.

TOP AMENDMENT NO. 678

Mr. BUMPERS, Mr. President, I send three amendments to the desk.

The PRESIDING OFFICER. Does the Senator ask them to be considered en bloc?

Mr. BUMPERS, I ask unanimous consent that they be considered en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. BUMPERS, Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

1. On page 16, line 17, delete the semi-colon and add "and lands under the jurisdiction of the Smithsonian Institution."

2. On page 16, beginning on line 18 through line 22, delete subsection (d) and insert in lieu thereof the following: "The term 'Indian lands' means land the fee title to which is held by Indian tribes, or Indian individuals, either in trust by the United States or subject to a restriction against alienation imposed by the United States."

3. On page 22, following line 11, add a new subsection (e) as follows: "(e) Nothing in subsection (b)(1) of this section shall be deemed applicable to any person with respect to an archaeological resource which was in the lawful possession of such person prior to the date of the enactment of this Act."

Mr. ROBERT C. BYRD, Mr. President, I suggest the absence of a quorum and I ask unanimous consent that the time not be charged against either side.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. BUMPERS, Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. With objection, it is so ordered.

Mr. BUMPERS, Mr. President, I yield to the Senator from Oregon for a unanimous-consent request.

Mr. HATFIELD, I thank the Senator from Arkansas.

Mr. President, I ask unanimous consent that Cindy Calfee, Steve Crow, and George Ramonis be given the privileges of the floor during the debate on this matter.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BUMPERS, Mr. President, on May 15, the Energy and Natural Resources Committee reported S. 490, the pending measure. The amendments which I am offering are of a technical nature and are consistent with the intent of this proposal.

The first amendment would insure that persons in lawful possession of archeological resources prior to the date of enactment of this act may retain or dispose of those resources as they wish, without fear of prosecution.

The second amendment would exempt the lands under the jurisdiction of the Smithsonian Institution from the definition of public lands.

The third and final amendment clarifies the term "Indian lands" to mean those lands in which fee title is held by Indian tribes, or Indian individuals.

On February 26, 1979, S. 490 was introduced by Senators DOMENICI, SCHMITT, DeCONCINI, GOLDWATER, and EAGLETON. The Subcommittee on Parks, Recreation, and Renewable Resources, of which I am chairman, held a hearing on May 1, 1979. Subsequent to that hearing, the bill was virtually redrafted based on testimony and further considerations by the sponsors and ordered it reported, with amendments.

The purpose of S. 490 is to provide greater protection than currently exists for archeological resources located on public lands and Indian lands by providing penalties commensurate with the value of the resources damaged or removed from those lands. It is hoped that this legislation will serve as a deterrent to the increasing incidence of looting archeological treasures found on those lands. Because of certain deficiencies in existing law, it has become evident that new authority is critically needed to insure adequate protection of these priceless resources.

Several important amendments were adopted by the committee during consideration of this proposal. I believe that a brief discussion of those changes would be beneficial to my colleagues. As introduced, S. 490 would have made it illegal to possess archeological resources. This provision was felt to be too onerous, and inconsistent with the purpose of the legislation—which is to stop illegal activities occurring on public lands and Indian lands. Therefore, the committee deleted "possession" as a prohibited act.

Next, the committee modified the penalty section by including a misdemeanor provision for violations involving archeological resources with a value of less than \$5,000. Felony prosecutions would there-

fore be limited to major violations of the act.

I want my colleagues to be aware of a situation which now exists on the public lands, especially in the Southwest region. A handful of individuals have found it very profitable to enter inadequately patrolled public lands with backhoes or similar equipment and excavate sites of ancient ruins in search of artifacts. Some of the pottery which is removed is known to bring the sellers up to \$20,000 on the national and international art market. Even more important than the loss of these artifacts, however, is the loss of the scientific information which is destroyed when sites are excavated by pottery hunters. Although no law currently exists to prohibit the sale of these illegally obtained artifacts, if enacted, section 6(b) of S. 490 would make that act illegal.

During the committee consideration of the civil penalty provision, the "ticket writing" enforcement authority for minor offenses administered by Federal land managers was thoroughly discussed. While the committee believes it is necessary to provide Federal land managers with a variety of enforcement measures appropriate to situations involving those who might unknowingly violate the act, the committee also recognizes the difficulties associated with adopting civil penalties.

The committee is aware that the potential may exist for abuse of this citation authority and expressed concern that the protection of individuals afforded by the presumption of innocence could be eroded by an arbitrary or excessive administrative application of civil penalties in contested situations. The committee, therefore, emphasized in its report that civil penalties should be used sparingly, and then only in situations which clearly warrant an enforcement action. This authority should not be used to harass those citizens in the normal use of public lands or those who inadvertently infringe on regulations in minor ways.

I wish to make clear that no provision of S. 490 would affect existing laws dealing with mining or mineral leasing. Some have been concerned that S. 490 might interfere with previously approved activities on public lands. Under the rules and regulations issued pursuant to the Antiquities Act of 1906, permits are issued to carry out surveys prior to the issuance of leases for uses of the public lands. This procedure would continue as it has in the past. But, once an activity is underway, other existing laws become applicable. Section 12 of S. 490 is designed to specifically protect multiple use activities on the public lands. In addition, this proposal would not interfere with field casting of paleontological specimens on the public domain. This activity is presently carried out under separate authority of the local land managing bureau which has immediate jurisdiction on the land in question.

Many members of the committee are concerned about the education of the visitors to our public lands, and I urge Federal land managers to publish in-

formation regarding the significance of archeological resources and the importance of their protection. While specific sites should not be signed, signs should be posted at popular access points to public lands to inform the visitor that such sites exist within the area and further, that such sites contain valuable information and are protected by law. Education of the visitor, may, in the long run, reduce the number of incidents on public lands.

Mr. President, I urge the adoption of these three amendments.

Mr. DOMENICI. Mr. President, has the Senator offered the three en bloc?

Mr. BUMPERS. Yes, they have been offered en bloc, and if the Senator from New Mexico wishes to discuss any part of those three amendments, I would be happy to yield to him for that or any other purpose.

Mr. DOMENICI. I merely wanted to say that, as the principal sponsor of the bill, I support them. I would only want to make the point that your first amendment, the one that makes sure that people in possession of artifacts not be prosecuted under this new statute, will define and make valid a constitutionally effective statute, in that we did not intend that they be subject to it when we reported it. Is that not correct, Senator BUMPERS?

Mr. BUMPERS. The Senator is correct.

Mr. DOMENICI. The Senator's amendment will clarify and make that more certain to others that it is precisely what we intended and what I intended.

I have no objection.

Mr. BUMPERS. I would say for the record that the two Senators from Arizona (Mr. GOLDWATER and Mr. DeCONCINI) both express strong support for the amendment. As a matter of fact, Senator DeCONCINI had the amendment prepared, and we just introduced it as one of the three being offered en bloc.

Mr. President, I ask for the adoption of those three amendments.

The PRESIDING OFFICER. Have the Senators all yielded back their time?

Mr. BUMPERS. I yield back the remainder of my time on the amendments.

Mr. HATFIELD. I yield back all our time.

The PRESIDING OFFICER. All time having been yielded back, the vote occurs on agreeing to these amendments.

The amendments were agreed to.

Mr. BUMPERS. Mr. President, I yield to the Senator from Oregon.

Mr. HATFIELD. Mr. President, I express my appreciation to the chairman of our subcommittee and the comanager of the bill today, Mr. BUMPERS.

Mr. President, the Antiquities Act of 1906, which has provided the legal basis for protecting America's prehistoric and historic heritage, is no longer adequate. Artifact hunters and collectors have been descending on national forests, parks, and public lands in ever increasing numbers. Depredations have occurred primarily in the Southwest but extend to all States including my own State of Oregon.

The drafters of the 1906 act could not have anticipated the lucrative market in these artifacts nor could they an-

ticipate the use of bulldozers and backhoes in eliminating a piece of history to get a pot.

I fully support Senator DOMENICI's efforts to correct this problem. I would also point out that he has offered several refinements to his bill, S. 490, to strengthen and improve it. The committee unanimously accepted these amendments. The sponsors have offered other amendments which would conform with House-passed language. One amendment would assure those persons who now lawfully possess artifacts of their right to sell, transport, purchase, exchange, transport or receive archeological resources. I support this amendment along with the other two submitted en bloc.

Mr. President, S. 490, the Senate reported bill, has three additions that the sponsors and the distinguished floor manager have accepted and explained. I urge passage of S. 490 with the amendments, and also H.R. 1825, as amended to reflect the provisions of S. 490.

Mr. President, I merely want to take this opportunity to underscore that I personally am grateful to Senator DOMENICI, from New Mexico, for having given the initial thrust to this bill in our committee and in introducing the bill.

Senator DOMENICI has been long involved in this matter, and once again has demonstrated unique leadership in bringing this to a point where we now have a bill that I think people can live with without being subject to the severe and harsh penalties that were once considered important for this kind of legislation.

So I want to commend not only the initial idea by the Senator from New Mexico, but also his willingness to compromise and work out a bill now that I believe, once passed and once it is signed into law, will be enforceable and will protect the national treasures that have now been subject to vandalism and just plain being carried off by souvenir hunters and others who are not thinking of tomorrow or the next generation.

Mr. DOMENICI. Mr. President, will the Senator yield me 5 minutes?

Mr. BUMPERS. I would be happy to.

Mr. DOMENICI. I thank the Senator from Arkansas and the Senator from Oregon for bringing this matter through the committee to a final conclusion, and to the floor. I particularly want to thank the distinguished Senator from Arkansas. He is chairman of the subcommittee of the Committee on Energy and Natural Resources that has jurisdiction over this subject matter.

Frequently, unless a Senator has a particular interest in his State or his region, as busy as we have been, it is difficult for some Senators to find time to take up matters that are really of national interest, but another part of this great Nation is affected more than theirs. That was the case here.

Serious thievery of American artifacts off of public domain lands are occurring, both Federal public domain and Indian trust lands, and it is not a small item; it is not just a little vandalism. It is a major industry in crime.

They actually are finding ways to get on to public domain with bulldozers.

They have schemes to hire Mexican nationals and pay them on a concession basis, that if they will steal these valuable artifacts of our past history, they will pay them a kind of finder's fee.

The way the law is drawn today, in one whole section of the country, because of a circuit court opinion, we have no laws that can be enforced against that kind of public domain thievery. This was called to our attention out in the Southwest by U.S. attorneys who could not prosecute, who were very much concerned about finding a constitutional way to define an artifact, which would permit them to prosecute.

Senator BUMPERS took the time and put forth the effort because he saw it to be very important for our country, if not for his State, to enact this measure into law, and I thank him for that.

I also would like to say, lest there be some concern that this bill is intended to thwart the legitimate endeavors of people like Boy Scouts and the like to go onto the public domain and, as a matter of ethnic interest and, in pursuit of their educational growth, be looking for arrowheads and the like, that we do not have any intention to interfere with such legitimate pursuits, nor does this bill intend that.

For many years it was a crime to steal valuable artifacts. It is just that a court has ruled that, since we did not define the term "artifact," we were going to have to let criminals loose. The purpose of this bill is to plug that loophole, and at the same time grant those who have a reasonable and logical right to use the public domain to further their education and knowledge of American history to do so, without taking from it valuable artifacts.

Mr. President, as I say, recent court decisions have made the 1906 Antiquities Act unenforceable in certain States. In order to reinstate protection of archeological sites on public lands and to provide a more streamlined system for enforcement, this legislation was introduced. Joined by my distinguished colleagues in the Senate from New Mexico and Arizona, this legislation was introduced in February 26, 1979, as S. 490. The House passed a version of this legislation on July 10, 1979.

Since 1906, the law has stated that any antiquity found on public land is the property of the United States. Land managers were given authority to protect such finds with criminal prosecution of violators.

In recent years, the rise in prices of prehistoric Indian artifacts and other archeological resources has created a large international demand. Professional looters have been active in the Southwest and elsewhere pirating these sites on public lands, in some cases with bulldozers. Virtually tens of thousands of dollars worth of artifacts have been taken from public lands in New Mexico. Mimbres pots are being illegally dug out on consignment and sold in the international art market. And since the court decision, prosecutors in certain States are powerless to protect these national resources.

The general intent of this legislation is to deter this sort of criminal conduct

by restoring the enforcement provisions of the old act.

The bill provides that no archeological resources may be disturbed or removed from public lands without first receiving a permit from the Secretary of the agency whose lands are involved. In order to be able to enforce this provision, both criminal and civil procedures are provided. The civil procedures are designed to insure that casual, unwitting violators are protected from criminal prosecution. I believe this a significant improvement over the old act.

Other changes in the revised language of S. 490 which we consider today demonstrate a concern for those uncertainties raised by citizens of the Southwest in recent correspondences.

I am concerned as are Senators GOLDWATER, DECONCINI, and SCHMIDT about the rights of the legitimate private collector and private museums. I agree with Senator DECONCINI in his recommendation to delete possession of an object as one of the prohibited acts.

Another change that may be needed which is included is to insure that protection and deterrence is provided without infringing on Indian land rights and contributing to the destruction of Indian religious, cultural, or historical values. If a site is currently used for religious purposes, we must respect that use.

I want to make sure that the permitting procedures in this bill do not lay out another cumbersome, time-consuming constraint on legitimate mining, exploration and other activities on public lands. This bill in no way requires or obligates or burdens mining companies. I say that in no uncertain terms and with the concurrence of all committee members.

Finally, I say to the agencies which will be administering this law that it is incumbent upon them to educate the public about these provisions. The old act was generally unenforced and little understood by the public. Perhaps the reluctance to subject a naive citizen to criminal prosecution was the reason for this. This new language will no longer necessitate such drastic measures. Enforcement has been greatly simplified yet retains the teeth necessary to deter the criminal. However, only proper promulgation of this bill and a conscientious educational effort to inform the citizens of what is expected of them on public lands will insure its practicability.

Mr. President, this bill embodies a workable, enforceable law to protect our national archaeological heritage while at the same time expanding the enjoyment of using the public lands by our citizens.

I ask unanimous consent to have printed in the RECORD an editorial from the Santa Fe New Mexican, dated Thursday, March 1, 1979, indicating that the adoption of this measure is a matter of considerable importance for our area, and an article published in the Albuquerque Journal of April 15, 1979, outlining the dimensions of the problem.

There being no objection, the article were ordered to be printed in the RECORD, as follows:

[From the New Mexican Opinion, M 1979]

ADOPT ARTIFACTS ACT

New Mexico's U.S. Sen. Pete V. Domenici and Arizona's U.S. Rep. Morris Udall have introduced measures in Congress which would prohibit the raiding of archaeological sites for profit.

The bills would have a direct effect on the looting and plundering of old Indian sites in New Mexico by collectors seeking priceless pottery, carvings and other artifacts.

The prices and demand for these prehistoric Indian materials have risen so high that unscrupulous collectors and dealers are using mechanical equipment to rip open sites.

Because of this greed and careless destruction of archaeological sites, important scientific information is being lost forever.

Domenici and Udall have introduced identical measures which would make raiding Indian ruins a federal offense punishable by up to two years in prison and up to \$20,000 in fines. Any archaeological resources which are recovered would be confiscated.

This proposed federal act contains several features which make it a good law which both federal and state officials can use to protect archaeological sites.

If enacted, the law would dovetail with existing state laws, such as New Mexico's, so that offenders could not skip to another state to avoid prosecution.

The bill would provide for civil penalties such as light fines and confiscation of artifacts for pottery hunters who accidentally violate the law.

The bill would provide a \$2,500 reward to people who report illegal activity. Hunters, hikers and other outdoor recreation enthusiasts would be encouraged to report archaeological raiding if they knew they would be eligible for a reward.

This act is needed to prevent the wholesale destruction of our Indian heritage by persons bent on profits not preserving history. Legitimate archaeological research would be permitted through an Interior Department permit system.

Congress should act favorably on this measure as soon as possible to provide the umbrella of federal jurisdiction needed to adequately protect these sites.

[From the Albuquerque Journal, Apr. 15, 1979]

LOOTERS DESTROYING UNWRITTEN HISTORY; NEW BILL SUPPORTED (By Larry Brown)

Professional and amateur archaeologists, who have been watching with mounting rage and frustration as looters destroy America's unwritten past in the southwest, are applauding the course through Congress of a bill aimed at stopping the pillage.

Today the systematic looting of archaeological sites is a high-profit, small-risk venture.

Looters find eager markets for pottery, shards, effigies, stone tools and other relics on the east and west coasts, in Japan and in Europe. They are leaving behind trails of desecration.

Reportedly one pottery bowl taken from a Mimbres cultural site in southwest New Mexico was marketed on the east coast for \$20,000.

Prices ranging from \$1,000 to \$4,000 are not unusual.

Professional looters rip into sites using backhoes and bulldozers, and, says Jerry Brody, head of the Maxwell Museum at the University of New Mexico, "They literally destroy the site and completely ruin any possibility of scientific investigation."

Current law, the Antiquities Act of 1906, provides only a \$500 fine and 90 days in jail

as a maximum penalty for such looting, and, in addition, has come under attack as being constitutionally vague.

The U.S. Tenth Circuit Court of Appeals, with jurisdiction in New Mexico, Kansas, Oklahoma, Colorado, Utah and Wyoming, has upheld the act in the case of two Deming pottery dealers sentenced in U.S. District Court in Las Cruces in January to serve 90 days on each of 11 counts after being found guilty of excavating Mimbres Indian bowls.

Tenth Circuit Court of Appeals judges ruled the act "gives a person of ordinary intelligence a reasonable opportunity to know that excavating prehistoric Indian burial grounds and appropriating 800- to 900-year-old artifacts is prohibited."

The Ninth Circuit Court of Appeals, which has jurisdiction in states west of the Tenth Circuit states, ruled the 1906 act unconstitutional.

In Albuquerque U.S. Magistrate Peter Gallagher found the law unconstitutional in the trial of a man charged with excavating pottery pieces at a 900-year-old Zuni ruin in August 1977. Gallagher dismissed charges against a 25-year-old Harvard medical student because he said the law was vague.

Because of the conflict between the rulings by the Ninth and Tenth Circuit Courts of Appeals the issue may go to the Supreme Court.

Even when the law has been enforced, authorities say professional "pothunters"—the term most often used—see the penalties as part of the cost of doing business.

The new bill is being pushed in Congress by a number of sponsors from southwestern states, including all New Mexico senators and House members. New penalties could range as high as \$100,000 in fines and five years in prison for two or more violations.

The maximum penalty for a first conviction is \$20,000 and two years in prison.

And the bill—the "Archaeological Resources Protection Act of 1979"—seeks to overcome the fact that many sites are remote and there is a lack of federal manpower to police them by adding rewards up to \$2,500 for information leading to the conviction of violators.

Brody said prior to the passage of a state law last year, which made the use of bulldozers at archaeological sites illegal, much of the fragile Mimbres culture which thrived around 950 to 1150 A.D. near Silver City was destroyed.

"Much of it was completely wiped out," he said. "Bowls were buried with individuals under the floors of rooms, and to reach them pothunters went in with bulldozers and zip, zip, zip—it's gone."

"We're not talking about a family out on a picnic picking up a piece, but big business that can afford bulldozers and expecting to make a couple of hundred thousand in their enterprise," he said.

Brody is especially distressed about the Mimbres Culture because he has studied it for years, and last year published a book about it. But other sites in the state have suffered a similar fate.

Richard Bice of Albuquerque, a member of the New Mexico Archaeological Society, said other areas raided by professional pothunters include the lava beds near Grants and a site on Forest Service land in the Jemez Mountains.

"It is primarily of concern in the Mimbres area because of the type of pottery the ancient peoples made was very well decorated with animal and human figures, and the price a bowl decorated like that can bring is in the thousands of dollars," Bice said.

The New Mexico Archaeological Society has strongly endorsed the proposed bill.

The proposed law is not without detractors, however.

Ironically, two people who have spoken out against it are amateur members of the Grant

County Archaeological Society, who have studied the Mimbres Culture around Silver City.

Mrs. Joe Haymes, of Silver City, calls the bill "a thievery act."

"Because it's retroactive they can take away private collections," she said. "The way it's written, a fossil collector can't even pick up an ordinary rock without ending up in the penitentiary."

She said because the bill identifies an "archaeological resource" as something at least 50 years old, the bill is going to hurt salvage operators, junk dealers, barbwire collectors, bottle collectors and other amateurs.

Kenneth Cookin, also of Silver City, said he is concerned about a section of the bill that requires such resources be preserved "for a satisfactory period of time" by a university, museum or other scientific or educational institution.

Cookin claims priceless items have passed through museums and universities after a "satisfactory period" to other countries.

A collection once at Western New Mexico University is now in Mexico City in a museum, he claims, and another collection given to the University of New Mexico is now in London, England.

"The real pothunters are from the universities," Cookin said, "and these people are a big marketing factor in pottery and artifacts. They are also interested in turning what belongs to us all into their own private collections."

Cookin said the bill will hurt "amateurs," and makes a strong case for amateur archaeologists.

"King Tut's tomb was found by an amateur," he said. "The old Viking coin, the Folsom sites over in Texas, all found by amateurs. In many cases amateurs are doing a finer, more dependable job, than professionals from universities."

Mrs. Haymes also claims university archaeologists . . . take the cream from sites they explore.

"Did you ever visit an archaeologist's home?" she asked. "Barry Goldwater has a fabulous collection—I've seen it."

Sen. Barry Goldwater, R-Arizona, is one of the sponsors of the bill.

"If this bill passes we'll have to stand by and watch our country be raped by pothunters with doctor's degrees behind their names," Mrs. Haymes said.

To support their argument against the bill, Mrs. Haymes and Cookin use exactly the same argument as those who support the bill.

"These things on federal land belong to all the people," they said, and the sentiment was echoed by Mark Michel, one of the bill's strongest supporters.

Michel, of Santa Fe, is also a member of the New Mexico Archaeological Society.

"These things are the property of the United States and should only be removed by a permit," Michel said. "Instead they are finding their way into the international market, in Japan, Paris, New York."

As far as the law allowing the government to take private collections, Michel said, "The government could seize them right now if they could prove they were taken illegally."

Michel said the chances of this happening are "not likely. It would be pretty hard to prove."

Brody, who supports the bill, defends the "professional" archaeologists from universities.

"We have a different philosophy, usually conservative and conservation minded. Amateurs frequently are not," he said.

POTHUNTERS OBLITERATE MIMBRES PAST

(By Dr. Jerry Brody)

Jerry Brody tenderly cradled a rough clay bowl in his hands.

inside was as smooth as glass and depicted two mountain sheep in a swirling pattern.

Brody was in the basement of the Maxwell Museum standing in front of shelves of pottery and artifacts.

"We don't like to discuss the appraised value of a piece because when we put it on display we want people to think about the artifact and not think of dollar bills," Brody said.

He was talking about the fact a Mimbres bowl was reported sold to a dealer on the east coast for \$20,000.

"We don't put a price tag on pots," he said, "but if we did . . ."

The outside of the Mimbres pottery bowl was earth colored and unfinished, but the

"I have personally handled about 4,000 Mimbres pots and if I didn't know where this came from I would be suspicious. It's in almost too fine a condition, but it is documented."

The pot was discovered by Steve LeBlanc, a member of the private Mimbres Foundation. The ancient Pueblo culture placed such pots over the heads of deceased people when they buried them.

"After he found it, it took him two days just to dig it out," Brody said. "If it had been found by a professional pothunter it would just have been grabbed. They don't consider that with documentation it would be more valuable, they are after the quick buck."

Brody said Mimbres pottery is particularly valuable to researchers because the execution is remarkably fine and because it fits the ideals of what a work of art is.

The pottery has pictures of life forms, animals, people, birds, interaction, and Brody said, "Not only carries an awful lot of information about people but appeals to our humanity." The ancient culture near Silver City was unique to the southwest, he said. Evidence shows there was considerable trade with other parts of the southwest.

Unfortunately, many intriguing questions raised by Mimbres research may never be answered. Looters systematically destroyed sites searching for artifacts to market.

Brody reaches down another bowl, holding it up to show three holes smashed through the bottom.

"Sometimes when we find a hole in a pot we know it was a kill hole, and the pot was placed over a dead person. But what happened here is that a pothunter, probably using an eight to 10 foot long iron bar, poked around in the ground.

"The pothunter hopes to hear a clink as a reward to tell him he'd found something," Brody continues, using the crafts of his trade to read the actions of a 20th century man.

"The hunter tried and missed, but he hit this pot three times," he said. "The vandalism at the site is terrible, and these pothunters are stealing property that belongs to all of us."

Mr. DOMENICI. I thank both Senators for their efforts, and for yielding me time.

Mr. BUMPERS. Mr. President, I ask unanimous consent that a statement by the Senator from Arizona (Mr. DeCONCINI) be printed in the Record at this point.

There being no objection, the statement was ordered to be printed in the Record, as follows:

STATEMENT BY SENATOR DeCONCINI ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979

Much of this Country's cultural heritage has evolved on what is now federally owned land, especially in the West and Southwest. The physical remnants of those cultures, in-

cluding our own immediate past, remain on public lands and in public ownership. We share this heritage and share the responsibility and obligation to treat this great resource with respect, and in a manner that will best serve the present and future public interest.

American archaeological and historic artifacts have a great deal of cultural and sociological value; and, of course, monetary value. These artifacts are valued not only in the United States but throughout the world by public institutions, private collectors, and investors. Because of this wide interest, there has been, in recent years, a massive assault on archaeological sites and other historic resources which remain on Federal lands. Profit-minded looters, using sophisticated equipment, are stealing and destroying the last vestiges of our heritage.

Contributing to this deplorable situation has been the lack of the legal protection originally intended by Congress through the Antiquities Act of 1906. Relevant provisions of the Antiquities Act have been held unconstitutionally vague in the Ninth Circuit by the U.S. Court of Appeals, (which includes Arizona). In effect, this ruling invites professional looters to raid the public lands in nine Western States by trying the hands of Federal enforcement agencies.

I commend my distinguished colleague, Senator Bumpers and his capable staff, for their dedication to the purposes of this act. Through their efforts, a legislative proposal has been reported that is structured enough to meet our objectives, but flexible enough to accommodate the many and sometimes conflicting demands on our public lands and resources.

The Archaeological Resources Protection Act clearly defines, for the first time, the term "Archaeological Resource." Artifacts and objects which have historical significance are included, but the Act differs from the Antiquities Act by excluding the paraphernalia of our present-day society. It should be stressed that this proposal includes only those objects which are already on public lands and which are already in public ownership. Certain specific exemptions have been recommended, but it should be pointed out that simply omitting a class of objects from this definition of an archaeological resource, and from the scope of this Act, would not allow the acquisition of those objects by private individuals. To infer otherwise would be misleading.

From the letters and comments I received from my constituents after the bill was introduced, it became clear that certain provisions of the Act as originally drafted would unintentionally affect some individuals and businesses who have legitimate concerns and interests. Most of conflicts were addressed and corrected in committee mark-ups.

However, my greatest concern with the bill as reported, was with the prohibition against selling or exchanging resources currently in private possession. It was the intent of this sponsor to prevent the future destruction of archaeological treasures and not unjustly punish private collectors and others who have acted legally in the past. It has been my concern that the provisions of Section G, subsections (b) and (c) should not be applicable with respect to any archaeological resource, if the resource was removed from the public land or Indian lands prior to the date of enactment of this Act.

Since the bill has been amended to include the "grandfather" provision, I am satisfied that it can be workable and practical. This amendment insures museums, institutions, and thousands of individuals who legally own archaeological artifacts that they will not be in violation of Federal law if they wish to sell, exchange, or transport

those artifacts. There should be, of course, no exemption for the sale of artifacts taken illegally from the public lands after the date of enactment of this act.

The bill as reported by the committee, and amended, differs in several respects from the companion bill reported by the House of Representatives. (H.R. 1825). Some of the differing provisions of the House bill are not without merit and should be given consideration by the conferees. For example, the House bill would permit a Governor of any State to receive a permit on behalf of the State or its educational institutions, for any designee as the Governor deems qualified. I could support such a provision if the designee is required to possess the same qualifications or meet the same requirements as any other individual who would apply for a permit through regular channels. Protection of our public resources is a responsibility willingly shared by our State governments and by the citizens of the State. This law, like any other law, can only work if it has the active support of the local people. The people of Arizona are known for their respect of the public lands. They have done much over the past 100 years to protect the character and vitality of the public lands and Indian lands while promoting the careful and rational use of our natural resources.

In that regard, nothing in this Act is intended to restrict public access to the Federal lands or modify multiple use activities now permitted under existing laws.

I truly regret that it is necessary to legislate to protect the interests of the vast majority from the reckless greed of a relative few, but I am pleased to note the bill is an improvement over the Antiquities Act in several positive aspects. It not only eliminates criminal penalties for most minor violations, it expands the permit process and will have the positive effect of including a greater segment of our population in orderly excavations. It will also promote a greater knowledge and understanding our heritage through an expanded exchange program between museums and other institutions.

In total, it is my belief that this Act will serve notice that our common heritage should be shared openly and that the plundering of our publicly owned archaeological and historic resources will no longer be tolerated.

Mr. BUMPERS. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 1825, the House companion measure to S. 490.

The PRESIDING OFFICER. Will the Senator withhold for a moment on that? The bill is open to further amendment. Are there further amendments?

Mr. DOMENICI. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. BUMPERS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BUMPERS. Mr. President, if there be no further amendments, I move the adoption of the committee amendment, as amended.

Mr. CRAVEL. Mr. President, I wonder if I might be recognized at this point.

The PRESIDING OFFICER. Does the Senator from Arkansas yield time to the Senator from Alaska?

Mr. BUMPERS. Are we under controlled time?

The PRESIDING OFFICER. We are under controlled time. The Senator has 8 minutes remaining on the bill.

Mr. BUMPERS. How much time does the Senator need?

Mr. GRAVEL. How much time is there on amendments?

The PRESIDING OFFICER. Twenty minutes, equally divided, on each amendment.

Mr. GRAVEL. If I may have about 8 or 10 minutes, it is not my purpose to delay. I just want to raise some items for the Record that are very important to me and my State. I would hope I might have this time.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the distinguished Senator from Arkansas and the distinguished Senator from Oregon may have an additional 10 minutes each on the bill.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BUMPERS. Mr. President, I yield 10 minutes to the Senator from Alaska.

Mr. GRAVEL. Mr. President, although the people putting this bill together apparently took deliberate effort to avoid direct amendment of the 1906 Antiquities Act, the major effect of the legislation before us would be to amend the original act to include a more comprehensive list of prohibited activities, such as purchasing and transporting artifacts, and more severe penalties for such activities.

I wholeheartedly concur that such revisions are necessary to deal more effectively and realistically with the problems of the theft and destruction of our historical and archeological heritage on Federal lands. But, just as the Antiquities Act is not effective today in doing what it was intended to do, other portions of the act are being used for purposes which were never envisioned or intended by the original authors. I submitted testimony to the committee when hearings were held on this measure encouraging the members to examine all the intents and provisions of the 1906 Antiquities Act to see if it is working in the way it was designed. I sincerely feel the following amendments are vital to make this act truly responsive to the goals of protecting historic and archeological resources:

HISTORIC AND SCIENTIFIC INTEREST

The act gives the President authority to withdraw "historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest" as national monuments. Yet, on December 1, 1978, the Secretary of the Interior proclaimed 56 million acres in Alaska as national monuments which have long been studied and acclaimed by the Interior Department and environmental groups for their scenic, recreational, wilderness, and fish and wildlife values. In only a very few distinct areas have historic and archeological values been of prime concern. In the House and Senate reports on the Antiquities Act it is clear that the purpose of the act is to protect distinct archeological areas and sites and

"objects," not for the far broader purposes attributed to our national park or wildlife refuge systems.

Thus, I would recommend the definition of "objects of historic or scientific interest" be amended in the act to include only historic, archeological remains associated with human behavior.

SIZE OF WITHDRAWALS

The act further provides that the land withdrawn "shall be confined to the smallest area compatible with the proper care and management of the objects to be protected." In a floor colloquy on the bill in the House in 1906, the following exchange took place:

Mr. STEPHENS of Texas. How much land will be taken off the market in the Western States by the passage of the bill?

Mr. LACY. Not very much. The bill provides that it shall be the smallest area necessary for the care and maintenance of the objects to be preserved.

Mr. STEPHENS of Texas. Would it be anything like the forest-preserve bill, by which seventy or eighty million acres of land in the United States have been tied up?

Mr. LACY. Certainly not. The object is entirely different. It is to preserve these old pueblos in the Southwest, whilst the other reserves the forests and the water resources.

Mr. STEPHENS of Texas. I hope . . . this bill will not result in locking up other lands.

Despite this clear intent, the President in his proclamation last year in Alaska withdrew 56 million acres of land. The 56 million acres—over half the area of California—is by no stretch of the imagination the "smallest area" necessary for the "objects" protected. Clearly the Congress needs to clarify the limits of this authority. I would strongly recommend that any proposal to create a monument greater than 5,000 acres be submitted to Congress for approval by joint resolution under expedited procedures similar to those under the Alaska Natural Gas Transportation Act. The 5,000-acre provision conforms to the limits of the discretionary authority granted the Secretary of the Interior for land classification decisions under the Federal Land Policy and Management Act of 1976—the BLM Organic Act. These provisions should also be made retroactive to the end of the last Congress to cover the President's actions in Alaska.

LAND USES

Because the designation of national monuments places the units within the National Park System, the areas by definition fall under prescribed rules and regulations governing park units. One such prohibition, that on hunting, has presented an especially capricious and onerous situation in Alaska. There appears no clear reason why the protection of historic or scientific artifacts or other objects should, by definition, be lessened by such land uses as hunting and perhaps other activities. Rather than arbitrarily ruling out various land uses validly existing at the time of proclamation, the act should be modified to permit such uses to the extent that they do not interfere in the protection of or result in harm to archaeological or historic resources.

Mr. President, I ask unanimous consent to have printed in the Record S. 1176, which I introduced earlier this

year, which contains the specific amendments I have discussed along with related background material. This measure has been cosponsored by 14 other Senators. It has received the backing of the Alaska State Legislature, the National Cattlemen's Association, the Public Lands Council, the National Wool Growers Association, the Western States Legislative Forestry Task Force, and other Alaskan and national organizations. I ask unanimous consent to have printed in the Record resolutions from these organizations.

There being no objection, the material was ordered to be printed in the Record, as follows:

S. 1176

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "the Antiquities Act and Federal Land Policy and Management Act Amendments of 1979".

ANTIQUITIES ACT AMENDMENTS

SEC. 2. (a) The first section of the Act of June 8, 1906, (34 Stat. 225; 16 U.S.C. 433), is amended to include the following:

"(a) For purposes of this Act, the term—'objects of historic or scientific interest' means historic or prehistoric specimens or structures such as pottery, bottles, weapons, dwellings, rock paintings, carvings, graves, human skeletal materials, and non-fossilized and fossilized paleontological specimens when found in an archeological context. Such objects shall be directly associated with human behavior and activities.

"(b)(1) Any proclamation for reservation of public lands as national monuments by the President pursuant to section 2 of this Act in excess of 5,000 acres shall be transmitted to the Congress. Such proclamation shall not become effective unless within sixty calendar days of continuous session of the Congress after the proclamation has been transmitted, the Senate and the House of Representatives pass a concurrent resolution approving such proclamation.

"(2) For purposes of this section—

"(A) continuity of sessions of Congress is broken only by an adjournment sine die; and

"(B) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the sixty-day calendar period.

"(C) the term 'resolution' means a concurrent resolution, the resolving clause of which is as follows: "That the House of Representatives and Senate approve the proclamation by the President reserving public lands as the

National Monument submitted to the Congress on _____; the blank spaces therein shall be filled with proper names of the National Monument which corresponds to a legal land description available for public inspection and with the date on which the President submits his proclamation to the Congress.

"(3) Except as otherwise provided in this section, the provisions of section 2(d) of the Alaska Natural Gas Transportation Act shall apply to the consideration of such resolution."

(b) Such Act is further amended by adding at the end thereof the following new section:

SEC. 5. Notwithstanding any other laws or regulations, any uses of the public lands included within any monument proclaimed under this Act validly occurring at the time of creation of the monument shall be permitted to continue to the extent that the uses do not destroy, disturb, or otherwise adversely impact on the historic or prehistoric sites or specimen to be protected by the establishment of the national monu-

ment. Such uses may include hunting, guiding, hiking, boating, and use of motorized vehicles.

"Nothing in this paragraph shall be construed as limiting in any way valid existing rights of owners or holders of property or claims within any monument under existing law."

(c) The provisions of subsection (d) of the first section of such Act of June 8, 1906, as added by this section, shall be deemed to have taken effect as of October 14, 1978, and any proclamation proclaiming a monument under such Act and after October 14, 1978, shall be subject to the provisions of such subsection (d).

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976 AMENDMENT

SEC. 3. Section 204(c)(1) of the Federal Land Policy and Management Act of 1976 (90 Stat. 2782; 43 U.S.C. 1714) is amended by striking out the second sentence and inserting in lieu thereof the following sentence: "The withdrawal shall become effective at the end of ninety days (not counting days on which the Senate or the House of Representatives has adjourned for more than three consecutive days) beginning on the day notice of such proposed withdrawal has been submitted to the Senate and the House of Representatives, if the Congress has adopted a concurrent resolution stating that such House approves the withdrawal."

SUMMARY OF PROPOSED AMENDMENTS TO THE ANTIQUITIES AND FEDERAL LAND POLICY AND MANAGEMENT ACTS

(1) The bill requires that any proposal to create a monument greater than 5,000 acres be submitted to Congress for approval by joint resolution under expedited procedures similar to those under the Alaska Natural Gas Transportation Act. The bill would be retroactive to October 14, 1978 (the date the 95th Congress adjourned) in order to include the monuments created in Alaska December 1, 1978. The 5,000-acre provision conforms to the limits of the discretionary authority granted the Secretary of the Interior for land classification decisions under the Federal Land Policy and Management Act of 1976 (the "BLM Organic Act").

(2) The bill provides that land uses validly occurring at the time a monument was established would not be prohibited unless they directly impact historic or archaeological sites or remains. Thus, an activity such as hunting, which is prohibited automatically under current law, would be permitted to the extent it did not impair the values for which the monument was established.

(3) The bill defines "objects of historic or scientific interest" as used in the Antiquities Act to include only historic, archaeological remains associated with human behavior. The intent of this definition is to limit the President's use of the Antiquities Act to protect only areas of unique historic or archaeological value, not fish and wildlife, scenic, recreational or wilderness areas. We have other laws relating to establishment of these areas.

(4) The bill amends the Federal Land Policy and Management Act of 1976 (the "BLM Organic Act") to provide more direct positive congressional review of administrative land withdrawals. The Act now enables the Secretary of the Interior to withdraw any amount of land for up to 20 years subject to a congressional veto under expedited procedures. The Secretary currently proposes to use this authority (section 204(c)) in Alaska to create 12 new wildlife refuges of approximately 40 million acres. This bill would make such action effective only after congressional approval by joint resolution under expedited procedures.

THE "EMERGENCY"

Under the terms of section 17(d)(2) of the Alaska Native Claims Settlement Act, the Secretary of the Interior was authorized to withdraw up to 80 million acres of land from all appropriations for potential addition to either the national park, wildlife refuge, forest, or wild and scenic rivers system. If Congress did not act before December 18, 1978, these withdrawals would lapse.

However, at the time the (d)(2) withdrawals were made, the lands were also withdrawn under section 17(d)(1) of the Claims Act. After the December 18, 1978 deadline expired, the "D-1" withdrawals provided the same protection to the land as that occurring under section 17(d)(2). There is no expiration date for the D-1 withdrawals. In addition, most other federal land in Alaska is withdrawn under the D-1 authority.

In a letter sent prior to the December 18 expiration date to solicit public comments on a draft Environmental Impact Statement analyzing several possible administrative actions—including possible use of the Antiquities Act—Cynthia Wilson, Special Assistant to the Secretary, stated:

Although the Administration is confident that the protective land withdrawals which will remain after the expiration of "D-3" withdrawals in December are capable of continuing to preclude the entry, location or selection of the national interest lands, the lands are so significant to the nation that prudence dictates that they be protected as fully as possible under existing executive branch authorities, pending final congressional action.

Despite the protection afforded by D-1, the Secretary withdrew approximately 110 million acres of land in Alaska under the provisions of section 204(e) of the Federal Land Policy and Management Act of 1976 (the "BLM Organic Act") on November 16, 1978. This section of FLPMA authorizes the Secretary to make "emergency" withdrawals of public land from all forms of entry and appropriation for a period of up to three years. This withdrawal affected virtually all the lands under consideration by the Congress during the past session.

Yet, even with this action, which duplicated protection already provided by D-1, the Secretary urged the President to proclaim 86 million acres of land as national monuments under the 1906 Antiquities Act. These national monuments are not just temporary withdrawals until Congress acts, they are permanently designated conservation system units with extremely restrictive land use policies. In particular, such areas are closed to sport hunting, trapping, and related guiding. In Alaska this affects hundreds of people who have had their livelihoods wiped out with the stroke of a pen. Hunting guides, trappers, miners, air taxi operators and recreationists have all been displaced. They are essentially "regulated out" of these vast areas.

Thus, the use of the Antiquities Act can only be viewed as an extreme abuse of power designed to punish and intimidate those who oppose the Administration's proposals for the use of Alaska land.

ANTIQUITIES ACT PROVISIONS

The Antiquities Act was originally intended to prevent the removal of artifacts and further destruction of archaeological sites in the Southwest. It gives the President authority to withdraw "historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest" as national monuments. The law further provides that the land withdrawn "shall be confined to the smallest area compatible with the proper care and management of the objects to be protected." In a floor colloquy on the bill in the House in 1906, the following exchange took place:

Mr. STEPHENS of Texas. Much land will be taken off the market in the Western States by the passage of the bill?

Mr. LACY. Not very much. The bill provides that it shall be the smallest area necessary for the care and maintenance of the objects to be preserved.

Mr. STEPHENS of Texas. Would it be anything like the forest preserve bill, by which seventy or eighty million acres of land in the United States have been tied up?

Mr. LACY. Certainly not. The object is entirely different. It is to preserve these old pueblos in the Southwest, whilst the other reserves the forests and the water resources.

Mr. STEPHENS of Texas. I hope . . . this bill will not result in locking up other lands.

The areas which were designated monuments in Alaska have long been studied and acclaimed by the Interior Department and environmental groups for their scenic, recreational, wilderness, and fish and wildlife values. In only a very few distinct areas have historic or archaeological values been of prime concern. The 86 million acres withdrawn is by no stretch of the imagination the "smallest area" necessary for the "objects" protected.

16 U.S.C. Sec. 431 (Antiquities Act)

§ 431. National monuments; reservation of land; relinquishment of private claims.

The President of the United States is authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected. When such objects are situated upon a tract covered by a bona fide unperfected claim or held in private ownership, the tract, or so much thereof as may be necessary for the proper care and management of the object, may be relinquished to the Government, and the Secretary of the Interior is authorized to accept the relinquishment of such tracts in behalf of the Government of the United States (June 8, 1906, ch. 3080, § 2, 34 Stat. 225.)

[REPORT NO. 3797]

PRESERVATION OF AMERICAN ANTIQUITIES REPORT

The Committee on Public Lands, to whom was referred the bill (S. 4698) for the preservation of American antiquities having had the same under consideration, beg leave to report it back with the recommendation that the bill do pass.

This measure has the hearty support of the Archeological Institute of America, the American Anthropological Association, the Smithsonian Institution, and numerous museums throughout the country, and in view of the fact that the historic and prehistoric ruins and monuments on the public lands of the United States are rapidly being destroyed by parties who are gathering them as relics and for the use of museums and colleges, etc., your committee are of the opinion that their preservation is of great importance.

This bill is carefully drawn, and the committee are unanimously in favor of its passage.

[REPORT NO. 2224]

PRESERVATION OF AMERICAN ANTIQUITIES REPORT

Your committee to whom was referred the bill (H.R. 11026) for the preservation of

American antiquities, report the same with the following amendments:

In line 3, page 1, after the word "shall," insert the words "willfully or wantonly."

In line 9, page 1, after the word "shall," insert "be guilty of a misdemeanor and"

On page 2, at the end of line 14, insert the following proviso: "Provided further, That no expense shall be incurred for special custodians under this act."

The various archeological societies of the United States in the Fifty-eighth Congress presented the subject of the enactment of a bill along the lines proposed in the present bill. A full hearing was had on the matter by the Committee on the Public Lands, and a bill was reported to carry out the purpose proposed, but the bill did not receive action in the House in the last Congress.

The bill as above amended will, in the opinion of your committee, accomplish the purpose desired. There are scattered throughout the Southwest quite a large number of very interesting ruins. Many of these ruins are upon the public lands, and the most of them are upon lands of but little present value. The bill proposes to create small reservations reserving only so much land as may be absolutely necessary for the preservation of these interesting relics of prehistoric times.

Practically every civilized government in the world has enacted laws for the preservation of the remains of the historic past, and has provided that excavations and explorations shall be conducted in some systematic and practical way so as not to needlessly destroy buildings and other objects of interest.

The United States should adopt some method of protecting these remains that are still upon the public domain or in Indian reservations. The following-named persons, during the Fifty-eighth Congress, communicated with or appeared before your committee in behalf of this legislation: Prof. Thomas D. Seymour, of Yale University; Charles P. Bowditch, esq., of Boston, Mass.; Prof. Francis W. Kelsey, of the University of Michigan; Prof. Mitchell Carroll, of George Washington University; Dr. A. L. Kroeber, of the University of California; Dr. G. B. Gordon, of the University of Pennsylvania; Prof. M. H. Saville, of Columbia University; Hon. John W. Foster, of Washington, D.C.; Prof. William Henry Holmes, of the Smithsonian Institution; Dr. Henry Mason Baum, president Institute of Historical Research, of Washington, D.C.; Prof. F. W. Putnam, of Harvard University; Prof. Edgar L. Hewett, formerly president of the Normal University of New Mexico; Msgr. Dennis J. O'Connell, rector of the Catholic University of America, and others.

Professor Seymour, of Yale University, president of the Archeological Institute of America; Mr. Charles P. Bowditch, of the Boston society; Prof. Franz Boas, of the New York society; Miss Alice Fletcher, of the Baltimore society; Mrs. Sara Y. Stevenson, of the Pennsylvania society; Dr. George A. Dorsey, of the Chicago society; Dr. George William Bates, of the Detroit society; Prof. M. S. Slaughter, of the Wisconsin society; Prof. E. N. Fowler, of the Cleveland society; Dr. George Grant MacCurdy, of the Connecticut society; Dr. W. J. McGee, of the Missouri society; Prof. M. Carroll, of the Washington society; Dr. Duren J. E. Ward, of the Iowa society; Hon. H. K. Porter, M.C., of the Pittsburgh society; Mr. Charles F. Lummis, of the Southwest society; Dr. A. L. Kroeber, of the San Francisco society; Mrs. W. S. Peabody, of the Colorado society; Prof. F. W. Putnam, of the Peabody Museum; Mr. W. H. Holmes and Dr. J. W. Fewkes, of the Smithsonian Institution; Hon. J. W. Foster and Dr. Henry Mason Baum, of Washington, D.C.; and Hon. L. Bradford Prince, of Santa Fe, N. Mex.

These gentlemen are men of high character who have given the subject much consideration, and their opinions are entitled to most serious consideration.

Prof. Edgar L. Hewett prepared and presented your committee with a very interesting memorandum on the ruins in Arizona, New Mexico, Colorado, and Utah, which here incorporated as a part of this report.

PRESERVATION OF AMERICAN ANTIQUITIES

Mr. PATTERSON. I am directed by the Committee on Public Lands, to whom was referred the bill (S. 4698) for preservation of American antiquities, to report it favorably without amendment, and I submit a report thereon. I ask unanimous consent for its present consideration of the bill.

The Secretary read the bill, and there being no objection, the Senate, as in Committee of the Whole, proceeded to its consideration. It provides that any person who shall appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned or controlled by the Government of the United States without the permission of the Secretary of the Department of the Government having jurisdiction over the lands on which said antiquities are situated, shall, upon conviction, be fined a sum of not more than \$500 or be imprisoned for a period of not more than ninety days, or shall suffer both fine and imprisonment, in the discretion of the court.

Section 2 authorizes the President of the United States, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected, but when such objects are situated upon a tract covered by a bona fide unperfected claim or held in private ownership the tract, or so much thereof as may be necessary for the proper care and management of the object, may be relinquished to the Government, and the Secretary of the Interior is hereby authorized to accept the relinquishment of such tracts in behalf of the Government of the United States.

Permits for the examination of ruins, the excavation of archeological sites, and the gathering of objects of antiquity upon the lands under their respective jurisdictions may be granted by the Secretaries of the Interior, Agriculture, and War to institutions which they may deem properly qualified to conduct such examination, excavation, or gathering, subject to such rules and regulations as they may prescribe. Provided, That the examinations, excavations, and gatherings are undertaken for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions, with a view to increasing the knowledge of such objects and that the gatherings shall be made for permanent preservation in public museums.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

PRESERVATION OF AMERICAN ANTIQUITIES

House, June 8, 1906.

Mr. LACY. Mr. Speaker, I ask unanimous consent for the present consideration of the bill S. 4698.

The clerk read as follows:

A bill (S. 4698) for the preservation of American antiquities.

Be it enacted, etc., That any person who shall appropriate, excavate, injure, or destroy

any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned or controlled by the Government of the United States, without the permission of the Secretary of the Department of the Government having jurisdiction over the lands on which said antiquities are situated, shall, upon conviction, be fined in a sum of not more than \$500 or be imprisoned for a period of not more than ninety days, or shall suffer both fine and imprisonment, in the discretion of the court.

SEC. 2. That the President of the United States is hereby authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected: *Provided*, That when such objects are situated upon a tract covered by a bona fide unperfected claim or held in private ownership, the tract, or so much thereof as may be necessary for the proper care and management of the object, may be relinquished to the Government, and the Secretary of the Interior is hereby authorized to accept the relinquishment of such tracts in behalf of the Government of the United States.

SEC. 3. That permits for the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity upon the lands under their respective jurisdictions may be granted by the Secretaries of the Interior, Agriculture, and War to institutions which they may deem properly qualified to conduct such examination, excavation, or gathering, subject to such rules and regulations as they may prescribe: *Provided*, That the examinations, excavations, and gatherings are undertaken for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions, with a view to increasing the knowledge of such objects and that the gathering shall be made for permanent preservation in public museums.

SEC. 4. That the Secretaries of the Departments aforesaid shall make and publish from time to time uniform rules and regulations for the purpose of carrying out the provisions of this act.

The SPEAKER. Is there objection?

Mr. STEPHENS of Texas. Mr. Speaker, I desire to ask the gentleman whether this applies to all the public lands or only certain reservations made in the bill?

Mr. LACY. There is no reservation made in the bill of any specific spot.

Mr. STEPHENS of Texas. I think the bill would be preferable if it covered a particular spot and did cover the entire public domain.

Mr. LACY. There has been an effort made to have national parks in some of these regions, but this will merely make small reservations where the objects are of sufficient interest to preserve them.

Mr. STEPHENS of Texas. Will that take this land off the market, or can they still be set-aside as part of the public domain?

Mr. LACY. It will take that portion of the reservation out of the market. It is meant to cover the cave dwellers and cliff dwellers.

Mr. STEPHENS of Texas. How much land will be taken off the market in the Western States by the passage of the bill?

Mr. LACY. Not very much. The bill provides that it shall be the smallest area necessary for the care and maintenance of the objects to be preserved.

Mr. STEPHENS of Texas. Would it be anything like the forest-reserve bill, by which

seventy or eighty million acres of land in the United States have been tied up?

Mr. LACY. Certainly not. The object is entirely different. It is to preserve these old objects of special interest and the Indian remains in the pueblos in the Southwest, whilst the other reserves the forests and the water courses.

Mr. STEPHENS of Texas. I will say that that bill was abused. I know of one place where in 6 miles square you could not get a cord of wood, and they call it a forest, and by such means they have locked up a very large area in this country.

Mr. LACY. The next bill I desire to call up is a bill on which there is a conference report now on the Speaker's table, which permits the opening up of specified tracts of agricultural lands where they can be used, by which the very evil that my friend is protesting against can be remedied. It is House bill 17576, which has passed both bodies, and there is a conference report for concurrence as to one of the details upon the Speaker's table.

Mr. STEPHENS of Texas. I hope the gentleman will succeed in passing that bill, and this bill will not result in locking up other lands. I have no objection to its consideration.

The SPEAKER. Is there objection? [After a pause.] The Chair hears none.

The bill was ordered to a third reading, read the third time, and passed.

On motion of Mr. LACY, a motion to reconsider the vote by which the bill was passed was laid on the table.

[Public Law 94-579—Oct. 21, 1976]

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976

An act to establish public land policy; to establish guidelines for its administration; to provide for the management, protection, development, and enhancement of the public lands; and for other purposes.

WITHDRAWALS

SEC. 204. (a) On and after the effective date of this Act the Secretary is authorized to make, modify, extend, or revoke withdrawals but only in accordance with the provisions and limitations of this section. The Secretary may delegate this withdrawal authority only to individuals in the Office of the Secretary who have been appointed by the President, by and with the advice and consent of the Senate.

(b) (1) Within thirty days of receipt of an application for withdrawal, and whenever he proposes a withdrawal on his own motion, the Secretary shall publish a notice in the Federal Register stating that the application has been submitted for filing or the proposal has been made and the extent to which the land is to be segregated while the application is being considered by the Secretary. Upon publication of such notice the land shall be segregated from the operation of the public land laws to the extent specified in the notice. The segregative effect of the application shall terminate upon (a) rejection of the application by the Secretary, (b) withdrawal of lands by the Secretary, or (c) the expiration of two years from the date of the notice.

(2) The publication provisions of this subsection are not applicable to withdrawals under subsection (e) hereof.

(c) (1) On and after the dates of approval of this Act a withdrawal aggregating five thousand acres or more may be made (or such a withdrawal any other withdrawal involving in the aggregate five thousand acres or more which terminates after such date of approval may be extended) only for a period of not more than twenty years by the Secretary on his own motion or upon a request by a department or agency head.

The Secretary shall notify both Houses of Congress of such a withdrawal no later than its effective date and the withdrawal shall terminate and become ineffective at the end of ninety days (not counting days on which the Senate or the House of Representatives has adjourned for more than three consecutive days) beginning on the day notice of such withdrawal has been submitted to the Senate and the House of Representatives, if the Congress has adopted a concurrent resolution stating that such House does not approve the withdrawal. If the committee to which a resolution has been referred during the said ninety day period, has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the Presidential recommendation. A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same Presidential recommendation. When the committee has reported, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(2) Within the notices required by subsection (c) (1) of this section and within three months after filing the notice under subsection (e) of this section, the Secretary shall furnish to the committees—

(1) a clear explanation of the proposed use of the land involved which lead to the withdrawal;

(2) an inventory and evaluation of the current natural resource uses and values of the site and adjacent public and nonpublic land and how it appears they will be affected by the proposed use, including particularly aspects of use that might cause degradation of the environment, and also the economic impact of the change in use on individuals, local communities, and the Nation;

(3) an identification of present users of the land involved, and how they will be affected by the proposed use;

(4) an analysis of the manner in which existing and potential resource uses are incompatible with or in conflict with the proposed use, together with a statement of the provisions to be made for continuation or termination of existing uses, including an economic analysis of such continuation or termination;

(5) an analysis of the manner in which such lands will be used in relation to the specific requirements for the proposed use;

(6) a statement as to whether any suitable alternative sites are available (including cost estimates) for the proposed use or for uses such a withdrawal would displace;

(7) a statement of the consultation which has been or will be had with other Federal departments and agencies, with regional,

State and local government bodies and other appropriate individuals and groups;

(8) a statement indicating the effect of the proposed uses, if any, on State and local government interests and the regional economy;

(9) a statement of the expected length of time needed for the withdrawal;

(10) the time and place of hearings and of other public involvement concerning such withdrawal;

(11) the place where the records on the withdrawal can be examined by interested parties; and

(12) a report prepared by a qualified mining engineer, engineering geologist, or geologist which shall include but not be limited to information on: general geology, known mineral deposits, past and present mineral production, mining claims, mineral leases, evaluation of future mineral potential, present, and potential market demands.

(d) A withdrawal aggregating less than five thousand acres may be made under this subsection by the Secretary on his own motion or upon request by a department or an agency head—

(1) for such period of time as he deems desirable or a resource use; or

(2) for a period of not more than twenty years for any other use, including but not limited to use for administrative sites, location of facilities, and other proprietary purposes; or

(3) for a period of not more than five years to preserve such tract for a specific use then under consideration by the Congress.

(e) When the Secretary determines, or when the Committee on Interior and Insular Affairs of either the House of Representatives or the Senate notifies the Secretary, that an emergency situation exists and that extraordinary measures must be taken to preserve values that would otherwise be lost, the Secretary notwithstanding the provisions of subsections (c)(1) and (d) of this section, shall immediately make a withdrawal and file notice of such emergency withdrawal with the Committees on Interior and Insular Affairs of the Senate and the House of Representatives. Such emergency withdrawal shall be effective when made but shall last only for a period not to exceed three years and may not be extended except under the provisions of subsection (c)(1) or (d), whichever is applicable, and (b)(1) of this section. The information required in subsection (c)(2) of this subsection shall be furnished the committees within three months after filing such notice.

(f) All withdrawals and extensions thereof, whether made prior to or after approval of this Act, having a specific period shall be reviewed by the Secretary toward the end of the withdrawal period and may be extended or further extended only upon compliance with the provisions of subsection (c)(1) or (d), whichever is applicable, and only if the Secretary determines that the purpose for which the withdrawal was first made requires the extension, and then only for a period no longer than the length of the original withdrawal period. The Secretary shall report on such review and extensions to the Committees on Interior and Insular Affairs of the House of Representatives and the Senate.

(g) All applications for withdrawal pending on the date of approval of this Act shall be processed and adjudicated to conclusion within fifteen years of the date of approval of this Act, in accordance with the provisions of this section. The segregative effect of any application not so processed shall terminate on that date.

(h) All new withdrawals made by the Secretary under this section (except an emergency withdrawal made under sub-

section (e) of this section) shall be promulgated after an opportunity for a public hearing.

(i) In the case of lands under the administration of any department or agency other than the Department of the Interior, the Secretary shall make, modify, and revoke withdrawals only with the consent of the head of the department or agency concerned, except when the provisions of subsection (e) of this section apply.

(j) The Secretary shall not make, modify, or revoke any withdrawal created by Act of Congress; make a withdrawal which can be made only by Act of Congress; modify or revoke any withdrawal creating national monuments under the Act of June 8, 1906 (34 Stat. 228; 16 U.S.C. 431-433); or modify, or revoke any withdrawal which added lands to the National Wildlife Refuge System prior to the date of approval of this Act or which thereafter adds lands to that System under the terms of this Act. Nothing in this Act is intended to modify or change any provision of the Act of February 27, 1976 (90 Stat. 199; 16 U.S.C. 669dd(a)).

(k) There is hereby authorized to be appropriated the sum of \$10,000,000 for the purpose of processing withdrawal applications pending on the effective date of this Act, to be available until expended.

(l) (1) The Secretary shall, within fifteen years of the date of enactment of this Act, review withdrawals existing on the date of approval of this Act, in the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming of (1) all Federal lands other than withdrawals of the public lands administered by the Bureau of Land Management and of lands which, on the date of approval of this Act, were part of Indian reservations and other Indian holdings, the National Forest System, the National Park System, the National Wildlife Refuge System, other lands administered by the Fish and Wildlife Service or the Secretary through the Fish and Wildlife Service, the National Wild and Scenic Rivers System, and the National System of Trails; and (2) all public lands administered by the Bureau of Land Management and of lands in the National Forest System (except those in wilderness areas, and those areas formally identified as primitive or natural areas or designated as national recreation areas) which closed the lands appropriation under the Mining Law of 1872 (30 Stat. 91, as amended; 30 U.S.C. 22 et seq.) or leasing under the Mineral Leasing Act of 1920 (41 Stat. 437, as amended; 30 U.S.C. 181 et seq.).

(2) In the review required by paragraph (1) of this subsection, the Secretary shall determine whether, and for how long, the continuation of the existing withdrawal of the lands would be, in his judgment, consistent with the statutory objectives of the programs for which the lands were dedicated and of the other relevant programs. The Secretary shall report his recommendations to the President, together with statements of concurrence or nonconcurrence submitted by the heads of the departments or agencies which administer the lands. The President shall transmit this report to the President of the Senate and the Speaker of the House of Representatives, together with his recommendations for action by the Secretary, or for legislation. The Secretary may act to terminate withdrawals other than those made by Act of the Congress in accordance with the recommendations of the President unless before the end of ninety days (not counting days on which the Senate and the House of Representatives has adjourned for more than three consecutive days) beginning on the day the report of the President has been submitted to the Senate and the House of Representatives the Congress has adopted a concurrent resolution indicating otherwise.

If the committee to which a resolution has been referred during the said ninety day period, has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the Presidential recommendation. A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same Presidential recommendation. When the committee has reported, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(3) There are hereby authorized to be appropriated not more than \$10,000,000 for the purpose of paragraph (1) of this subsection to be available until expended to the Secretary and to the heads of other departments and agencies which will be involved.

PUBLIC LANDS COUNCIL,
Washington, D.C.,
NATIONAL CATTLEMEN'S
ASSOCIATION,
Denver, Colo.,
NATIONAL WOOL GROWERS
ASSOCIATION,
Washington, D.C.,
JULY 12, 1979.

SENATOR MIKE GRAVEL,
Dirksen Building,
Washington, D.C.

DEAR SENATOR GRAVEL: A formal note to insure our support for your bill S. 1176, "An Act for the Preservation of American Antiquities."

Please keep us informed as to any action which you feel we could undertake to enhance enactment of this measure.

Sincerely,

RONALD A. MICHELLI,
Director, Government Affairs for Land
and Natural Resources-NCA, Executive
Director-PLC.

[Western States Legislative Forestry
Task Force]

A RESOLUTION RELATIVE TO LIMITING PRESIDENTIAL POWERS UNDER ANTIQUITIES ACT

Whereas, the "property clause" of the U.S. Constitution reserves unto Congress the authority to appropriate federal lands; and

Whereas, the 95th Congress considered legislation directed to appropriation of large quantities of federal lands in Alaska and refused to pass such legislation; and

Whereas, the 96th Congress is again considering such federal land appropriation proposals; and

Whereas, in December of 1978 notwithstanding the appropriate provisions of the U.S. Constitution, acted to declare 17 National Monuments in Alaska totaling some 56 million acres, relying upon provisions of the Antiquities Act of 1906; and

Whereas, the Antiquities Act is intended to grant to the President the authority to

protect "objects of historic or scientific interest" in the "smallest area compatible with the proper care and management of the objects"; and

Whereas, the President in declaring such 17 National Monuments clearly exceeded the authority granted pursuant to the Antiquities Act of 1906 and usurped authority reserved to Congress; and

Whereas, the Secretary of Interior withdrew an additional 40 million acres of federal lands in Alaska as wildlife refuges in reliance upon authority granted the Secretary of Interior by the BLM Organic Act with respect to emergency situations; and

Whereas, the action of the Secretary of Interior was precipitous and not for the purpose of dealing with a true emergency; and

Whereas, the actions of the President and his Secretary of Interior resulting in the incredibly large federal land withdrawals have caused substantial harm to many Alaskans as well as clouding the ability of our Nation to realize important energy and mineral potential contained in such lands; and

Whereas, the Congress may remedy the harm caused by the precipitous acts of the President and the Secretary of the Interior

Now, Therefore, Be It Resolved, that the Western States Legislative Forestry Task Force does hereby support legislation that would:

1. Require any proposal to create National Monuments aggregating more than 5000 acres of federal land located in any one State be submitted to Congress for approval by joint resolution under expedited procedures similar to those under the Alaska Natural Gas Transportation Act; and

2. Provide that land uses validly occurring at the time a National Monument is established will not be prohibited unless they directly impact historic or archaeological sites or remains; and

3. Define "objects of historic or scientific interest" as used in the Antiquities Act of 1906 to include only historic, archaeological remains associated with human behavior; and

4. Provide more direct, positive congressional review of administrative land withdrawals

Be It Further Resolved that the Executive Director be and he is hereby authorized and directed to forward copies of this Resolution to the President of the United States, the Secretary of Interior, the Congressional Delegations and Governors of the Task Force member States.

Upon motion by Representative Oral Freeman of Alaska, seconded by Senator Lowell Peterson of Washington, the foregoing Resolution was unanimously passed and adopted by the Western States Legislative Forestry Task Force at a regular meeting thereof on March 26, 1979, held in the Rayburn House Office Building in Washington, D.C.

RICHARD A. BOWEN,
Executive Director.

RESOLUTION

Be It Resolved by the House of Representatives:

Whereas the vast areas of land in Alaska withdrawn under the 1906 Antiquities Act and the Federal Land Policy and Management Act of 1976 by the President of the United States and the Secretary of the Interior far exceed any reasonable concern for the temporary protection of the land until such time as Congress can dispose of it as provided for in 17(d)(2) of the Alaska Native Claims Settlement Act of 1971; and

Whereas the 1906 Antiquities Act was originally intended to protect archaeological sites in the Southwest, and not to close large tracts of land to exploration for and development of oil, gas, minerals, and other natural resources; and

Whereas the effect of creating 17 national monuments in Alaska, covering approximately 56,000,000 acres under the 1906 Antiquities Act, and withdrawing approximately 40,000,000 acres under sec. 204(c) of the Federal Land Policy and Management Act of 1976, not only prevents the exploration for and utilization of natural resources for the benefit of the whole Nation, but also blocks access to adjacent areas which have high natural resources potential; and

Whereas it makes no sense that while the Nation is experiencing a continuing and increasing dependency on foreign oil at great cost, and frequently from unstable and unreliable foreign sources, the Nation should foreclose opportunities for development of energy resources and non-fuel minerals at home; and

Whereas a majority of the American public favors exploration for energy resources within federal wilderness areas;

Be it resolved that the Alaska House of Representatives wholeheartedly supports proposed legislation presently being circulated in Congress that would curb the powers of the President of the United States and of the Secretary of the Interior to arbitrarily withdraw federal land under the 1906 Antiquities Act and the Federal Land Policy and Management Act of 1976 without Congressional approval; and be it

Further resolved that the Alaska House of Representatives favors an amendment to the 1906 Antiquities Act to require that the creation of any national monument in excess of 5,000 acres under the Act be approved by Congress by concurrent resolution; and be it

Further resolved that existing land uses, including hunting, mining, guiding, hiking, boating, and use of motorized vehicles, not impacting the historic or archaeological sites or remains for which a national monument was created under the 1906 Antiquities Act, be allowed to continue; and be it

Further resolved that a more precise definition of "objects of historic or scientific interest" as used in the 1906 Antiquities Act be required to avoid having almost any land proclaimed a national monument; and be it

Further resolved that sec. 204(c) of the Federal Land Policy and Management Act of 1976 be amended to require Congressional approval for administrative land withdrawals instead of the existing Congressional veto.

Copies of this resolution shall be sent to the Honorable Jimmy Carter, President of the United States; the Honorable Cecil D. Andrus, Secretary of the Interior; the Honorable Henry S. Jackson, Chairman of the Senate Committee on Energy and Natural Resources; the Honorable Morris K. Udall, Chairman of the House Committee on Interior and Insular Affairs; the Honorable John B. Breaux, Chairman of the House Subcommittee on Fisheries and Wildlife Conservation and the Environment; the Honorable John M. Murphy, Chairman of the House Committee on Merchant Marine and Fisheries; the members of the Special Task Force on Alaska Lands; John W. Katz, Special Counsel to the Governor of Alaska on (d)(2) Lands; Earl Miller, President of the Citizens for the Management of Alaska Lands; and to the Honorable Ted Stevens and the Honorable Mike Gravel, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

Mr. GRAVEL. The distinguished chairman of the Parks and Recreation Subcommittee, Senator BUMPERS, has most graciously offered to hold hearings on S. 1176 in the near future and I would hope that the issues I have raised here could be thoroughly examined by the committee at that time. I am sure that

they also will come to the conclusion that the 1906 Antiquities Act has been greatly abused and that changes are required most expeditiously.

I would just like to state that I am very grateful to the floor managers for this opportunity to present my thoughts on this legislation. The efforts of my staff have been coordinated with those of the staff of the Senator from Arkansas and I believe the minority as well, to seek a date for hearings on the bill that I had introduced (S. 1176).

Apparently, those hearings have been scheduled tentatively for the 13th of September. I wonder if there has been a final decision made on that. It was my hope originally to couple my efforts with this legislation, but this legislation has moved along faster than I could have my legislation move. Obviously, this bill before us has merit and should go forward. But I am deeply concerned that we can arrive at some focus on this other legislation for a lot of reasons, not the least of which, Mr. President, is that the President is misusing the law.

For those Senators who want to avail themselves of the information, I am placing in the Record a colloquy that took place in 1976 between Mr. Stephens and Mr. Lacey where they talked about the intent of the Antiquities Act. It is very clear that the intent of that act was not to set aside large blocks of Federal domain, but to set aside small sites to protect artifacts, and scientific sites. That use has been totally exaggerated. In fact, I think it would be better if we called it misuse.

In the case of Alaska the Secretary of the Interior and the President of the United States were pressing for passage lands legislation in the Congress and Secretary Andrus and even the President had said repeatedly, "If that legislation does not pass the Congress, we are going to invoke the Antiquities Act." It was a clear threat and had nothing to do with the merits of what that Antiquities Act was intended for; those merits being a protection of a scientific or historic site. When legislation was not effected in the Congress the President of the United States, in my mind, totally breached the law.

His actions are now being litigated by the sovereign State of Alaska, by the Anaconda Co., and a Native corporation of Alaska, all litigating the Federal Government over this abusive use of existing law. It becomes almost ironic that the President would cite that law for the taking of 56 million acres of land in Alaska creating national monuments when in no other part of Federal law can the President unilaterally and permanently take more than 5,000 acres. In this particular case he took 56 million acres. The impact of this and other withdrawals is to take 40 million acres of sedimentary basins out of U.S. inventory of potential oil and gas.

So that you, Mr. President, may understand what 40 million acres of sedimentary basins means in Alaska, the Prudhoe Bay field which has one-third of all the oil in the U.S. reserve and one-fourth of all the U.S. gas in the U.S. reserve occupies 190,000 acres. Forty million acres

will be taken out of inventory. I recently in meetings I have had with the White House staff, we are told, "Even if we had gotten all the money we needed through oil and gas, oil and gas are not out there to be discovered. Therefore, we do not need the money in that area of our economy." What an irony, that they have established a self-fulfilling prophecy by withdrawing this kind of acreage through the specious exercise of a law which was not intended for this purpose.

I thank my colleague from Arkansas for giving me this time. I have essentially stated my piece. My hope is that the committee will grant us the hearing so that the State of Alaska can make its case and so that the Secretary of the Interior can come before the Energy Committee and state his reasons for the use of the Antiquities Act on the scale that it was used in Alaska. I think that would be edifying to the Senator from Arkansas. It would also be edifying to the committee, to the Congress, and to anybody else who is concerned about the misuse of power.

I make that respectful request with regard to those hearings and thank my colleague for the accommodation he has already indicated both publicly and privately to me in this regard.

Mr. BUMPERS. I would say to the Senator from Alaska that we have set September 13 as the date for the hearings I promised him on the Antiquities Act.

Mr. President, I move adoption of the committee amendments to S. 490.

The PRESIDING OFFICER. If there is no further amendment, the question now is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. Do Senators yield back the remainder of their time?

Mr. BUMPERS. Mr. President, I yield back the remainder of my time.

Mr. HATFIELD. Mr. President, I yield back the remainder of my time.

Mr. BUMPERS. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 1825, Calendar No. 352.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 1825) to protect archeological resources on public lands and Indian lands, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed immediately to the consideration of the bill.

Mr. BUMPERS. Mr. President, I ask unanimous consent that all after the enacting clause be stricken and that the language of S. 490, as amended, be inserted in lieu thereof.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Arkansas.

The motion was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (H.R. 1825), as amended, was passed.

Mr. BUMPERS. Mr. President, I ask unanimous consent that the Senate bill S. 490 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BUMPERS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. STEVENSON). Without objection, it is so ordered.

ARCHEOLOGICAL RESOURCES PROTECTION ACT OF 1979

Mr. UDALL. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 1825), to protect archeological resources on public lands and Indian lands, and for other purposes, with Senate amendments thereto, and concur in the Senate amendments with an amendment.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The Clerk will report the Senate amendment and the House amendment to the Senate amendments.

The Clerk read the Senate amendments and the House amendment to the Senate amendments, as follows:

Senate amendments: Strike out all after the enacting clause and insert:

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Archeological Resources Protection Act of 1979".

TABLE OF CONTENTS

Sec. 1. Short title and table of contents.
Sec. 2. Findings and purpose.
Sec. 3. Definitions.
Sec. 4. Excavation and removal.
Sec. 5. Custody of resources.
Sec. 6. Prohibited acts.
Sec. 7. Penalties.
Sec. 8. Civil damages.
Sec. 9. Rewards; forfeiture.
Sec. 10. Confidentiality.
Sec. 11. Regulations; intergovernmental coordination.
Sec. 12. Savings provisions; mining; rock collection.
Sec. 13. Report.

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that—

(1) archaeological resources on public lands and Indian lands are an accessible and irreplaceable part of the Nation's heritage;

(2) these resources are increasingly endangered because of their commercial attractiveness; and

(3) existing Federal laws do not provide adequate protection to prevent the loss and destruction of these archaeological resources and sites resulting from uncontrolled excavations and pillage.

(b) The purpose of this Act is to protect, for the present and future benefit of the American people, the archaeological resources and sites which are on public lands and Indian lands.

DEFINITIONS

SEC. 3. As used in this Act—

(a) The term "archaeological resource" means any material remains of past human life or activities which are of archaeological interest, as determined under uniform regulations promulgated pursuant to this

Act. Such archaeological resources shall include, but not be limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials nonfossilized and fossilized paleontological specimens when found in an archaeological context, and any portion or piece of any of the foregoing items. No item shall be treated as an archaeological resource under regulations under this paragraph unless such item is at least fifty years of age.

(b) The term "Federal land manager" means, with respect to any public lands, the Secretary of the Department, or the head of any other agency or instrumentality of the United States, having primary management authority over such lands. In the case of any public lands or Indian lands with respect to which no department, agency, or instrumentality has primary management authority, such term means the Secretary of the Interior. If the Secretary of the Interior consents, the responsibilities (in whole or in part) under this Act of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary of the Interior with respect to any land managed by such other Secretary or agency head, and in any such case, the term "Federal land manager" means the Secretary of the Interior.

(c) The term "public lands" means—

(1) lands or interests in lands which are administered as part of—

(A) the National Park System,

(B) the National Wildlife Refuge System,

or

(C) the National Forest System; and

(2) all other lands the fee title to which is held by the United States other than lands on the Outer Continental Shelf and lands under the jurisdiction of the Smithsonian Institution;

(d) The term "Indian lands" means land the fee title to which is held by Indian tribes, or Indian individuals, either in trust by the United States or subject to a restriction against alienation imposed by the United States.

(e) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 688).

(f) The term "person" means an individual, corporation, partnership, trust, institution, association, or any other private entity or any officer, employee, agent, department, or instrumentality of the United States, of an Indian tribe or of any State or political subdivision thereof.

(g) The term "State" means any of the fifty States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

EXCAVATION AND REMOVAL

SEC. 4. (a) Any person may apply to the Federal land manager for a permit to excavate or remove any archaeological resource located on public lands or Indian lands and to carry out activities associated with such excavation or removal. The application shall be required, under uniform regulations under this Act, to contain such information as the Federal land manager deems necessary, including information concerning the time, scope, and location and specific purpose of the proposed work.

(b) A permit may be issued pursuant to an application under subsection (a) if the Federal land manager determines, pursuant to uniform regulations under this Act, that—

(1) the applicant is qualified to carry out the permitted activity;

(2) the activity is undertaken for the purpose of furthering archaeological knowledge in the public interests;

(3) the archaeological resources derived from public lands will remain the property of the United States, and such resources and copies of associated archaeological records and data will be preserved by a suitable university, museum, or other scientific or educational institution; and

(4) the activity pursuant to such permit is not inconsistent with any management plan applicable to the public lands concerned.

(c) If a permit issued under this section may result in harm to, or destruction of, any religious or cultural site, as determined by the Secretary of the Interior, before issuing such permit the Secretary shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 10.

(d) Any permit under this section shall contain such terms and conditions, pursuant to uniform regulations promulgated under this Act, as the Federal land manager concerned deems necessary to carry out the purposes of this Act, to insure compliance with other applicable provisions of law, and to protect other resources involved.

(e) Each permit under this section shall identify the individual who shall be responsible for carrying out the terms and conditions of the permit and for otherwise complying with this Act and other law applicable to the permitted activity.

(f) Any permit issued under this section may be suspended by the Federal land manager upon his determination that the permittee has violated any provision of section 6, or the terms and conditions of the permit. Any such permit may be revoked by such Federal land manager upon assessment of a civil penalty under section 7(a) against the permittee or upon the permittee's conviction under section 7(b).

(g) (1) No permit shall be required under this section or under the Act of June 8, 1906 (16 U.S.C. 431) for the excavation or removal by any Indian tribe or member thereof of any archaeological resource located on Indian lands of such Indian tribe: Provided, That, in the absence of tribal law regulating the excavation or removal of archaeological resources on Indian lands, an individual tribal member shall be required to obtain a permit under this section or under the Act of June 8, 1906 (16 U.S.C. 431).

(2) In the case of any permits for the excavation or removal of any archaeological resource located on Indian lands, the permit may be granted only after obtaining the consent of the Indian or Indian tribe owning such lands. The permit shall include such terms and conditions as may be requested by such Indian or Indian tribe.

(h) (1) No permit or other permission shall be required under the Act of June 8, 1906, (16 U.S.C. 431-433) for any activity for which a permit is issued under this section.

(2) Any permit issued under the Act of June 8, 1906, shall remain in effect according to its terms and conditions following the enactment of this Act. No permit under this Act shall be required to carry out any activity under a permit issued under the Act of June 8, 1906, before the date of the enactment of this Act which remains in effect as provided in this paragraph, and nothing in this Act shall modify or affect any such permit.

(i) Issuance of a permit in accordance with this section and applicable regulations shall not require compliance with section 106 of the Act of October 15, 1966 (80 Stat. 917, 16 U.S.C. 470f).

CUSTODY OF RESOURCES

SEC. 5. The Secretary of the Interior may promulgate regulations providing for—

(a) the exchange, where appropriate, between suitable universities, museums, or other scientific or educational institutions, of archaeological resources removed from public lands and, with the consent of the Indian or Indian tribe, Indian lands pursuant to this Act; and

(b) the ultimate disposition of such resources and other resources removed pursuant to the Act of June 27, 1960 (16 U.S.C. 469-469c) or the Act of June 8, 1906 (16 U.S.C. 431-433).

Following promulgation of regulations under this section notwithstanding any other provision of law, such regulations shall govern the disposition of archaeological resources removed from public lands and Indian lands pursuant to this Act.

PROMITTED ACTS

Sec. 6. (a) No person may excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under section 4, a permit referred to in section 4(h)(2), or the exemption contained in section 4(g)(1).

(b) No person may sell, purchase, exchange, transport, receive or offer to sell, purchase, or exchange any archaeological resource if such resource was excavated or removed from public lands or Indian lands in violation of—

(1) the prohibition contained in subsection (a); or

(2) any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

(c) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange, in interstate or foreign commerce, any archaeological resource excavated, removed, sold, purchased, exchanged, transported, or received in violation of any provision, rule, regulation, ordinance, or permit in effect under State or local law.

(d) The prohibitions contained in this section shall take effect on the date of the enactment of this Act.

(e) Nothing in subsection (b)(1) of this section shall be deemed applicable to any person with respect to an archaeological resource which was in the lawful possession of such person prior to the date of the enactment of this Act.

PENALTIES

Sec. 7. (a) (1) Any person who violates any prohibition contained in a regulation or permit issued under this Act may be assessed a civil penalty by the Federal land manager concerned. No penalty may be assessed under the subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Federal land manager concerned.

(2) The amount of such penalty shall be determined under regulations promulgated pursuant to this Act, taking into account—

(A) the archaeological or commercial value of the archaeological resource involved; and

(B) the cost of restoration and repair of the resource and the archaeological site involved. Such regulations shall provide that, in the case of a second or subsequent violation by any person, the amount of such civil penalty may be double the amount which would have been assessed if such violation were the first violation by such person.

The amount of any penalty assessed under this subsection shall not exceed \$1,000 for each violation or \$2,000 in the case of a second or subsequent violation.

(c) Any person aggrieved by an order assessing a civil penalty under paragraph (b) may file a petition for judicial review of such order with the United States District Court for the District of Columbia or for any other district in which such a person resides or transacts business. Such a peti-

tion may only be filed within the thirty-day period beginning on the date the order making such assessment was issued. The court shall hear such action on the record made before the Federal land manager and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(4) If any person fails to pay an assessment of a civil penalty—

(A) after the order making the assessment has become a final order and such person has not filed a petition for judicial review of the order in accordance with paragraph (3); or

(B) after a court in an action brought under paragraph (3) has entered a final judgment upholding the assessment of a civil penalty, the Federal land managers may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. In such action, the validity and amount of such penalty shall not be subject to review.

(5) Hearings held during proceedings for the assessment of civil penalties authorized by paragraph (1) of this subsection shall be conducted in accordance with section 554 of title 5 of the United States Code. The Federal land manager may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this paragraph, a district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Federal land manager or to appear and produce documents before the Federal land manager, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) Any person who knowingly violates, or solicits or employs any other person to violate, any prohibition contained in section 6 shall, upon conviction, be fined not more than \$10,000 or imprisoned not more than one year, or both. If the commercial or archaeological value of the archaeological resources involved and the cost of restoration and repair of such resources exceeds the sum of \$5,000, any person who knowingly violates, or solicits or employs any other person to violate, any prohibition contained in section 6 shall be fined not more than \$20,000 or imprisoned not more than two years, or both. In the case of a second or subsequent violation under this subsection the penalty shall be \$100,000, or five years, or both.

CIVIL DAMAGES

Sec. 8. (a) Any person who violates a prohibition contained in section 6 shall be liable to the United States for any damage to the archaeological resource involved and may be sued civilly in the United States district court for the district in which the resource is located.

(b) For purposes of this section, damages to an archaeological resource include—

(1) the archaeological value of the resource;

(2) the commercial value of the resource; and

(3) the cost of restoration and repair of the resource and the site involved.

REWARD; FORFEITURE

Sec. 9. (a) Upon the certification of the Federal land manager concerned, the Secre-

tary of the Treasury is directed to pay, from penalties and fines collected under section 7, an amount equal to one-half of such penalty or fine, but not to exceed \$500, to any person who furnishes information which leads to the finding of civil violation or the conviction of criminal violation with respect to which such penalty or fine was paid. If several persons provided such information, such amount shall be divided among such persons. No officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall be eligible for payment under this subsection.

(b) All archaeological resources with respect to which a violation of section 6 occurred and which are in the possession of any person, and all vehicles and equipment of any person which were used in connection with such violation, may be (in the discretion of the court or administrative law judge, as the case may be) subject to forfeiture to the United States upon—

(1) such person's conviction of such violation under section 7(b);

(2) assessment of a civil penalty against such person under section 7(a) with respect to such violation; or

(3) a determination by any court that such archaeological resources, vehicles, or equipment were involved in such violation.

(c) In cases in which a violation of the prohibition contained in section 6 invokes archaeological resources excavated or removed from Indian lands, the Federal land manager or the court, as the case may be, shall provide for the payments to an Indian or Indian tribe involved of all damages collected pursuant to section 8 and forfeitures under this section.

CONFIDENTIALITY

Sec. 10. Information concerning the nature and location of any archaeological resource for which the excavation or removal requires a permit or other permission under this Act or under any other provision of Federal law may not be made available to the public under subchapter II of chapter 5 of title 5 of the United States Code or under any other provision of law unless the Federal land manager concerned determines that such disclosure would—

(a) further the purposes of this Act or the Act of June 27, 1960 (16 U.S.C. 469-469c); and

(b) not create a risk of harm to such resources or to the site at which such resources are located.

REGULATIONS; INTERGOVERNMENTAL COORDINATION

Sec. 11. (a) The Secretaries of the Interior, Agriculture, and Defense, after consultation with other Federal land managers, Indian tribes, and representatives of concerned State agencies, and after public notice and hearing, shall promulgate such uniform rules and regulations as may be appropriate to carry out the purposes of this Act. Such rules and regulations may be promulgated only after consideration of the provisions of the American Indian Religious Freedom Act (92 Stat. 469; 42 U.S.C. 1996).

(b) Each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations under subsection (a), as may be appropriate for the carrying out of his functions and authorities under this Act.

SAVINGS PROVISIONS; MINING; ROCK COLLECTION

Sec. 12. (a) Nothing in this Act shall be construed to repeal or modify the mining or mineral leasing laws of the United States.

(b) Nothing in this Act applies to, or requires a permit for, the collection for private purposes of any rock or mineral which is not an archaeological resource, as determined under uniform regulations promulgated pursuant to this Act.

REPORT

Sec. 13. As part of the annual report submitted to the Congress under section 6(c) of the Archaeological Recovery Act of 1960 (74 Stat. 226; 16 U.S.C. 498-499), the Secretary of the Interior shall include a report to the Congress respecting the activities carried out under this Act.

Among the titles to read as follows: "An Act to protect archaeological resources on public lands and Indian lands, and for other purposes."

Where amendments to Senate amendments: Strike out in its entirety the Senate amendment to the text of this bill and substitute the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Archaeological Resources Protection Act of 1971".

PURPOSE AND SCOPE

SEC. 2. (a) The Congress finds that—
(1) archaeological resources on public lands and Indian lands are an accessible and irreplaceable part of the Nation's heritage;
(2) these resources are increasingly endangered because of their commercial exploitation;

(3) existing Federal laws do not provide adequate protection to prevent the loss and destruction of these archaeological resources and sites resulting from uncontrolled excavations and pillage; and
(4) there is a wealth of archaeological information which has been legally obtained by private individuals for noncommercial purposes and which could voluntarily be made available to professional archaeologists and institutions.

(b) The purpose of this Act is to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, and private individuals having collections of, and private individuals having collections of, archaeological resources and data which were obtained before the date of the enactment of this Act.

DEFINITIONS

SEC. 3. As used in this Act—

(1) The term "archaeological resource" means any material remains of past human life or activities which are of archaeological interest, as determined under uniform regulations promulgated pursuant to this Act. Such regulations containing such determinations shall include, but not be limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items. Nonlithic and fossilized paleontological specimens, or any portion or piece thereof, shall not be considered archaeological resources, under the regulations under this paragraph, unless found in an archaeological context. No item shall be treated as an archaeological resource under regulations under this paragraph unless such item is at least 100 years of age.

(2) The term "Federal land manager" means, with respect to any public lands, the Secretary of the Department, or the head of any other agency or instrumentality of the United States, having primary management authority over such lands. In the case of any public lands or Indian lands with respect to which no department, agency, or instrumentality has primary management authority, such term means the Secretary of the Interior. If the Secretary of the Interior deems the responsibilities (in whole or in part) under this Act of the Secretary of any department (other than the Department of the Interior) or the head of any other

agency or instrumentality may be delegating to the Secretary of the Interior with respect to any land managed by such other Secretary or agency head, and in any such case, the term "Federal land manager" means the Secretary of the Interior.

(3) The term "public lands" means—
(A) lands which are owned and administered by the United States as part of—
(i) the national park system,
(ii) the national wildlife refuge system,
(iii) the national forest system; and
(B) all other lands the fee title to which is held by the United States, other than lands on the Outer Continental Shelf and lands which are under the jurisdiction of the Smithsonian Institution;

(4) The term "Indian lands" means lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for any subsurface interests in lands not owned or controlled by an Indian tribe or an Indian individual.
(5) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (68 Stat. 685).

(6) The term "person" means an individual, corporation, partnership, trust, institution, association, or any other private entity or any officer, employee, agent, department, or instrumentality of the United States, of any Indian tribe or of any State or political subdivision thereof.
(7) The term "State" means any of the fifty States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

ENCAVATIONS AND REMOVAL

SEC. 4. (a) Any person may apply to the Federal land manager for a permit to excavate or remove any archaeological resource located on public lands or Indian lands and to carry out activities associated with such excavation or removal. The application shall be required under uniform regulations under this Act, to contain such information as the Federal land manager deems necessary, including information concerning the time, scope, and location and specific purpose of the proposed work.

(b) A permit may be issued pursuant to an application under subsection (a) if the Federal land manager determines pursuant to uniform regulations under this Act, that—

(1) the applicant is qualified, to carry out the permitted activity;

(2) the activity is undertaken for the purpose of furthering archaeological knowledge in the public interest;

(3) the archaeological resources which are excavated or removed from public lands will remain the property of the United States, and such resources and copies of associated archaeological records and data will be preserved by a suitable university, museum, or other scientific or educational institution, and

(4) the activity pursuant to such permit is not inconsistent with any management plan applicable to the public lands concerned.

(5) If a permit issued under this section may result in harm to, or destruction of, any religious or cultural site, as determined by the Federal land manager, before issuing such permit, the Federal land manager shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 9.

(6) Any permit under this section shall

contain such terms and conditions, pursuant to uniform regulations promulgated under this Act as the Federal land manager or deemed necessary to carry out its purposes of this Act.

(6) Each permit under this section shall identify the individual who shall be responsible for carrying out the terms and conditions of the permit and for other activities complying with this Act and other law applicable to the permitted activity.
(7) Any permit issued under this section may be suspended by the Federal land manager upon his determination that the permittee has violated any provision of section 6, (b), (c) of section 6. Any such permit may be revoked by such Federal land manager upon assessment of civil penalty under section 7 against the permittee or upon the permittee's conviction under section 6.

(8) (1) No permit shall be required under this section or under the Act of June 8, 1906 (16 U.S.C. 481) for the excavation or removal by any Indian tribe or member thereof of any archaeological resource located on Indian lands of such Indian tribe, except that in the absence of tribal law regulating the excavation or removal of archaeological resources on Indian lands, an individual tribal member shall be required to obtain a permit under this section.
(2) In the case of any permits for the excavation or removal of any archaeological resource located on Indian lands, the permit may be granted only after obtaining the consent of the Indian or Indian tribe owning or having jurisdiction over such lands. The permit shall include such terms and conditions as may be required by such Indian or Indian tribe.

(b) (1) No permit or other permission shall be required under the Act of June 8, 1906 (16 U.S.C. 481-483) for any activity for which a permit is issued under this section.
(2) Any permit issued under the Act of June 8, 1906, shall remain in effect according to its terms and conditions following the enactment of this Act. No permit under this Act shall be required to carry out any activity under a permit issued under the Act of June 8, 1906, before the date of the enactment of this Act which remains in effect as provided in this paragraph, and nothing in this Act shall modify or affect any such permit.

(3) Issuance of a permit in accordance with this section and applicable regulations shall not require compliance with section 106 of the Act of October 15, 1966 (80 Stat. 817; 16 U.S.C. 470f).

(4) Upon the written request of the Governor of any State, the Federal land manager shall issue a permit, subject to the provisions of subsections (b) (8), (b) (4), (6) (8), (f), (g), (h), and (i) of this section for the purpose of conducting archaeological research, excavation, removal, and curative research on behalf of the State or its educational institutions, to such Governor or to such designee as the Governor deems qualified to carry out the intent of this Act.

CUSTODY OF REMOVED

SEC. 5. The Secretary of the Interior shall promulgate regulations providing for—
(1) the exchange, where appropriate, between suitable universities, museums, or other scientific or educational institutions of archaeological resources removed from public lands and Indian lands pursuant to this Act; and

(2) the ultimate disposition of such resources and other resources removed pursuant to the Act of June 27, 1960 (16 U.S.C. 469-469c) or the Act of June 8, 1906 (16 U.S.C. 481-483).

Any exchange or ultimate disposition under such regulation of archaeological resources excavated or removed from Indian lands shall

be subject to the consent of the Indian or Indian tribe which owns or has jurisdiction over such lands. Following promulgation of regulations under this section, notwithstanding any other provision of law, such regulations shall govern the disposition of archaeological resources removed from public lands and Indian lands pursuant to this Act.

PROHIBITED ACTS AND CRIMINAL PENALTIES

Sec. 6. (a) No person may excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under section 6, a permit referred to in section 4(h)(3), or the exemption contained in section 4(g)(1).

(b) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange any archaeological resource if such resource was excavated or removed from public lands or Indian lands in violation of—

(1) the prohibition contained in subsection (a), or

(2) any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

(c) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange, in interstate or foreign commerce, any archaeological resource excavated, removed, sold, purchased, exchanged, transported, or received in violation of any provision, rule, regulation, ordinance or permit in effect under State or local law.

(d) Any person who knowingly violates, or counsels, procures, solicits or employs any other person to violate, any prohibition contained in subsection (a), (b), or (c) of this section shall, upon conviction, be fined not more than \$10,000 or imprisoned not more than 1 year, or both: *Provided, however*, That if the commercial or archaeological value of the archaeological resources involved and the cost of restoration and repair of such resources exceeds the sum of \$5,000, such person shall be fined not more than \$20,000 or imprisoned not more than two years, or both. In the case of a second or subsequent such violation upon conviction such person shall be fined not more than \$100,000, or imprisoned not more than five years, or both.

(e) The prohibitions contained in this section shall take effect on the date of the enactment of this Act.

(f) Nothing in subsection (b)(1) of this section shall be deemed applicable to any person with respect to an archaeological resource which was in the lawful possession of such person prior to the date of the enactment of this Act.

(g) Nothing in subsection (d) of this section shall be deemed applicable to any person with respect to the removal of arrowheads located on the surface of the ground.

CIVIL PENALTIES

Sec. 7. (a) (1) Any person who violates any prohibition contained in an applicable regulation or permit issued under this Act may be assessed a civil penalty by the Federal land manager concerned. No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Federal land manager concerned.

(2) The amount of such penalty shall be determined under regulations promulgated pursuant to this Act, taking into account, in addition to other factors—

(A) the archaeological or commercial value of the archaeological resource involved, and

(B) the cost of restoration and repair of the resource and the archaeological site involved.

Such regulations shall provide that, in the case of a second or subsequent violation by

any person, the amount of such civil penalty may be double the amount which would have been assessed if such violation were the first violation by such person. The amount of any penalty assessed under this subsection for any violation shall not exceed an amount equal to double the cost of restoration and repair of resources and archaeological sites damaged and double the fair market value of resources destroyed or not recovered.

(3) No penalty shall be assessed under this section for the removal of arrowheads located on the surface of the ground.

(b) (1) Any person aggrieved by an order assessing a civil penalty under subsection (a) may file a petition for judicial review of such order with the United States District Court for the District of Columbia or for any other district in which such a person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued. The court shall hear such action on the record made before the Federal land manager and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) If any person fails to pay an assessment of a civil penalty—

(A) after the order making the assessment has become a final order and such person has not filed a petition for judicial review of the order in accordance with paragraph (1), or

(B) after a court in an action brought under paragraph (1) has entered a final judgment upholding the assessment of a civil penalty,

the Federal land managers may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. In such action, the validity and amount of such penalty shall not be subject to review.

(c) Hearings held during proceedings for the assessment of civil penalties authorized by subsection (a) shall be conducted in accordance with section 554 of title 5 of the United States Code. The Federal land manager may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Federal land manager or to appear and produce documents before the Federal land manager, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

REWARDS; FORFEITURE

Sec. 8. (a) Upon the certification of the Federal land manager concerned, the Secretary of the Treasury is directed to pay from penalties and fines collected under sections 6 and 7 an amount equal to one-half of such penalty or fine, but not to exceed \$500, to any person who furnishes information which leads to the finding of a civil violation, or the conviction of criminal violation, with respect to which such penalty or fine was paid. If several persons provided such information, such amount shall be divided among such persons. No officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance

of his official duties shall be eligible for payment under this subsection.

(b) All archaeological resources with respect to which a violation of subsection (a), (b), or (c) of section 6 occurred and which are in the possession of any person, and all vehicles and equipment of any person which were used in connection with such violation, may be (in the discretion of the court or administrative law judge, as the case may be) subject to forfeiture to the United States upon—

(1) such person's conviction of such violation under section 6,

(2) assessment of a civil penalty against such person under section 7 with respect to such violation, or

(3) a determination by any court that such archaeological resources, vehicles, or equipment were involved in such violation.

(c) In cases in which a violation of the prohibition contained in subsection (a), (b), or (c) of section 6 involve archaeological resources excavated or removed from Indian lands, the Federal land manager or the court, as the case may be, shall provide for the payment to the Indian or Indian tribe involved of all penalties collected pursuant to section 7 and for the transfer to such Indian or Indian tribe of all items forfeited under this section.

CONFIDENTIALITY

Sec. 9. (a) Information concerning the nature and location of any archaeological resource for which the excavation or removal requires a permit or other permission under this Act or under any other provision of Federal law may not be made available to the public under subchapter II of chapter 5 of title 5 of the United States Code or under any other provision of law unless the Federal land manager concerned determines that such disclosure would—

(1) further the purpose of this Act or the Act of June 27, 1960 (16 U.S.C. 469-469c), and

(2) not create a risk of harm to such resources or to the site at which such resources are located.

(b) Notwithstanding the provisions of subsection (a), upon the written request of the Governor of any State, which request shall state—

(1) the specific site or area for which information is sought,

(2) the purpose for which such information is sought,

(3) a commitment by the Governor to adequately protect the confidentiality of such information to protect the resource from commercial exploitation,

the Federal land manager concerned shall provide to the Governor information concerning the nature and location of archaeological resources within the State of the requesting Governor.

REGULATIONS; INTERGOVERNMENTAL COORDINATION

Sec. 10. (a) The Secretaries of the Interior, Agriculture and Defense and the Chairman of the Board of the Tennessee Valley Authority, after consultation with other Federal land managers, Indian tribes, representatives of concerned State agencies, and after public notice and hearing, shall promulgate such uniform rules and regulations as may be appropriate to carry out the purposes of this Act. Such rules and regulations may be promulgated only after consideration of the provisions of the American Indian Religious Freedom Act (92 Stat. 469; 42 U.S.C. 1996). Each uniform rule or regulation promulgated under this Act shall be submitted on the same calendar day to the Committee on Energy and Natural Resources of the United States Senate and to the Committee on Interior and Insular Affairs of the United States House of Representatives, and no such uniform rule or regulation may take effect before the expiration of a period of 90 calendar days

following the date of its submission to such Committees.

(b) Each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations under subsection (a), as may be appropriate for the carrying out of his functions and authorities under this Act.

COOPERATION WITH PRIVATE INDIVIDUALS

Sec. 11. The Secretary of the Interior shall take such action as may be necessary, consistent with the purposes of this Act, to foster and improve the communication, cooperation, and exchange of information between—

(1) private individuals having collections of archaeological resources and data which were obtained before the date of the enactment of this Act, and

(2) Federal authorities responsible for the protection of archaeological resources on the public lands and Indian lands and professional archaeologists and associates of professional archaeologists.

In carrying out this section, the Secretary shall, to the extent practicable and consistent with the provisions of this Act, make efforts to expand the archaeological data base for the archaeological resources of the United States through increased cooperation between private individuals referred to in paragraph (1) and professional archaeologists and archaeological organizations.

SAVES PROVISIONS

Sec. 12. (a) Nothing in this Act shall be construed to repeal, modify, or impose additional restrictions on the activities permitted under existing laws and authorities relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands.

(b) Nothing in this Act applies to, or requires a permit for, the collection for private purposes of any rock, coin, bullet, or mineral which is not an archaeological resource, as determined under uniform regulations promulgated under section 3(1).

(c) Nothing in this Act shall be construed to affect any land other than public land or Indian land or to affect the lawful recovery, collection, or sale of archaeological resources from land other than public land or Indian land.

REPORT

Sec. 13. As part of the annual report required to be submitted to the specified committees of the Congress pursuant to section 5(c) of the Act of June 27, 1960 (74 Stat. 220; 16 U.S.C. 469-469a), the Secretary of the Interior shall comprehensively report as a separate component on the activities carried out under the provisions of this Act, and he shall make such recommendations as he deems appropriate as to changes or improvements needed in the provisions of this Act. Such report shall include a brief summary of the actions undertaken by the Secretary under section 11 of this Act, relating to cooperation with private individuals.

Mr. UDALL (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendments and the House amendment to the Senate amendments be considered as read and printed in the Record.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

Mr. LAGOMARSINO. Mr. Speaker, I reserve the right to object.

(Mr. LAGOMARSINO asked and was given permission to revise and extend his remarks.)

Mr. UDALL. Mr. Speaker, will the gentleman yield?

Mr. LAGOMARSINO. I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Speaker, the amendment to the Senate amendment to H.R. 1825, the Archaeological Resources Protection Act of 1979 would modify the original House-passed version of H.R. 1825 in the following ways:

First. The definition of "archaeological resource" in section 3(1) no longer specifically excludes bullets and arrowheads; however, these items are given special consideration in sections 6, 7, and 13 so that hobbyists need not fear Federal penalties.

Second. The definition of "archaeological resource" no longer makes use of the term archaeological context except insofar as paleontological specimens are concerned.

Third. "Public lands" is redefined to exclude lands under the jurisdiction of the Smithsonian Institution.

Fourth. "Indian lands" is redefined to protect non-Indian owners of subsurface rights.

Fifth. The requirement to disclose information to Indian tribes is made applicable to all "Federal land managers" rather than just the Secretary of the Interior.

Sixth. When State Governors are given permits on request, they must identify the responsible individual, and if the applicable provisions of the act are violated, the permit can be revoked.

Seventh. Persons who cause more than \$5,000 damage can be convicted of a felony on the first offense and are subject to imprisonment of not more than 2 years.

Eighth. Civil penalties are measured solely by the value of the resources involved and the costs of restoration and repair. The penalty may be double these, but no additional amount may be levied.

Ninth. Rewards are limited to \$500 to be paid "from penalties and fines collected".

Tenth. The TVA is allowed to participate in the writing of the implementing regulations.

Eleventh. The uniform regulations do not take effect until 90 days after they have been transmitted to the House Interior Committee and the Senate Energy and Natural Resources Committee.

This amendment reflects the compromise reached by the interested members between the House-passed version and the Senate amendment. This has been a bipartisan effort to protect archaeological resources found on public lands and Indian lands of the United States, and I believe this compromise serves that purpose well.

The bill is not changed in its basics. Archaeological resources are protected. State and privately owned lands are not affected. Existing multiple use activities are not subjected to any additional significant barriers which would inhibit authorized uses of public lands.

Two modifications of the definition of "archaeological resource" require additional explanation. The first change is that bullets and arrowheads are no longer excluded from the definition. It is still the intent of the authors and supporters of this bill that only artifacts of true archaeological interest will be considered "archaeological resources."

Such items as coins, bottles, and bullets are clearly not intended to come under the purview of this law unless found within an archeological site. While arrowheads located on the surface of the ground may be considered archaeological resources, and permits may be required to remove them, no civil or criminal penalty may be imposed under this act. Other acts also regulate the removal of arrowheads. They are unchanged, and some have potential penalties.

The second change in the definition is that the term archaeological context is used only insofar as paleontological specimens are concerned. This allows the regulations to protect artifacts of true archaeological interest even when found in isolation, but in general, it is the recognition of the importance of the integrity of the archeological site and the context in which archaeological resources are found that should guide land managers in their protection and enforcement efforts. As to paleontological specimens, the amendment retains the absolute rule that they must be in an archeological context to be protected.

One further clarification may be needed. If a Federal land manager assesses a civil penalty pursuant to section 7 and needs to go to court to enforce it, language in subsection (b) allows the Federal land manager to "request the Attorney General to institute a civil action." Some Federal land managers such as TVA, are not represented by the Attorney General, and can institute their own enforcement actions.

Mr. LAGOMARSINO. Mr. Speaker further reserving the right to object I note that one of the changes in the current version of the bill applies the provision requiring disclosure of information to all Federal land managers rather than just the Secretary of the Interior. It is my understanding that this change does not alter the intent of the section as expressed in the colloquy between the gentleman from Arizona (Mr. UDALL) and the gentleman from California (Mr. CLAUSEN) during the debate on the original House-passed version (CONGRESSIONAL RECORD of July 9 1979, at page 5513). Is this correct?

Mr. UDALL. The gentleman is correct Mr. LAGOMARSINO. I thank the gentleman.

Mr. Speaker, I rise in support of H.R. 1825, the Archaeological Resources Protection Act of 1979. First, I would like to commend the distinguished chairman and the minority leader for their cooperation and assistance in reaching agreement on this important legislation to protect our Nation's irreplaceable treasures.

I believe this legislation will be a strong deterrent to protect against the wanton destruction of these invaluable archaeological resources and help prevent their plunder by a handful of people seeking personal gain.

I am gratified that we were able to achieve this goal while at the same time permitting the individual citizen to enjoy the recreational uses of the public land including collecting those items which are not of true archaeological or scientific interest.

The language as it currently reads is an important compromise with regard to the specific coverage of the bill. The important protections of the bill apply to "archaeological resources" as that term is defined. We have specifically provided authority to the Secretary of the land management agencies to promulgate regulations to elaborate on which archaeological resources are covered and which are not. While we provide him such authority and responsibility to promulgate such regulations, it is equally important for us to provide him with a clear understanding of our intention as to which items we believe are archaeological resources. In the legislation, we have defined to be material remains of past human life or activities which are of archaeological interest as determined by regulations.

To guide the Secretary in promulgating the regulations, a list of items is provided which must be included in such regulations. The list includes such things as pottery, basketry, and other objects. This does not, however, mean that each of these items is automatically of archaeological interest—it merely means that each must be covered in the final regulations. Our intent is not to cover items of little archaeological interest. In that regard, section 12 has listed items which we believe will not usually be of archaeological interest—coins, rock, and bullets. Similarly, arrowheads found on the surface of the ground have been excluded from the penalty section because such items are not the type of item we consider having overriding archaeological interest. This is principally because such items are collected for hobby purposes by amateur collectors who are not the enforcement targets of this bill.

We intend that the hobby collector of these items not be covered except in rare and limited circumstances when such items are found in an archeologic context of significant scientific or cultural interest. Likewise, bottles or containers found in old mining areas are not considered to be archeologically significant within the coverage of this act.

Further, the archaeological significance of an item is based upon the item itself and its setting. For example, a few scattered beer bottles more than 100 years old may be very interesting to a collector of beer bottles, but they do not constitute the kind of substantial historical or cultural evidence which is meant to be protected here. The intent behind this act is to protect these kinds of items only in a true archeological setting.

Because of the importance of the regulations, we are requiring that they be submitted to the Congress for our review. We are certain that together with the land management agencies and through a cooperative approach with the Congress, we can protect America's invaluable archeological treasures without preventing the average citizen from enjoying the multiple use benefits of the public lands.

In this regard, I would also note that the intent of the Interior Committee and the House regarding multiple uses has been retained in section 12(a). The lan-

guage of this provision clearly indicates that the bill is not intended to require new permits to carry out the provisions of the Archaeological Recovery Act of 1960 for example, or as requiring a permit to conduct archeological surveys prior to oil or gas drilling activities. In short, provisions of existing law and regulations were deemed sufficient by the committee as they relate to multiple uses of public lands and by passing this act there is not intention to add a new layer of administrative or procedural delay which would impede approved activities or projects on the public lands.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

Mr. McCORMACK. Mr. Speaker, I reserve the right to object.

Mr. Speaker, I have several questions on the legislation for the gentleman from Arizona. I have been interested in this legislation because I have a number of constituents who enjoy going on recreational hikes in eastern Washington, and picking up arrowheads and old bottles and such items. Over the last 40 or 50 years many of them have made collections of these articles. I would like to know what impact this legislation would have on an individual citizen who picks up arrowheads or other artifacts, or even bottles from Federal land and brings them home for a collection? I would like to know how this legislation would affect such activities.

Mr. UDALL. Mr. Speaker, will the gentleman yield?

Mr. McCORMACK. I am happy to yield to the gentleman.

Mr. UDALL. Mr. Speaker, there will be no adverse impact. The gentleman from Nevada (Mr. SANTINI) and other Members were greatly concerned on this question. We made clear in the bill and in the report, and I want to make it clear again in my remarks today, that nothing here is intended in any way to interfere with hobbyist-hikers, people who like to pick up arrowheads and bottles from the surface of the land and so on. That is a perfectly legitimate use of public land. We want to make sure that it continues.

Furthermore, any collections people may have had from past activities are beyond the reach of this bill.

Mr. McCORMACK. I thank the gentleman for his explanation and I do not object to his request.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona to dispense with the reading of the Senate amendments and the House amendment to the Senate amendments?

There was no objection.

The SPEAKER pro tempore. Is there objection to the original request of the gentleman from Arizona?

Mr. SANTINI. Mr. Speaker, reserving the right to object, for those of us who are concerned about possible embarrassment to the national leaders, foremost of which is the President of the United States, who has in the past engaged in the hobby pursuit, of arrowhead collecting, and given all of his recent misfortunes, he has had of late, involving

confrontations with rabbits and other distressing episodes, his fortunes would be further depressed if he were to be arrested on a BLM piece of ground because he found an arrowhead there.

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As H.R. 1825 is presently written, would the President of the United States incur either a criminal sanction or a civil sanction if he, perhaps in the company of a Member of Congress, was found to have picked up an arrowhead on BLM lands or Forest Service lands?

Mr. UDALL. The answer to the gentleman's question is no. I commend him for helping us to try to tighten this up and making it very clear the sort of thing he fears will not occur.

Mr. SANTINI. How about miniballs? The gentleman from North Carolina had indicated that there was a concern among some of his constituents that purchasing a miniball might invite the prosecutorial wrath of the Federal Government.

Mr. UDALL. We do not intend that to happen, and we will make it very clear that it does not happen in the report.

Mr. SANTINI. I thank the gentleman.

The SPEAKER pro tempore. Is there objection to the original request of the gentleman from Arizona (Mr. UDALL)?

There was no objection.

A motion to reconsider was laid on the table.

DEFINITIONS

Sec. 3. As used in this Act—

(1) The term "archaeological resource" means any material remains of past human life or activities which are of archaeological interest, as determined under uniform regulations promulgated pursuant to this Act. Such regulations containing such determination shall include, but not be limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items. Nonfossilized and fossilized paleontological specimens, or any portion or piece thereof, shall not be considered archaeological resources, under the regulations under this paragraph, unless found in an archaeological context. No item shall be treated as an archaeological resource under regulations under this paragraph unless such item is at least 100 years of age.

(2) The term "Federal land manager" means, with respect to any public lands, the Secretary of the department, or the head of any other agency or instrumentality of the United States, having primary management authority over such lands. In the case of any public lands or Indian lands with respect to which no department, agency, or instrumentality has primary management authority, such term means the Secretary of the Interior. If the Secretary of the Interior consents, the responsibilities (in whole or in part) under this Act of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary of the Interior with respect to any land managed by such other Secretary or agency head, and in any such case, the term "Federal land manager" means the Secretary of the Interior.

(3) The term "public lands" means—
(A) lands which are owned and administered by the United States as part of—
(i) the national park system,
(ii) the national wildlife refuge system,
or

(iii) the national forest system; and
(B) all other lands the fee title to which is held by the United States, other than lands on the Outer Continental Shelf and lands which are under the jurisdiction of the Smithsonian Institution;

(4) The term "Indian lands" means lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for any subsurface interests in lands not owned or controlled by an Indian tribe or an Indian individual.

(5) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 688).

(6) The term "person" means an individual, corporation, partnership, trust, institution, association, or any other private entity or any officer, employee, agent, department, or instrumentality of the United States, of any Indian tribe, or of any State or political subdivision thereof.

(7) The term "State" means any of the fifty States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

EXCAVATION AND REMOVAL

Sec. 4. (a) Any person may apply to the Federal land manager for a permit to excavate or remove any archaeological resource located on public lands or Indian lands and to carry out activities associated with such excavation or removal. The application shall

be required, under uniform regulations under this Act, to contain such information as the Federal land manager deems necessary, including information concerning the time, scope, and location and specific purpose of the proposed work.

(b) A permit may be issued pursuant to an application under subsection (a) if the Federal land manager determines, pursuant to uniform regulations under this Act, that—

(1) the applicant is qualified to carry out the permitted activity;

(2) the activity is undertaken for the purpose of furthering archaeological knowledge in the public interest;

(3) the archaeological resources which are excavated or removed from public lands will remain the property of the United States, and such resources, and copies of associated archaeological records and data will be preserved by a suitable university, museum, or other scientific or educational institution, and

(4) the activity pursuant to such permit is not inconsistent with any management plan applicable to the public lands concerned.

(c) If a permit issued under this section may result in harm to, or destruction of, any religious or cultural site, as determined by the Federal land manager, before issuing such permit, the Federal land manager shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 9.

(d) Any permit under this section shall contain such terms and conditions, pursuant to uniform regulations promulgated under this Act, as the Federal land manager concerned deems necessary to carry out the purposes of this Act.

(e) Each permit under this section shall identify the individual who shall be responsible for carrying out the terms and conditions of the permit and for otherwise complying with this Act and other law applicable to the permitted activity.

(f) Any permit issued under this section may be suspended by the Federal land manager upon his determination that the permittee has violated any provision of subsection (a), (b), or (c) of section 6. Any such permit may be revoked by such Federal land manager upon assessment of a civil penalty under section 7 against the permittee or upon the permittee's conviction under section 6.

(g) (1) No permit shall be required under this section or under the Act of June 8, 1906 (16 U.S.C. 431), for the excavation or removal of any archaeological resource located on Indian lands of such Indian tribe, except that in the absence of tribal law regulating the excavation or removal of archaeological resources on Indian lands, an individual tribal member shall be required to obtain a permit under this section.

(2) In the case of any permits for the excavation or removal of any archaeological resource located on Indian lands, the permit may be granted only after obtaining the consent of the Indian or Indian tribe owning or having jurisdiction over such lands. The permit shall include such terms and conditions as may be requested by such Indian or Indian tribe.

(h) (1) No permit or other permission shall be required under the Act of June 8, 1906 (16 U.S.C. 431-455), for any activity for which a permit is issued under this section.

(2) Any permit issued under the Act of June 8, 1906, shall remain in effect according to its terms and conditions following the enactment of this Act. No permit under this Act shall be required to carry out any activity under a permit issued under the Act of

ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979

Mr. ROBERT C. BYRD, Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 1825.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendment of the Senate to the text of the bill (H.R. 1825) entitled "An Act to protect archaeological resources on public lands and Indian lands, and for other purposes", with the following amendment:

In lieu of the matter proposed by the amendment of the Senate to the text of the bill, insert:

SHORT TITLE

SECTION 1. This Act may be cited as the "Archaeological Resources Protection Act of 1979".

FINDINGS AND PURPOSE

Sec. 2. (a) The Congress finds that—
(1) archaeological resources on public lands and Indian lands are an accessible and irreplaceable part of the Nation's heritage;
(2) these resources are increasingly endangered because of their commercial attractiveness;

(3) existing Federal laws do not provide adequate protection to prevent the loss and destruction of these archaeological resources and sites resulting from uncontrolled excavations and pillage; and

(4) there is a wealth of archaeological information which has been legally obtained by private individuals for noncommercial purposes and which could voluntarily be made available to professional archaeologists and institutions.

(b) The purpose of this Act is to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data which were obtained before the date of the enactment of this Act.

June 8, 1906 shall remain in effect except insofar as this Act which remains in effect as provided in this paragraph, and nothing in this Act shall modify or affect any such permit.

(i) Issuance of a permit in accordance with this section and applicable regulations shall not require compliance with section 106 of the Act of October 15, 1966 (80 Stat. 917, 16 U.S.C. 470f).

(j) Upon the written request of the Governor of any State, the Federal land manager shall issue a permit subject to the provisions of subsections (b)(3), (b)(4), (c), (e), (f), (g), (h), and (i) of this section for the purpose of conducting archaeological research, excavation, removal, and curation, on behalf of the State or its educational institutions, to such Governor or to such designee as the Governor deems qualified to carry out the intent of this Act.

CUSTODY OF RESOURCES

Sec. 5. The Secretary of the Interior may promulgate regulations providing for—

(1) the exchange, where appropriate, between suitable universities, museums or other scientific or educational institutions, of archaeological resources removed from public lands and Indian lands pursuant to this Act, and

(2) the ultimate disposition of such resources and other resources removed pursuant to the Act of June 27, 1960 (16 U.S.C. 469-469c) or the Act of June 8, 1906 (16 U.S.C. 431-433).

Any exchange or ultimate disposition under such regulation of archaeological resources excavated or removed from Indian lands shall be subject to the consent of the Indian or Indian tribe which owns or has jurisdiction over such lands. Following promulgation of regulations under this section, notwithstanding any other provision of law, such regulations shall govern the disposition of archaeological resources removed from public lands and Indian lands pursuant to this Act.

PROHIBITED ACTS AND CRIMINAL PENALTIES

Sec. 6. (a) No person may excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under section 4, a permit referred to in section 4(h)(2), or the exemption contained in section 4(i)(1).

(b) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange any archaeological resource if such resource was excavated or removed from public lands or Indian lands in violation of—

(1) the prohibition contained in subsection (a), or

(2) any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

(c) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange, in interstate or foreign commerce, any archaeological resource excavated, removed, sold, purchased, exchanged, transported, or received in violation of any provision, rule, regulation, ordinance, or permit in effect under State or local law.

(d) Any person who knowingly violates, or counsels, procures, solicits, or employs any other person to violate, any prohibition contained in subsection (a), (b), or (c) of this section shall, upon conviction, be fined not more than \$10,000 or imprisoned not more than one year, or both: Provided, however, That if the commercial or archaeological value of the archaeological resources involved and the cost of restoration and repair of such resources exceeds the sum of \$5,000,

such person shall be fined not more than \$20,000 or imprisoned not more than two years, or both. In the case of a second or subsequent such violation upon conviction such person shall be fined not more than \$100,000, or imprisoned not more than five years, or both.

(e) The prohibitions contained in this section shall take effect on the date of the enactment of this Act.

(f) Nothing in subsection (b)(1) of this section shall be deemed applicable to any person with respect to an archaeological resource which was in the lawful possession of such person prior to the date of the enactment of this Act.

(g) Nothing in subsection (d) of this section shall be deemed applicable to any person with respect to the removal of arrowheads located on the surface of the ground.

CIVIL PENALTIES

Sec. 7. (a) (1) Any person who violates any prohibition contained in an applicable regulation or permit issued under this Act may be assessed a civil penalty by the Federal land manager concerned. No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Federal land manager concerned.

(2) The amount of such penalty shall be determined under regulations promulgated pursuant to this Act, taking into account, in addition to other factors—

(A) the archaeological or commercial value of the archaeological resource involved, and

(B) the cost of restoration and repair of the resource and the archaeological site involved.

Such regulations shall provide that, in the case of a second or subsequent violation by any person, the amount of such civil penalty may be double the amount which would have been assessed if such violation were the first violation by such person. The amount of any penalty assessed under this subsection for any violation shall not exceed an amount equal to double the cost of restoration and repair of resources and archaeological sites damaged and double the fair market value of resources destroyed or not recovered.

(3) No penalty shall be assessed under this section for the removal of arrowheads located on the surface of the ground.

(b) (1) Any person aggrieved by an order assessing a civil penalty under subsection (a) may file a petition for judicial review of such order with the United States District Court for the District of Columbia or for any other district in which such a person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued. The court shall hear such action on the record made before the Federal land manager and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) If any person fails to pay an assessment of a civil penalty—

(A) after the order making the assessment has become a final order and such person has not filed a petition for judicial review of the order in accordance with paragraph (1), or

(B) after a court in an action brought under paragraph (1) has entered a final judgment upholding the assessment of a civil penalty.

The Federal land managers may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction

to hear and decide any such action. In such action, the validity and amount of such penalty shall not be subject to review.

(c) Hearings held during proceedings for the assessment of civil penalties authorized by subsection (a) shall be conducted in accordance with section 554 of title 5 of the United States Code. The Federal land manager may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Federal land manager or to appear and produce documents before the Federal land manager, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

REWARDS; FORFEITURE

Sec. 8. (a) Upon the certification of the Federal land manager concerned, the Secretary of the Treasury is directed to pay from penalties and fines collected under sections 6 and 7 an amount equal to one-half of such penalty or fine, but not to exceed \$500, to any person who furnishes information which leads to the finding of a civil violation, or the conviction of criminal violation, with respect to which such penalty or fine was paid. If several persons provided such information, such amount shall be divided among such persons. No officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall be eligible for payment under this subsection.

(b) All archaeological resources with respect to which a violation of subsection (a), (b), or (c) of section 6 occurred and which are in the possession of any person, and all vehicles and equipment of any person which were used in connection with such violation, may be (in the discretion of the court or administrative law judge, as the case may be) subject to forfeiture to the United States upon—

(1) such person's conviction of such violation under section 6,

(2) assessment of a civil penalty against such person under section 7 with respect to such violation, or

(3) a determination by any court that such archaeological resources, vehicles, or equipment were involved in such violation.

(c) In cases in which a violation of the prohibition contained in subsection (a), (b), or (c) of section 6 involve archaeological resources excavated or removed from Indian lands, the Federal land manager or the court, as the case may be, shall provide for the payment to the Indian or Indian tribe involved of all penalties collected pursuant to section 7 and for the transfer to such Indian or Indian tribe of all items forfeited under this section.

CONFIDENTIALITY

Sec. 9. (a) Information concerning the nature and location of any archaeological resource for which the excavation or removal requires a permit or other permission under this Act or under any other provision of Federal law may not be made available to the public under subchapter II of chapter 5 of the United States Code or under any other provision of law unless the Federal land manager concerned determines that such disclosure would—

(1) further the purposes of this Act: or the Act of June 27, 1960 (16 U.S.C. 469-469c), and (2) not create a risk of harm to such resources or to the site at which such resources are located.

(b) Notwithstanding the provisions of subsection (a), upon the written request of the Governor of any State, which request shall state—

(1) the specific site or area for which information is sought.

(2) the purpose for which such information is sought.

(3) a commitment by the Governor to adequately protect the confidentiality of such information to protect the resource from commercial exploitation, the Federal land manager concerned shall provide to the Governor information concerning the nature and location of archaeological resources within the State of the requesting Governor.

REGULATIONS; INTERGOVERNMENTAL COORDINATION

Sec. 10. (a) The Secretaries of the Interior, Agriculture and Defense and the Chairman of the Board of the Tennessee Valley Authority, after consultation with other Federal land managers, Indian tribes, representatives of concerned State agencies, and after public notice and hearing, shall promulgate such uniform rules and regulations as may be appropriate to carry out the purposes of this Act. Such rules and regulations may be promulgated only after consideration of the provisions of the American Indian Religious Freedom Act (92 Stat. 469; 42 U.S.C. 1996). Each uniform rule or regulation promulgated under this Act shall be submitted on the same calendar day to the Committee on Energy and Natural Resources of the United States Senate and to the Committee on Interior and Insular Affairs of the United States House of Representatives, and no such uniform rule or regulation may take effect before the expiration of a period of ninety calendar days following the date of its submission to such Committees.

(b) Each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations under subsection (a), as may be appropriate for the carrying out of his functions and authorities under this Act.

COOPERATION WITH PRIVATE INDIVIDUALS

Sec. 11. The Secretary of the Interior shall take such action as may be necessary, consistent with the purposes of this Act, to foster and improve the communication, cooperation, and exchange of information between—

(1) private individuals having collections of archaeological resources and data which were obtained before the date of the enactment of this Act, and

(2) Federal authorities responsible for the protection of archaeological resources on the public lands and Indian lands and professional archaeologists and associations of professional archaeologists.

In carrying out this section, the Secretary shall, to the extent practicable and consistent with the provisions of this Act, make efforts to expand the archaeological data base for the archaeological resources of the United States through increased cooperation between private individuals referred to in paragraph (1) and professional archaeologists and archaeological organizations.

SAVINGS PROVISIONS

Sec. 12. (a) Nothing in this Act shall be construed to repeal, modify, or impose additional restrictions on the activities permitted under existing laws and authorities relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands.

(b) Nothing in this Act applies to, or requires a permit for, the collection for private purposes of any rock, coin, bullet, or mineral which is not an archaeological resource, as determined under uniform regulations promulgated under section 3(1).

(c) Nothing in this Act shall be construed to affect any land other than public land or Indian land or to affect the lawful recovery, collection, or sale of archaeological resources from land other than public land or Indian land.

REPORT

Sec. 13. As part of the annual report required to be submitted to the specified committees of the Congress pursuant to section 5(c) of the Act of June 27, 1960 (74 Stat. 220; 16 U.S.C. 469-469a), the Secretary of the Interior shall comprehensively report as a separate component on the activities carried out under the provisions of this Act, and he shall make such recommendations as he deems appropriate as to changes or improvements needed in the provisions of this Act. Such report shall include a brief summary of the actions undertaken by the Secretary under section 11 of this Act, relating to cooperation with private individuals.

Resolved, That the House agree to the amendment of the Senate to the title of the bill.

Mr. DOMENICI. Mr. President, as this legislation is being passed into law I reiterate my position on what this legislation does and does not do.

This bill was necessary in order to give Federal land managers the authority to protect archaeological sites from piracy and pillage. A court ruling in the ninth circuit voided the old law.

Archeological resources in this bill are defined so as to insure only those artifacts of true value as antiquities are preserved. They must, for example, be 100 years old.

A system of civil rather than criminal penalties is established to insure that general users of public lands will not be subject to criminal prosecution in the event of controversy.

This bill also provides the Governor of any State the authority to request a Federal land manager to grant a permit for the purpose of conducting archeological research. This is meant to expand and simplify the procedure for use of the public lands and to open them to wider use. An example would be a Boy Scout troop requesting the Governor for permission to explore public lands for arrowheads, bullets, or coins.

In the course of the hearings on this bill, I consistently stressed that the Federal land managers can help to protect the archeological resources through the education of the visitor. Educational materials will help the visitors to understand and appreciate our national resources and how to best protect them.

Mr. President, in New Mexico we have archeological sites containing Mimbres artifacts which are extremely valuable. There are those who invade public lands with bulldozers and raze antiquities for profit. They must be stopped. We also have literally tens of thousands of citizens who enjoy exploring the public lands with a genuine interest in the history and background of their home towns. Their rights to enjoy the land must also be protected. This legislation

will put teeth in the law to stop the criminal but also protects and expands the use of the lands by all Americans who will now better understand how to protect them.

I yield to the Senator from Oregon.

Mr. HATFIELD. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. A message from the House on H.R. 1825.

Mr. HATFIELD. Mr. President, I see the manager of the bill is here on the majority side. I was going to move to adopt the House amendments.

Mr. President, I yield to the Senator from Arkansas.

Mr. BUMPERS. Mr. President, this measure will protect archeological resources located on public and Indian lands. H.R. 1825 was first passed by the House of Representatives on July 9. On July 30, the Senate approved the House-passed bill with an amendment in the nature of a substitute.

The PRESIDING OFFICER. The time of the Senator from New Mexico has expired.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senator may proceed for 1 minute.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BUMPERS. Mr. President, for the benefit of my colleagues, I would like to explain the major changes which were made by the House to the Senate-passed text of H.R. 1825.

First. Defined age of an archeological resource. The Senate-passed provision defined an archeological resource as being at least 50 years of age while the House substitute amendment would define an archeological resource as being at least 100 years of age. Although the Senate 50-year provision would protect additional resources, there is general agreement that for the purposes of this act, the 100-year provision is reasonable and acceptable.

Second. Permits for excavation. The House substitute text provides that upon the written request of a Governor of any State, a Federal land manager shall issue a permit for the purpose of conducting archeological research. The Senate-passed provision would maintain the existing procedures for issuance of permits, that is, permits would be issued only by the Federal land manager. In the substitute text a permit issued to a Governor on behalf of a State or its educational institutions, would be subject to most of the restrictions applicable to private permittees.

In light of the longstanding interest by the States and their educational institutions to conduct research on lands within the State and the ongoing efforts by the Federal land managing agencies to cooperate with the States in the identification of significant archeological resources, this amendment is acceptable and is supported by the sponsors of the Senate companion measure and the members of the Energy and Natural Resources Committee.

Third. Exemption from civil and criminal punishment for persons removing arrowheads from the surface of the

ground. While this amendment acceptable to the sponsors of the legislation and the members of the committee, it should be noted that removing arrowheads is prohibited under the 1906 Antiquities Act, the 1916 National Park Service Organic Act, and would not be allowed on Indian lands without an appropriate permit. In addition, the removal of arrowheads without a permit should not be permitted near sites where investigations and excavations are underway or where areas are protected by signs. Persons collecting arrowheads should be familiar with the guidelines of the various land managing agencies and the locations where such activity is permitted.

(4) Fourth, Ninety-Day Congressional Review Period for Regulations. The House substitute text provides that final regulations promulgated under the act shall be transmitted to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives and shall lay before the committees for 90 days before they become effective.

Finally, I want to emphasize that the effectiveness of this legislation can be greatly enhanced by efforts to inform the public about the importance of our archeological and cultural resources. The Federal managers can help to protect the archeological resources through the education of the visitor. Educational materials, interpretive programs, and so forth, will help the visitors to understand and appreciate the cultural resources located on public lands and Indian lands and the need for their protection.

Mr. HATFIELD. Mr. President, I rise in support of H.R. 1825 as amended by the Senate and the House. I compliment the Senator from New Mexico (Mr. DOMENICI) for his hard and fruitful work in bringing agreement and solution of the problems presented by archeological depredation on public lands.

The major House amendments to the Senate amendments modify the original House-passed bill in the following ways:

Although the definition of "archeological resources" no longer specifically excludes bullets and arrowheads, these items along with coins are given special consideration so that hobbyists need not fear Federal penalties.

It is the intent of the authors and supporters of this bill that only artifacts of true archeological interest will be considered "archeological resources."

Such items as coins, bottles, and bullets are clearly not intended to come under the purview of this law unless found within an archeological site. While arrowheads located on the surface of the ground may be considered "archeological resources," and permits may be required to remove them, no civil or criminal penalties may be imposed. As stated, other acts also regulate the removal of arrowheads.

I feel that we should be honest and warn that the taking of arrowheads may be prohibited by other laws and other regulations on some public lands such

as national parks. However, the intent of this bill in this matter is to educate, not punish. We do not intend to affect activities such as the Boy Scouts had a few years ago where merit badges were awarded for arrowhead collecting. Under a proper land ethic, these activities are being curtailed, modified, or eliminated as education and knowledge of our actions increase. Education is the key.

I have been interested in this legislation from a number of viewpoints. Some archeological depredation has occurred in Oregon. A goodly number of constituents in Oregon are legitimate public land users: Hikers, rockhounds, collectors, explorers, wanderers, and persons who like to poke around for fun, picking up arrowheads, old bottles, and old metal. Some of these persons use metal detectors in their pursuits. In Oregon, there are three companies manufacturing metal detectors. They have made positive contributions to this legislation. They have not opposed the legislation as they agree with the goals of protecting our "archeological resources."

I have some questions for the distinguished chairman of the Parks, Recreation, and Renewable Resources Subcommittee.

I would like to know what impact this legislation would have on an individual citizen who picks up arrowheads, bottles, coins from Federal land and brings them home for a collection?

Mr. BUMPERS. Mr. President, in answering the distinguished Senator from Oregon (Mr. HATFIELD). First, anyone engaging in the activities you describe before enactment of this legislation may retain any collection after enactment if the archeological resource was in the lawful possession of such person. Second, nothing in this act applies to the collection for private purposes any rock, coin, bullet which is not an archeological resource. The collection of arrowheads found on the surface of the ground is not a civil or criminal violation, under this act. However, as the Senator stated, arrowhead removal may be currently prohibited on certain Federal lands, such as national parks.

Mr. HATFIELD. Does this legislation limit the use of metal detectors on public lands?

Mr. BUMPERS. This legislation does not affect the use of metal detectors on public lands. If it is legal to use metal detectors currently, this act does not diminish that use. If it is illegal to use metal detectors, as in national parks, this act does not allow such use.

Mr. President, the House substitute language is acceptable to the Senate sponsor of this legislation and to me. I urge that the Senate concur in the amendments of the House. Mr. President, I move that the Senate agree to the House amendments.

The PRESIDING OFFICER. Without objection, the motion is agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. DOMENICI. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOMENICI. Mr. President, I originally introduced that bill as S. 490. What we have agreed to today is an improvement. I wholeheartedly support it. There is a need. I thank the Senator from Arkansas for bringing it here today.

Seventh Floor Bond

JUN 22 1989

**UNITED STATES CODE
CONGRESSIONAL AND
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Volume 6

**LEGISLATIVE HISTORY:
PUBLIC LAWS 100-533 to 100-647**

**ST. PAUL, MINN.
WEST PUBLISHING CO.**

**ARCHEOLOGICAL RESOURCES PROTECTION ACT
OF 1979, AMENDMENT**

P.L. 100-582, see page 102 Stat. 2983

DATES OF CONSIDERATION AND PASSAGE

House: July 26, October 19, 1988

Senate: October 14, 1988

**House Report (Interior and Insular Affairs Committee)
No. 100-791, July 26, 1988 [To accompany H.R. 4068]**

**Senate Report (Energy and Natural Resources Committee)
No. 100-566, Sept. 30, 1988 [To accompany H.R. 4068]**

Cong. Record Vol. 134 (1988)

The Senate Report is set out below.

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[page 1]

The Committee on Energy and Natural Resources to which was referred the Act (H.R. 4068) to amend the Archaeological Resources Protection Act of 1979 to strengthen the enforcement provisions of that Act, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the Act, as amended, do pass.

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PURPOSE OF THE MEASURE

The purpose of H.R. 4068 is to strengthen the Archaeological Resources Protection Act of 1979 to prohibit attempted excavation, removal, or defacing of archaeological resources, and to reduce the felony threshold value of illegally removed artifacts to \$500.

BACKGROUND AND NEED

The Archaeological Resource Protection Act (ARPA) was passed in 1979 to respond to increased vandalism and looting of archaeological resources on Federal and Indian lands. ARPA requires a permit for excavation or removal of archaeological resources from these lands, prohibits removal without such a permit and prohibits the sale of illegally obtained archaeological resources. ARPA also provides criminal penalties for violations of the provisions of the Act, based on the value of the archaeological resources.

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Difficulties have arisen in using ARPA as an effective deterrent to looting and vandalism of archaeological sites. Lack of funding expended by agencies for enforcement makes protection difficult.

Another problem centers around obtaining jury convictions with the felony threshold of \$5,000. Currently, ARPA provides for felony penalties if the value of the archaeological resource involved in the offense and the cost of restoration and repair of that resource exceed \$5,000. Determining the value of the archaeological resources damaged entails professional evaluation often difficult to convey to juries.

H.R. 4068 addresses these concerns by broadening the authority of ARPA to prohibit attempted excavation, removal, damaging or defacing of archaeological resources and by decreasing the felony threshold value of illegally removed artifacts to \$500.

LEGISLATIVE HISTORY

H.R. 4068 passed the House on July 26, 1988. A similar measure, S. 1814, was introduced by Senator Domenici on June 8, 1987. A hearing was held on both measures by the Subcommittee on Public Lands, National Parks and Forests on September 14, 1988.

At the business meeting on Thursday, September 22, 1988, the Senate Committee on Energy and Natural Resources ordered H.R. 4068, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on Thursday, September 22, 1988, by unanimous voice vote of a quorum present, recommends that the Senate pass H.R. 4068 if amended, as described herein.

COMMITTEE AMENDMENTS

During the consideration of H.R. 4068, the Committee adopted one amendment. The amendment would remove language in H.R. 4068 that would have deleted the current requirement in ARPA that a resource protected under the Act must be "of archaeological interest." At a hearing before the Subcommittee on Public Lands, National Parks and Forests, the Park Service testified that the definition of "archaeological resource" is clear in the regulations implementing ARPA, and that no such deletion is necessary.

SECTION-BY-SECTION ANALYSIS

Section 1(a) makes a technical change in punctuation to ARPA.

Section 1(b) amends Section 6(a) of the Act, which sets forth prohibited acts and criminal penalties, by inserting after "deface" the phrase ", or attempt to excavate, remove, damage, or otherwise alter or deface".

Section 1(c) amends Section 6(d) of ARPA by striking "\$5,000" and inserting "\$500". Section 1(c) provides felony penalties if the value of the archeological resource involved in the offense, and the cost of restoration and repair of that resource, exceed \$500.

Section 1(d) amends Section 10 of ARPA by adding a new subsection directing federal land managers to increase public awareness

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of the significance of the archeological resources located on public lands and Indian lands and the need to protect such resources. The section also directs the land managers to submit annual reports to the appropriate Committees of Congress.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office.

**U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 27, 1988.**

Hon. J. BENNETT JOHNSTON, Jr.
*Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 4068, an act to amend the Archaeological Resources Protection Act of 1979 to strengthen the enforcement provisions of that act, and for other purposes. The act was ordered reported by the Senate Committee on Energy and Natural Resources, September 22, 1988. Enactment of H.R. 4068 is not expected to have any significant effect on the federal budget or on those of state or local governments.

H.R. 4068 would direct federal land managers to establish programs to increase public awareness of archaeological resources. Each agency would be required to submit an annual report to the Congress regarding its efforts.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deb Reis, who can be reached at 226-2860.

Sincerely,

JAMES L. BLUM, Acting Director.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 4068. The Act is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact of personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 4068, as reported.

EXECUTIVE COMMUNICATIONS

On August 19, 1988, the Committee on Energy and Natural Resources requested legislative reports from the Departments of Agriculture and the Interior and the Office of Management and Budget setting forth executive views on H.R. 4068. These reports had not been received at the time the report on H.R. 4068 was filed. When the reports become available, the chairman will request that they

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be printed in the Congressional Record for the advice of the Senate. The testimony provided by the appropriate agency at the Subcommittee hearing follows:

STATEMENT OF WILLIAM L. RICE, DEPUTY CHIEF, FOREST SERVICE,
U.S. DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the subcommittee; thank you for this opportunity to offer the Department of Agriculture's views on S. 1814, H.R. 4068, and S. 1985, all of which would amend the Archaeological Resources Protection Act of 1979.

S. 1814 AND H.R. 4068, TO STRENGTHEN THE ENFORCEMENT PROVISIONS
OF ARPA

S. 1814 and H.R. 4068 would strengthen the Archaeological Resources Protection Act (ARPA). We support the enactment of S. 1814. We would also support the enactment of H.R. 4068 if amended as described below.

Both bills would amend section 6(a) of ARPA to make it possible to arrest and prosecute those who "attempt" to loot archaeological resources. ARPA is presently worded so that actual excavation, removal, damage, or defacing—and therefore archaeological resource damage—must occur before an arrest can be made. It is very difficult to catch violators in the act of looting. This amendment would make it possible to arrest, prosecute, and convict without damage to the resource.

Both bills would also amend section 6(d) of ARPA to lower the threshold between a misdemeanor and a felony from \$5,000 to \$500. Under current law, in order to obtain a felony conviction, we must prove that the commercial and archaeological value and the cost of restoration and repair of the archaeological resources exceeds \$5,000. Determining the commercial value and restoration and repair costs for vandalized resources is relatively easy and straight-forward. However, the archaeological value is subject to varying professional opinions, and is therefore difficult to determine and defend. Reducing the value to \$500 would increase the number of felony cases, because the commercial value and restoration and repair costs frequently exceed \$500. This would serve as a significant deterrent to archaeological resource vandalism and theft.

If these amendments to ARPA are enacted, we would anticipate a higher conviction rate, more felony convictions and, most importantly, a reduction in the looting of archaeological resources.

H.R. 4068 would amend section 3(1) of ARPA by changing the definition of the term "archaeological resource." The phrase "which are of archaeological interest" would be struck from the definition. This subjective test has proven troublesome, because there are widely differing opinions regarding what is "of archaeological interest." On the other hand, the definition of "archaeological resource" in existing ARPA regulations is clear and does not need to be changed. Therefore, while we do not object to this deletion, it is not necessary. If this language is deleted, however, we recommend that the Committee report clarify that no change in the regulations will be needed.

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HR. 4068 would also amend section 10 of ARPA to require Federal land managers to establish a public awareness program dealing with the significance of the archaeological resources on public lands and Indian lands, and require annual reports to Congress on this program. While we do not object to conducting a public awareness program, and have authority to do so, we believe the reporting requirement duplicates the annual report already required by ARPA. Therefore, we recommend against this additional reporting requirement.

S. 1985, TO IMPROVE THE PROTECTION AND MANAGEMENT OF ARCHEOLOGICAL RESOURCES

We oppose enactment of S. 1985.

S. 1985 would amend ARPA by adding a new section to require the Secretaries of the Interior, Agriculture, and Defense, and the Chairman of the Board of the Tennessee Valley Authority to develop plans and a schedule for archaeological surveys of lands under their control.

Presently, we conduct archaeological resource surveys on all National Forest lands where proposed land management activities could possibly disturb archaeological resources. We also survey areas where we believe there is a high probability of finding significant archaeological resources.

Additionally, cooperators, such as volunteers and universities, under the direction of the local Forest Supervisor, conduct surveys on National Forest lands. We do not, however, plan to survey the entire 190 million acres of the National Forest System. Because of the tremendous cost of implementing such a plan, and because many of the lands have a very low probability of containing important archaeological resources, we believe a complete survey is unnecessary. We prefer to utilize sampling and other survey strategies to identify significant archaeological values on areas not involved in current land management activities.

Additionally, S. 1985 would require each Secretary to develop documents and a process for reporting suspected violations of ARPA. In 1982, we implemented the Law Enforcement Management Reporting System (LEMARS) in the Forest Service. LEMARS provides Forest Service managers with a means of identifying, monitoring, and evaluating law enforcement activities through statistical analysis of the information provided on law enforcement reports, such as warning and violation notices, incident reports, and court disposition updates. We believe that LEMARS meets the intent and purpose of S. 1985 in regard to a reporting system for ARPA violations.

Like any system, it is not without shortcomings. In some cases, adequate data is not provided to the system. Educating and motivating employees about LEMARS is an ongoing process. We believe, however, that LEMARS is as good as any new system that we could devise in response to S. 1985.

Mr. Chairman, this concludes my testimony. I would be pleased to answer any questions you may have.

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STATEMENT OF JERRY ROGERS, ASSOCIATE DIRECTOR, NATIONAL PARK
SERVICE, DEPARTMENT OF THE INTERIOR

Mr. Chairman, I appreciate the opportunity to provide your Subcommittee with the views of the Department of the Interior on these bills.

We strongly recommend the enactment of S. 1314. Alternatively, we would recommend the enactment of H.R. 4068, if it is amended as discussed below.

We do not recommend enactment of S. 1985, because it duplicates existing authority and procedures already in practice by the land managing agencies.

All three bills would amend the Archaeological Resources Protection Act of 1979. That Act authorizes Federal land managers to issue permits to qualified persons for removal of archeological items that are 100 years old or older. It prohibits the excavation or removal of archeological resources without such a permit, and it prohibits the sale or trade of resources removed from public lands or Indian lands without a permit. Criminal penalties are established for violations, beginning with not more than \$10,000 or one year imprisonment for knowing violations. Civil penalties are also authorized.

S.1314 and H.R. 4068 would amend the 1979 Act in the following respects:

- H.R. 4068 deletes the requirement that a resource to be protected under the Act must be "of archeological interest"; no similar provision appears in S. 1314;
- S. 1314 and H.R. 4068 make *attempted* violation of prohibited acts a crime in addition to *actual* violation as in the current law;
- S. 1314 and H.R. 4068 reduce from \$5,000 to \$500 the value of resources which, if harmed, give rise to a doubling of the penalty; and
- H.R. 4068 directs each Federal land manager to establish a public awareness program and submit an annual report thereon to the committees. No similar provision is contained in S. 1314.

We understand that the phrase "of archaeological interest" is deleted in H.R. 4068 because it has caused some confusion in some prosecutions for violations under the Act. While we do not object to this deletion, we believe it is unnecessary. The definition of "archaeological resource" in the existing regulations implementing the Act is clear and does not require any modification. If the committee adopts this provision we recommend that language in the committee report be included to affirm our belief that no change in the regulations is needed.

We strongly support making attempted violations a crime. Under existing law we cannot prosecute for looting archeological resources until after the damage has occurred, and often then it is too late to save the material.

We also support lowering the value threshold to \$500. We understand that prosecutors frequently have difficulty in demonstrating to judge and jury that damage meets or exceeds the present threshold of \$5,000. The lower amount would probably not lessen the

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need for expert archeological testimony about the cost of scientifically excavating and analyzing the resource and the cost of restoring and repairing a damaged resource, but judges and juries would more readily accept such testimony toward proving the lower value than the higher one.

H.R. 4068 would also require Federal land managers to establish a program to increase public awareness of the significance of archeological resources on public lands, and the need to protect such resources. The bill would require each land manager to submit an annual report to the authorizing committees on the actions taken. We have no objection to a public awareness program concerning the need to protect archeological resources, and we can do so under existing authority, but we see no need for an additional report. If the committees desire information on public awareness activities, it could be provided as part of the annual report to the Congress that is already required under the Act. We recommend the committee amend this provision such that the requirement to submit a report will be satisfied by information included in the annual report required under existing law, if the committee adopts H.R. 4068.

S. 1985 would direct Interior, Agriculture, Defense, and TVA to develop plans for archeological surveys on their lands, prepare a schedule for surveying lands containing the most scientifically valuable archeological resources, and develop documents for reporting suspected violations and procedures for completing such reports.

We believe these proposed requirements duplicate the planning and inventorying that land management agencies are already authorized to do. For example, the National Park Service already has cultural resource management plans for most of its units. These plans are designed to include evaluations of survey needs and plans for programming these surveys.

Moreover, the land-managing bureaus in Interior already have developed documents and instituted procedures for reporting violations of ARPA. The National Park Service has also developed additional training for Federal and State law enforcement and resource specialists on how to use ARPA when violations have occurred or are suspected. We are working with the other agencies to improve the systematic collection of ARPA violation data Government-wide. Additional plans and document requirements, such as are contained in S. 1985, are not necessary.

Accordingly, we oppose enactment of S. 1985.

This concludes my prepared testimony, Mr. Chairman. I would be pleased to respond to any questions you may have.

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AMENDING THE ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1970
TO STRENGTHEN THE ENFORCEMENT PROVISIONS OF THAT ACT, AND
FOR OTHER PURPOSES

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Mr. UDALL, from the Committee on Interior and Insular Affairs,
submitted the following

REPORT

[To accompany H.R. 4068, which on March 2, 1988, was referred jointly to the
Committees on Interior and Insular Affairs and the Judiciary]

[Including the cost estimate of the Congressional Budget Office.]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 4068) to amend the Archaeological Resources Protection Act of 1979 to strengthen the enforcement provisions of that Act, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 1, line 3, strike all after the enacting clause and insert the following in lieu thereof:

SECTION 1. AMENDMENTS TO ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979

(a) Section 3(1) of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa and following) is amended by striking out "which are of archaeological interest".

(b) Section 3(3) of such Act is amended by striking out the semicolon at the end thereof and substituting a period.

(c) Section 6(a) of such Act is amended by inserting after "deface" the following: ", or attempt to excavate, remove, damage, or otherwise alter or deface".

(d) Section 6(d) of such Act is amended by striking "\$5,000" and inserting in lieu thereof "\$500".

(e) Section 10 of such Act is amended by adding the following new subsection at the end thereof:

"(c) Each Federal land manager shall establish a program to increase public awareness of the significance of the archaeological resources located on public lands and Indian lands and the need to protect such resources. Each such land manager shall submit an annual report to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate regarding the actions taken under such program."

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PURPOSE

The purpose of H.R. 4068¹ is to strengthen the enforcement capabilities of the Archaeological Resources Protection Act.

BACKGROUND

The Archaeological Resource Protection Act (ARPA), signed into law October 1979, is designed to provide protection to archeological resources located on federal and Indian lands. Increased vandalism and looting have damaged many archeological sites. Before the enactment of ARPA, protection for archeological resources came under the 1906 Antiquities Act which had a crucial section invalidated by the courts thus creating the need for stronger legislation.

ARPA defines "archeological resource", requires a permit for excavation or removal from public or Indian lands which can be given only to qualified persons under various kinds of control. It prohibits removal without a permit, and prohibits exchange (of any kind) of illegally obtained archeological resources. ARPA also provides criminal penalties based on the value of the archeological resources. The value includes both the value of the archeological resources themselves and the cost of restoration and repair of such resources. It provides for civil penalties by the federal land managers, as well as providing for the payment of rewards for information and the forfeiture of items such as trucks used in illegal activities. ARPA also includes provisions for confidentiality of location of sites, promulgation of regulations, intergovernmental coordination, and cooperation with private individuals.

There have been two primary difficulties in using ARPA as an effective deterrent and law enforcement tool to prevent further looting and vandalism of archeological sites. The first is lack of funding expended by agencies on archeological protection and enforcement. The second is obtaining jury convictions with the felony threshold of \$5000. Determining the value of the archeological resources damaged entails professional evaluation and technical issues often difficult to convey to nonprofessional juries. As a result, the Archeological Resources Protection Act has not been as effective as originally anticipated.

SECTION-BY-SECTION ANALYSIS

Section 1 (a) deletes from Section 3(1) of the Archeological Resources Protection Act the phrase "which are of archeological interest".

Section 1(b) makes a technical change by striking out the semicolon at the end of Section 3(3) of the Archeological Resources Protection Act and substitutes a period.

Section 1(c) amends Section 6(a) of the Act by inserting after "deface" the phrase ", or attempt to excavate, remove, damage, or otherwise alter or deface". The Committee recognizes that significant damage can occur to archeological resources by persons at-

¹ H.R. 4068 was introduced March 2, 1988 by Mr. Gejdenson (for himself, Mr. Udall, Mr. Miller of California, Mr. Richardson, Mr. Campbell and Mr. DeFazio).

tempting to collect such resources, as well as by those persons succeeding in collection.

Section 1(d) amends Section 6(d) of the Act by striking "\$5,000" and inserting "\$500". Section 1(d) provides felony penalties if the value of the archeological resource involved in the offense, and the cost of restoration and repair of that resource, exceed \$500.

Section 6(d) of the Act calls for a maximum penalty, for a first offense, of a fine of \$20,000 and imprisonment for 2 years. If the offense is a second or subsequent offense, section 6(d) provides a maximum penalty of a fine of \$100,000 and imprisonment for 5 years. However, the amount of a fine that a court can impose upon a defendant convicted under section 6(d) of the Act is not limited by the amounts set forth in section 6(d). The court is empowered by 18 U.S.C. 3571, as amended by the Criminal Fine Improvements Act of 1987, P.L. 100-185, section 6, 100 Stat. 1279, to impose a higher fine. If the defendant is an individual the fine can be up to \$250,000, twice any pecuniary gain derived by the defendant, or twice any pecuniary loss inflicted by the offense, whichever is the greatest. If the defendant is an organization, the fine can be up to the greatest of \$500,000, twice any pecuniary gain derived by the defendant, or twice any pecuniary loss inflicted by the offense, whichever is the greatest. Section 1(d) of the bill will not, and is not intended to, override the provisions of 18 U.S.C. 3571.

Section 1(e) amends Section 10 of the Act by adding a new subsection directing federal land managers to increase public awareness of the significance of the archeological resources located on public lands and Indian lands and the need to protect such resources. The section also directs the land managers to submit annual reports to the appropriate committees of Congress. The Committee believes that increased public recognition of archeological resources will serve to protect them better.

LEGISLATIVE HISTORY AND COMMITTEE RECOMMENDATIONS

A hearing on H.R. 4068 was held by the Subcommittee on National Parks and Public Lands on June 14, 1988. The bill was favorably recommended to the Committee on Interior and Insular Affairs with an amendment in the nature of a substitute on June 30, 1988. The Committee on Interior and Insular Affairs favorably reported H.R. 4068, as amended, to the House by voice vote on July 13, 1988.

OVERSIGHT STATEMENT

The Committee intends to carefully monitor the implementation of this legislation to ensure compliance with the intent of the Act, but no specific oversight hearings have been conducted on this matter. No recommendations were submitted to the Committee pursuant to Rule X, clause 2(b)(2).

INFLATIONARY IMPACT STATEMENT

The Committee finds that enactment of this measure would have no inflationary impact on the national economy.

COST AND BUDGET ACT COMPLIANCE

The Committee has determined that only a minimal increase in the Federal expenditure will result from enactment of this bill. The report of the Congressional Budget Office which the Committee adopts as its own, follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 20, 1988.

HON. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs, U.S. House
of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 4068, a bill to amend the Archaeological Resources Protection Act of 1979 to strengthen the enforcement provisions of that act, and for other purposes. The bill was ordered reported by the House Committee on Interior and Insular Affairs on July 13, 1988. Enactment of H.R. 4068 is not expected to have any significant effect on the federal budget or on those of state or local governments.

H.R. 4068 would direct federal land managers to establish programs to increase public awareness of archaeological resources. Each agency would be required to submit an annual report to the Congress regarding its efforts.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deb Reis, who can be reached at 226-2860.

Sincerely,

JAMES L. BLUM,
Acting Director.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1970, AS AMENDED

(93 Stat. 721; 16 U.S.C. 470aa et seq.)

SEC. 3. As used in this Act—

(1) The term "archaeological resource" means any material remains of past human life or activities [which are of archaeological interest,] as determined under uniform regulations promulgated pursuant to this Act. Such regulations containing such determination shall include, but not be limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items. Nonfossil-

ized and fossilized paleontological specimens, or any portion or piece thereof, shall not be considered archaeological resources, under the regulations under this paragraph, unless found in an archaeological context. No item shall be treated as an archaeological resource under regulations under this paragraph unless such item is at least 100 years of age.

(2) The term "Federal land manager" means, with respect to any public lands, the Secretary of the department, or the head of any other agency or instrumentality of the United States, having primary management authority over such lands. In the case of any public lands or Indian lands with respect to which no department, agency, or instrumentality has primary management authority, such term means the Secretary of the Interior. If the Secretary of the Interior consents, the responsibilities (in whole or in part) under this Act of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary of the Interior with respect to any land managed by such other Secretary or agency head, and in any such case, the term "Federal land manager" means the Secretary of the Interior.

(3) The term "public lands" means—

(A) lands which are owned and administered by the United States as part of—

- (i) the national park system,
- (ii) the national wildlife refuge system, or
- (iii) the national forest system; and

(B) all other lands the fee title to which is held by the United States, other than lands on the Outer Continental Shelf and lands which are under the jurisdiction of the Smithsonian Institution [;].

(4) The term "Indian lands" means lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for any subsurface interests in lands not owned or controlled by an Indian tribe or an Indian individual.

(5) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 688) et seq.

(6) The term "person" means an individual, corporation, partnership, trust, institution, association, or any other private entity or any officer, employee, agent, department, or instrumentality of the United States, of any Indian tribe, or of any State or political subdivision thereof.

(7) The term "State" means any of the fifty States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

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SEC. 6. (a) No person may excavate, remove, damage, or otherwise alter or deface, or attempt to excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public

lands or Indian lands unless such activity is pursuant to a permit issued under section 4, a permit referred to in section 4(h)(2), or the exemption contained in section 4(g)(1).

(b) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange any archaeological resource if such resource was excavated or removed from public lands or Indian lands in violation of—

(1) the prohibition contained in subsection (a), or

(2) any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

(c) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange, in interstate or foreign commerce, any archaeological resource excavated, removed, sold, purchased, exchanged, transported, or received in violation of any provision, rule, regulation, ordinance, or permit in effect under State or local law.

(d) Any person who knowingly violates, or counsels, procures, solicits, or employs any other person to violate, any prohibition contained in subsection (a), (b), or (c) of this section shall, upon conviction, be fined not more than \$10,000 or imprisoned not more than one year, or both: *Provided, however,* That if the commercial or archaeological value of the archaeological resources involved and the cost of restoration and repair of such resources exceeds the sum of ~~[\$5,000]~~ \$500, such person shall be fined not more than \$20,000 or imprisoned not more than two years, or both. If the case of a second or subsequent such violation upon conviction such person shall be fined not more than \$100,000, or imprisoned not more than five years, or both.

(e) The prohibitions contained in this section shall take effect on the date of the enactment of this Act.

(f) Nothing in subsection (b)(1) of this section shall be deemed applicable to any person with respect to an archaeological resource which was in the lawful possession of such person prior to the date of the enactment of this Act.

(g) Nothing in subsection (d) of this section shall be deemed applicable to any person with respect to the removal of arrowheads located on the surface of the ground.

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SEC. 10. (a) The Secretaries of the Interior, Agriculture and Defense and the Chairman of the Board of the Tennessee Valley Authority, after consultation with other Federal land managers, Indian tribes, representatives of concerned State agencies, and after public notice and hearing, shall promulgate such uniform rules and regulations as may be appropriate to carry out the purposes of this Act. Such rules and regulations may be promulgated only after consideration of the provisions of the American Indian Religious Freedom Act (92 Stat. 469; 42 U.S.C. 1996). Each uniform rule or regulation promulgated under this Act shall be submitted on the same calendar day to the Committee on Energy and Natural Resources of the United States Senate and to the Committee on Interior and Insular Affairs of the United States House of Representatives, and no such uniform rule or regulations may take effect

before the expiration of a period of ninety calendar days following the date of its submission to such Committees.

(b) Each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations under subsection (a), as may be appropriate for the carrying out of his functions and authorities under this Act.

(c) Each Federal land manager shall establish a program to increase public awareness of the significance of the archaeological resources located on public lands and Indian lands and the need to protect such resources. Each such land manager shall submit an annual report to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate regarding the actions taken under such program.

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**LEGISLATIVE HISTORY:
PUBLIC LAWS 100-533 to 100-647**

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**ARCHEOLOGICAL RESOURCES PROTECTION ACT
OF 1979, AMENDMENT**

P.L. 100-555, see page 102 Stat. 3778

DATES OF CONSIDERATION AND PASSAGE

Senate: October 11, 1988

House: October 13, 1988

**Senate Report (Energy and Natural Resources Committee) No. 100-569,
Sept. 30, 1988 [To accompany S. 1985]**

Cong. Record Vol. 134 (1988)

No House Report was submitted with this legislation.

SENATE REPORT NO. 100-569

[page 1]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1985) to improve the protection and management of archaeological resources on federal land, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE MEASURE

The purpose of the measure is to require Federal land managers to develop plans and schedules for surveys of cultural resources, and to develop documents for reporting suspected violations of ARPA and procedures for completing such reports.

BACKGROUND AND NEED

The Archaeological Resources Protection Act of 1979 (ARPA) toughened the laws protecting archaeological resources on Federal and Indian lands by imposing criminal penalties for unauthorized excavation, damage, destruction or removal of archaeological resources. However, looting and damaging of cultural resources on federal lands have continued.

A recent GAO report has found that about one-third of the known archaeological sites in the four-State area of its study (New Mexico, Colorado, Utah and Arizona) have been looted. The Federal Government's task of protecting the archaeological resources is complicated by the vast amount of lands under its control and the

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millions of archaeological sites on those lands. The four states mentioned above contain an estimated 2 million archaeological sites.

Concern has arisen that the actual level of looting activity and the current condition of the archaeological sites are unknown because staffing and funding constraints limit the agencies' abilities

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to monitor the sites and document looting incidents. The Bureau of Land Management, the Forest Service and the National Park Service have surveyed less than 6 percent of their lands for cultural resources and violations of laws protecting them.

S. 1985 would amend ARPA by adding a new section that would direct the Secretaries of the Interior, Agriculture, and Defense, and the Chairman of the Board of the Tennessee Valley Authority to develop plans for surveying lands under their control to determine the extent of archaeological resources on those lands. Secondly, the measure requires that those agencies prepare a schedule for the surveying of those lands that are likely to contain the most scientifically important archaeological resources. Finally, S. 1985 directs the four agencies to develop documents and procedures for the reporting of suspected violations of ARPA.

LEGISLATIVE HISTORY

S. 1985 was introduced on December 22, 1987 by Senators Domenici and Bingaman. A hearing was held by the Subcommittee on Public Lands, National Parks and Forests on September 14, 1988.

At the business meeting on Thursday, September 22, 1988, the Senate Committee on Energy and Natural Resources ordered S. 1985 favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on Thursday, September 22, 1988, by unanimous voice vote of a quorum present, recommends that the Senate pass S. 1985 as described herein.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 28, 1988.

HON. J. BENNETT JOHNSTON, JR.,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1985, a bill to improve the protection and management of archaeological resources on federal land, as ordered reported by the Senate Committee on Energy and Natural Resources, September 22, 1988. Enactment of this bill would have no significant impact on the federal budget or on those of state or local governments.

S. 1985 would direct the Chairman of the Tennessee Valley Authority and the Secretaries of Agriculture, Defense and the Interior

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to develop plans to survey and evaluate archaeological resources on federal lands. Most of these agencies are already carrying out similar activities, and the specific requirements of S. 1985 are not expected to add significantly to the cost of these existing programs.

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P.L. 100-555

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis, who can be reached at 226-2860.

Sincerely,

JAMES L. BLUM,
Acting Director.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1985. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact of personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 1985, as reported.

EXECUTIVE COMMUNICATIONS

On July 14, 1988, the Committee on Energy and Natural Resources requested legislative reports from the Departments of the Interior and Agriculture and the Office of Management and Budget setting forth executive views on S. 1985. These reports had not been received at the time the report on S. 1985 was filed. When the reports become available, the chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the appropriate agency at the Subcommittee hearing follows:

STATEMENT OF JERRY ROGERS, ASSOCIATE DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Mr. Chairman, I appreciate the opportunity to provide your Subcommittee with the views of the Department of the Interior on these bills.

We strongly recommend the enactment of S. 1814. Alternatively, we would recommend the enactment of H.R. 4068, if it is amended as discussed below.

We do not recommend enactment of S. 1985, because it duplicates existing authority and procedures already in practice by the land managing agencies.

All three bills would amend the Archaeological Resources Protection Act of 1979. That Act authorizes Federal land managers to issue permits to qualified persons for removal of archaeological items that are 100 years old or older. It prohibits the excavation or removal of archaeological resources without such a permit, and it prohibits the sale or trade of resources removed from public lands or Indian lands without a permit. Criminal penalties are estab-

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lished for violations, beginning with not more than \$10,000 or one year imprisonment for knowing violations. Civil penalties are also authorized.

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S. 1814 and H.R. 4068 would amend the 1979 Act in the following respects:

H.R. 4068 deletes the requirement that a resource to be protected under the Act must be "of archaeological interest"; no similar provision appears in S. 1814;

S. 1814 and H.R. 4068 make attempted violation of prohibited acts a crime in addition to actual violation as in the current law;

S. 1814 and H.R. 4068 reduce from \$5,000 to \$500 the value of resources which, if harmed, give rise to a doubling of the penalty; and

H.R. 4068 directs each Federal land manager to establish a public awareness program and submit an annual report thereon to the committees. No similar provision is contained in S. 1814.

We understand that the phrase "of archaeological interest" is deleted in H.R. 4068 because it has caused some confusion in some prosecutions for violations under the Act. While we do not object to this deletion, we believe it is unnecessary. The definition of "archaeological resource" in the existing regulations implementing the Act is clear and does not require any modification. If the committee adopts this provision we recommend that language in the committee report be included to affirm our belief that no change in the regulations is needed.

We strongly support making attempted violations a crime. Under existing law we cannot prosecute for looting archaeological resources until after the damage has occurred, and often then it is too late to save the material.

We also support lowering the value threshold to \$500. We understand that prosecutors frequently have difficulty in demonstrating to judge and jury that damage meets or exceeds the present threshold of \$5,000. The lower amount would probably not lessen the need for expert archaeological testimony about the cost of scientifically excavating and analyzing the resource and the cost of restoring and repairing a damaged resource, but judges and juries would more readily accept such testimony toward proving the lower value than the higher one.

H.R. 4068 would also require Federal land managers to establish a program to increase public awareness of the significance of archaeological resources on public lands, and the need to protect such resources. The bill would require each land manager to submit an annual report to the authorizing committees on the actions taken. We have no objection to a public awareness program concerning the need to protect archaeological resources, and we can do so under existing authority, but we see no need for an additional report. If the committees desire information on public awareness activities, it could be provided as part of the annual report to the Congress that is already required under the Act. We recommend the committee amend this provision such that the requirement to submit a report will be satisfied by information included in the

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annual report required under existing law, if the committee adopts H.R. 4068.

ARCHEOLOGICAL RESOURCES, AMEND.

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S. 1985 would direct Interior, Agriculture, Defense, and TVA to develop plans for archaeological surveys on their lands, prepare a schedule for surveying lands containing the most scientifically valuable archaeological resources, and develop documents for reporting suspected violations and procedures for completing such reports.

We believe these proposed requirements duplicate the planning and inventorying that land management agencies are already authorized to do. For example, the National Park Service already has cultural resource management plans for most of its units. These plans are designed to include evaluations of survey needs and plans for programming these surveys.

Moreover, the land-managing bureaus in Interior already have developed documents and instituted procedures for reporting violations of ARPA. The National Park Service has also developed additional training for Federal and State law enforcement and resource specialists on how to use ARPA when violations have occurred or are suspected. We are working with the other agencies to improve the systematic collection of ARPA violation data Government-wide. Additional plans and document requirements, such as are contained in S. 1985, are not necessary.

Accordingly, we oppose enactment of S. 1985.

This concludes my prepared testimony, Mr. Chairman. I would be pleased to respond to any questions you may have.

**STATEMENT OF WILLIAM L. RICE, DEPUTY CHIEF, FOREST SERVICE,
U.S. DEPARTMENT OF AGRICULTURE**

Mr. Chairman and members of the Subcommittee, thank you for this opportunity to offer the Department of Agriculture's views on S. 1814, H.R. 4068, and S. 1985, all of which would amend the Archaeological Resources Protection Act of 1979.

**S. 1814 AND H.R. 4068, TO STRENGTHEN THE ENFORCEMENT PROVISIONS
OF ARPA**

S. 1814 and H.R. 4068 would strengthen the Archaeological Resources Protection Act (ARPA). We support the enactment of S. 1814. We would also support the enactment of H.R. 4068 if amended as described below.

Both bills would amend section 6(a) of ARPA to make it possible to arrest and prosecute those who "attempt" to loot archaeological resources. ARPA is presently worded so that actual excavation, removal, damage, or defacing—and therefore archaeological resource damage—must occur before an arrest can be made. It is very difficult to catch violators in the act of looting. This amendment would make it possible to arrest, prosecute, and convict without damage to the resource.

Both bills would also amend section 6(d) of ARPA to lower the threshold between a misdemeanor and a felony from \$5,000 to \$500. Under current law, in order to obtain a felony conviction, we must prove that the commercial and archaeological value and the

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cost of restoration and repair of the archaeological resources exceeds \$5,000. Determining the commercial value and restoration and repair costs for vandalized resources is relatively easy and straight-forward. However, the archaeological value is subject to varying professional opinions, and is therefore difficult to determine and defend. Reducing the value to \$500 would increase the number of felony cases, because the commercial value and restoration and repair costs frequently exceed \$500. This would serve as a significant deterrent to archaeological resource vandalism and theft.

If these amendments to ARPA are enacted, we would anticipate a higher conviction rate, more felony convictions and, most importantly, a reduction in the looting of archaeological resources.

H.R. 4068 would amend section 3(1) of ARPA by changing the definition of the term "archaeological resource." The phrase "which are of archaeological interest" would be struck from the definition. This subjective test has proven troublesome, because there are widely differing opinions regarding what is "of archaeological interest." On the other hand, the definition of "archaeological resource" in existing ARPA regulations is clear and does not need to be changed. Therefore, while we do not object to this deletion, it is not necessary. If this language is deleted, however, we recommend that the Committee report clarify that no change in the regulations will be needed.

H.R. 4068 would also amend section 10 of ARPA to require Federal land managers to establish a public awareness program dealing with the significance of the archaeological resources on public lands and Indian lands, and require annual reports to Congress on this program. While we do not object to conducting a public awareness program, and have authority to do so, we believe the reporting requirement duplicates the annual report already required by ARPA. Therefore, we recommend against this additional reporting requirement.

S. 1985, TO IMPROVE THE PROTECTION AND MANAGEMENT OF
ARCHAEOLOGICAL RESOURCES

We oppose enactment of S. 1985.

S. 1985 would amend ARPA by adding a new section to require the Secretaries of the Interior, Agriculture, and Defense, and the Chairman of the Board of the Tennessee Valley Authority to develop plans and a schedule for archaeological surveys of lands under their control.

Presently, we conduct archaeological resource surveys on all National Forest lands where proposed land management activities could possibly disturb archaeological resources. We also survey areas where we believe there is a high probability of finding significant archaeological resources.

Additionally, cooperators, such as volunteers and universities, under the direction of the local Forest Supervisor, conduct surveys on National Forest lands. We do not, however, plan to survey the entire 190 million acres of the National Forest System. Because of the tremendous cost of implementing such a plan, and because many of the lands have a very low probability of containing impor-

ARCHEOLOGICAL RESOURCES, AMEND.

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tant archaeological resources, we believe a complete survey is unnecessary. We prefer to utilize sampling and other survey strategies to identify significant archaeological values on areas not involved in current land management activities.

Additionally, S. 1985 would require each Secretary to develop documents and a process for reporting suspected violations of ARPA. In 1982, we implemented the Law Enforcement Management Reporting System (LEMARS) in the Forest Service. LEMARS provides Forest Service managers with a means of identifying, monitoring, and evaluating law enforcement activities through statistical analysis of the information provided on law enforcement reports, such as warning and violation notices, incident reports, and court disposition updates. We believe that LEMARS meets the intent and purpose of S. 1985 in regard to a reporting system for ARPA violations.

Like any system, it is not without shortcomings. In some cases, adequate data is not provided to the system. Educating and motivating employees about LEMARS is an ongoing process. We believe, however, that LEMARS is as good as any new system that we could devise in response to S. 1985.

Mr. Chairman, this concludes my testimony. I would be pleased to answer any questions you may have.

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By Mr. DOMENICI:

S. 1314. A bill to amend the Archeological Resources Protection Act of 1979 to prohibit attempted excavation, removal, or defacing, and to reduce

the felony threshold value of illegally removed artifacts to \$500; to the Committee on Energy and Natural Resources.

ARCHAEOLOGICAL RESOURCES PROTECTION ACT
AMENDMENTS

Mr. DOMENICI. Mr. President, I rise today to introduce a bill that will make much-needed changes in the Archeological Resources Protection Act [ARPA]. ARPA was passed in 1979 to assure that archeological sites on public and Indian lands and the historic treasures which they contain would be protected against destruction and looting.

The measure that I am introducing will strengthen the provisions of ARPA by extending the coverage of ARPA to include the attempted destruction or looting of archeological sites and by making any theft or looting where the value of the artifacts involved is over \$500 a felony. This will allow more effective prosecution of individuals who plunder our public lands.

In recent years, the price of archeological treasures has skyrocketed. This has led to unscrupulous individuals digging up ancient artifacts on Federal land to sell to collectors. There are an estimated 2 million archeological sites in New Mexico, Arizona, Colorado, and Utah. Over 800,000 of these sites are in New Mexico alone. One-third of all recorded archeological sites in the Southwest have been looted. In southwestern New Mexico, 90 percent of the classic Mimbres sites, which date from approximately 1000 A.D., have been looted or destroyed. These pothunters are stealing the cultural history of the people of the United States.

Let me point out that the theft and destruction of archeological treasures is not only a southwestern problem. It also affects colonial sites in the Northeast, battlefields in the South, burial mounds in the Midwest, and other areas throughout our Nation. As a matter of fact, two-thirds of all the documented archeological vandalism on National Park Service land in 1985 occurred in the mid-Atlantic region.

Although the Antiquities Act of 1906 prohibited the taking of artifacts from Federal lands, until several years ago Federal law did not provide adequate protection against the loss and destruction of archeological sites and resources. Thousands of ancient Indian pots and other archeological artifacts had been stolen from Federal lands and the Federal authorities were powerless to stop it.

In order to put a halt to this practice, I sponsored legislation that became the Archeological Resources Protection Act. ARPA makes it illegal to excavate, remove, or damage archeological resources, such as pottery, baskets, rock carvings, and dwelling houses, found on Federal or Indian land without a permit. Under ARPA, it is also illegal to buy or sell archeological resources that were removed from

Federal or Indian land without a permit.

Where the value of the resource involved is greater than \$5,000, a violation of the provisions of ARPA is a felony and the offender is subject to a \$20,000 fine and 2 years in jail. Where the value of the resource is \$5,000 or less, the offense is a misdemeanor punishable by a maximum fine of \$10,000 and 1 year in jail. Persons who commit a second offense may be jailed for up to 5 years and may be fined up to \$100,000. ARPA also provides authority for civil penalties to be levied.

Yet despite the fact that there have been over 1,200 documented looting incidents in the Southwest since the enactment of ARPA, there have been only 27 ARPA convictions in the Southwest.

In the 99th Congress, I chaired a hearing in Albuquerque to review the implementation of ARPA and to identify ways to improve the enforcement of the act. Out of that hearing and additional subsequent inquiry, several conclusions came to light.

First, ARPA is an excellent act and is fundamentally sound.

Second, ARPA has led to a reduction in casual looting—looting by individuals as a "hobby," rather than for commercial purposes.

Third, commercial looting has continued, and even increased as the value of archeological treasures has increased.

Fourth, the level of archeological looting on Federal land is underreported.

Fifth, the problem of continued looting of archeological sites on Federal lands is primarily due to inadequate implementation and enforcement of ARPA.

Sixth, enforcement of ARPA is hampered by inadequate staffing, training, and funding.

Seventh, the general public and law enforcement personnel, prosecutors, and judges need to be educated about the seriousness of the problem of archeological looting and the need to enforce the provisions of ARPA.

Eighth, prosecution of ARPA offenses is hampered by the high felony threshold of the act and by the fact that the attempted stealing of a pot or destruction of an archeological site, as opposed to the actual looting or destruction of archeological resources, is not an offense under ARPA.

The bill I am introducing today addresses the provisions of ARPA which have made prosecution difficult.

Currently, in order for the looting of an archeological artifact on Federal land to be a felony, the value of the artifact must total \$5,000. This threshold of damage is too high, as demonstrated by the fact that three-quarters of all ARPA convictions are misdemeanor convictions. Expert witnesses often cannot place a market value on an artifact since each is unique. Even when a value can be established, the value of many artifacts—although

priceless from an historical and scientific vantage—does not reach the \$5,000 felony threshold. Finally, when a value can be determined, that value does not take into account the loss of scientific value when artifacts are removed from a site. Much of the value of archeological artifacts is the scientific knowledge gained by relating the artifacts to the site from which they come. Lowering the felony threshold to \$500 will remove this unnecessary obstacle to prosecution while continuing to assure that only crimes involving substantial injury are classified as felonies.

In addition, currently under ARPA, the attempted looting or destruction of an archeological site is not a crime. Actual damage must have occurred before a violation exists. One almost literally has to catch an individual with a shovel in one hand and a pot in the other. By that time it is too late. Although this loophole in the law has yet to become a serious impediment to the enforcement of ARPA, this loophole needs to be closed before cases are lost because of it. My bill would clarify that the attempted looting or destruction of an archeological site is an offense under ARPA.

Although my bill will remove obstacles to prosecution of pothunters and other archeological thieves under ARPA, we need to take other steps to assure that the archeological treasures that remain on Federal and Indian lands are preserved for future generations. We need to educate the public about the problem of archeological looting. Additional funds are needed to provide for enhanced enforcement of ARPA. Prosecutors must place a higher priority on ARPA cases, and judges need to hand out stiffer penalties for violations. I hope that when hearings are held on my bill the committee will explore ways to achieve these goals.

Mr. President, my bill will strengthen ARPA and remove obstacles to prosecution under the act. I hope that it will enjoy the support of the entire Senate, as we need to protect the archeological resources which are the irreplaceable heritage of all Americans.

Mr. President, I ask unanimous consent that the text of the bill which I am offering be printed in the Record at the conclusion of my remarks, as well as a letter of support for the Society for American Archeology.

There being no objection, the material was ordered to be printed in the Record, as follows:

S. 1314

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subsection (a) of section 6 of the Archeological Resources Protection Act of 1979 (Public Law 96-95; 16 U.S.C. 470e(a)) is amended by inserting after "deface" the following: ", or attempt to excavate, remove, damage, or otherwise alter or deface."

(b) The proviso of subsection (d) of section 6 (16 U.S.C. 470e(d)) is amended by

striking "\$5,000" and inserting in lieu thereof "\$8500".

SOCIETY FOR AMERICAN ARCHAEOLOGY,
OFFICE OF PUBLIC AFFAIRS,
Washington, DC, June 2, 1987.

Hon. PETE DOMENICI,
U.S. Senate, Washington, DC.

DEAR SENATOR DOMENICI: The Society for American Archaeology is pleased at your interest and concern for protecting archaeological resources. As you are aware, problems facing these resources are growing. Archaeological sites throughout the country are being robbed. Prehistoric and historic sites, civil war burials, Afro-American slave burials and Anasazi Indian burials, sacred sites and house pits, none are safe—all are being desecrated. Archaeological sites are similar to endangered species: once destroyed, they are gone forever.

The Society has been supporting a major initiative to address looting in several areas including increased funding, increased resource protection, staff training, increased prosecution of looters, and education of the public and the judicial system. We, therefore, welcome the opportunity to address the problems of archaeological vandalism and looting in Congressional legislation and hearings.

Your proposed legislation to amend the Archaeological Resources Protection Act offers a wonderful opportunity to help address the problem of archaeological looting and resource protection. We look forward to working closely with you on this.

If the Society for American Archaeology can be of any assistance to you please do not hesitate to contact us.

Sincerely,

LORETTA NEUMANN,
Washington Representative.®

ARCHAEOLOGICAL RESOURCES
PROTECTION ACT OF 1979
AMENDMENTS

Mr. VENTO. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4068) to amend the Archaeological Resources Protection Act of 1979 to strengthen the enforcement provisions of that act, and for other purposes, as amended.

The Clerk read as follows:

H.R. 4068

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AMENDMENTS TO ARCHAEOLOGICAL
RESOURCES PROTECTION ACT OF 1979

(a) Section 3(1) of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa and following) is amended by striking out "which are of archaeological interest".

(b) Section 3(3) of such Act is amended by striking out the semicolon at the end thereof and substituting a period.

(c) Section 6(a) of such Act is amended by inserting after "deface" the following: ", or attempt to excavate, remove, damage, or otherwise alter or deface".

(d) Section 6(d) of such Act is amended by striking "\$5,000" and inserting in lieu thereof "\$500".

(e) Section 10 of such Act is amended by adding the following new subsection at the end thereof:

"(c) Each Federal land manager shall establish a program to increase public awareness of the significance of the archaeological resources located on public lands and Indian lands and the need to protect such resources. Each such land manager shall submit an annual report to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate regarding the actions taken under such program."

The SPEAKER pro tempore. Is a second demanded?

Mr. MARLENEE. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Minnesota [Mr. VENTO] will be recognized for 20 minutes and the gentleman from Montana [Mr. MARLENEE] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Minnesota [Mr. VENTO].

GENERAL LEAVE

Mr. VENTO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to

revise and extend their remarks on the bill presently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. VENTO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 4068, a bill introduced by our colleague SAM GARDNER seeks to strengthen the enforcement of the Archaeological Resources Protection Act. In recent years, there has been growing recognition of the terrible pillaging of our Nation's archaeological resources. As the demand for remnants of our past has grown, and as prices for prehistoric pots and Civil War mementos have increased dramatically, the efforts to collect and sell these items have also greatly increased. Unfortunately each of these resources is unique and irreplaceable. Every such removal from public and Indian lands diminishes our Nation's heritage. Furthermore, when collected with hasty and unprofessional methods, valuable scientific information is destroyed and lost forever.

The Archaeological Resources Protection Act of 1979 sought to strengthen our ability to prevent such damage, and it has helped. But the threshold of \$5,000 for felonies has proven too high to get the convictions needed to stem this destruction. Felony convictions have not been obtained in any proportion to the extent of the crimes. H.R. 4068 as amended strengthens the ability to enforce the Archaeological Resources Protection Act, by lowering the felony threshold, by making attempted destruction of such resources criminal offenses, and by directing the Federal land managing agencies to establish programs to increase public awareness. Such programs will help the American public better understand the significance of archaeological resources and the need to protect them.

H.R. 4068 was also referred to the Judiciary Committee which was very helpful in examining the bill language and provided report language making clear that H.R. 4068 is not intended to override the provisions of the Criminal Code.

Mr. Speaker, I endorse this legislation and look forward to its enactment.

Mr. LAGOMARSINO. Mr. Speaker, this gentleman from California will be taking the place of the gentleman from Montana [Mr. MARLENE] at this point.

The SPEAKER pro tempore. Without objection, the gentleman from California [Mr. LAGOMARSINO] is recognized to manage the bill.

There was no objection.

Mr. LAGOMARSINO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the amended version of H.R. 4068 before

us today. These amendments to the Archaeological Resources Protection Act of 1979 are necessary to better ensure the original purposes of that act are achieved. Nine years after enactment of the Archaeological Resources Protection Act, destruction of irreplaceable archaeological resources on our Nation's public and Indian lands remains a nationwide concern. There has only been one felony conviction by jury under the law, and due to several problems with the existing law, prosecutions are usually pursued under other statutes. While the proposed amendments to the law can be expected to improve its effectiveness, it is widely recognized that minor modifications to the law alone will not stop this loss of our national archaeological heritage.

During the hearing and markup on this bill, concern was expressed by several Members regarding the age at which resources would become eligible for protection under this bill and the threshold dollar value at which a felony prosecution would be pursued. The amended version we are considering today retains the current 100-year age limitation for defining resources covered under this act and incorporates the recommendation of Mr. DOMINICK from the other body to establish \$500 as the threshold value for determination of a felony. The resolutions adopted for both of these provisions will best achieve the original purposes of the law.

I am especially pleased to point out the amendment to section 10 of the existing law which requires each Federal land manager to establish a program to increase public awareness of the significance of the archaeological resources on public lands. Only through raising the consciousness of the American public about our archaeological heritage through such programs as the "Take Pride in American Program" launched by Interior Secretary Hodel can we expect to be successful in protecting it.

Before closing, I want to commend the gentleman from Connecticut for his efforts in bringing a thoughtful proposal on this important issue before the subcommittee and the chairman, Mr. VENTO, for bringing forward a comprehensive proposal in a timely fashion.

I urge my colleagues to join me in support of the amended version of H.R. 4068.

Mr. GEJDENSON. Mr. Speaker, as the original sponsor of H.R. 4068, which strengthens the Archaeological Resources Protection Act of 1979 [ARPA], I am pleased to see this legislation brought up for consideration today. I would especially like to thank Representative BRUCE VENTO, chairman of the Subcommittee on National Parks and Public Lands, and Chairman UDALL for their willingness to move quickly on this vital legislation.

This bill, Mr. Speaker, is a product of an October 1987 field hearing in Cortez, CO, conducted by the Subcommittee on Oversight and Investigations, which I chair. Subsequent to the hearing, the subcommittee issued an investigative report detailing the extreme limitations of ARPA.

Archaeological resources on public lands, Mr. Speaker, belong to all Americans. These national treasures are being systematically and ruthlessly destroyed by professional looters.

The Interior Department and the Forest Service report that as much as 90 percent of the archaeological sites on Federal lands in the Southwest have been looted or vandalized. This high level of historical resource destruction cannot go unchecked.

The 8 years of experience since the passage of ARPA have demonstrated that there are weaknesses in the law that make it extremely difficult to prosecute looters. In fact, there has been only one ARPA felony conviction by jury since the law was passed.

Because of the weaknesses in ARPA, Federal prosecutors often resort to statutes other than ARPA to prosecute archaeological looters.

The compromise legislation before the House today makes four important changes to current law which will strengthen enforcement of ARPA and significantly reduce the level of looting of America's archaeological sites.

The first provision will change current law which requires that an artifact be worth \$5,000 before the crime can be prosecuted as a felony. The bill will lower the threshold to \$500 to bring in many more artifacts.

Second, it will make an attempt to excavate an archaeological site a prohibited activity under ARPA. This change will allow the prosecution of looters who are caught digging, but who haven't yet retrieved the object.

Third, it will strike the requirement under current law that an artifact must be of archaeological interest. This provision of current law only confuses juries and injects a subjective view of archaeological resources into the courtroom.

Fourth, it will require each Federal land manager to establish a program to increase public awareness of the significance of archaeological resources.

Mr. Speaker, this legislation will reverse the shocking increase in recent years in archaeological site looting. The U.S. attorneys in Arizona and Utah, who are partly responsible for prosecuting cases under ARPA, believe that the compromise bill will lead to a dramatic increase in prosecutions under the law.

I urge my colleagues to support this legislation before more of America's history is dug up and auctioned off forever.

□ 1600

Mr. Speaker, I yield back the balance of my time.

Mr. VENTO. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MONTGOMERY). The question is on the motion offered by the gentleman from Minnesota [Mr. VENTO] that the

July 26, 1988

CONGRESSIONAL RECORD—HOUSE

18903

House suspend the rules and pass the bill, H.R. 4068, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

On public lands across our Nation, pot hunters and other archaeological looters are digging through ancient Indian pueblos, historic Spanish shipwrecks, and the graves of Civil War soldiers and Native Americans, then stealing artifacts for a collection or sale.

For example, an Arizona man was recently caught after he tried to sell a 1,350-year-old mummy of a Hohokam Indian infant to an undercover Federal agent for \$35,000. This man had found the mummy—wrapped in a deer skin with several baby animal pelts, a small basket, and an unfinished woven mat—in a cave on National Forest land. The man said that, since he found the mummy and artifacts on Federal land, he thought they were his to keep.

What makes this case unusual is the fact that he was caught, convicted, and sentenced to jail for his crime. Most thefts of archaeological resources on public lands are not detected in time to apprehend the culprits. And in the rare instance of an arrest, the thieves are hardly ever punished.

After holding oversight hearings in 1985 on the problem of looting of archaeological artifacts on public lands, Senators WALLOP and BINGAMAN and I requested that the General Accounting Office (GAO) review the problem.

The GAO report was issued last December. It found that approximately 44,000 of the 136,000 archaeological sites in the Four Corners States of New Mexico, Arizona, Colorado, and Utah have been looted. In a 5½ year period ending in 1986, the Bureau of Land Management (BLM), the Forest Service, and the National Park Service documented 1,222 looting incidents in the four States.

Yet GAO concluded that these three agencies lack accurate documentation on the extent of looting. Agency records do not reflect the full extent of looting, either the current level of looting or its cumulative effects. There are no agencywide directives specifying under what circumstances a looting incident report should be prepared. In many instances, no report is prepared.

GAO determined that some of the factors in the continued looting of archaeological resources were the low probability of prosecution, the public attitude that looting was not really a crime, and the lack of education about the significance of archaeological sites.

In addition, GAO noted that BLM, the Forest Service, and the Park Service lack sufficient staff, funds, and knowledge of the resources they are supposed to protect to carry out effectively their cultural management responsibilities.

GAO concluded that the three agencies' efforts have not been extensive enough to cause commercial looters to

PROTECTION AND MANAGEMENT OF ARCHAEOLOGICAL RESOURCES ON FEDERAL LANDS

The bill (S. 1985) to improve the protection and management of archeological resources on Federal land, was considered.

Mr. DOMENICI. Mr. President, imagine the hue and cry that would rise across our Nation if someone, in the dead of night, dug up Plymouth Rock and carted it off for his own private collection.

The public would be outraged, and justifiably so.

Plymouth Rock holds an important place in our national historic and cultural heritage. It belongs to each of us.

Well, Mr. President, similar events are occurring daily across our land, and the hue and cry has yet been heard. I'm talking about the theft of our Nation's archaeological resources. It's time that we sound the alarm before our cultural resources—which are the common heritage of all Americans—are lost forever.

Archaeological resources are like endangered species: once they are destroyed, they are gone forever.

fear being caught, and thus cease looting.

Archaeological resources located on Federal land have been protected since 1906, when Congress enacted the Antiquities Act. The Antiquities Act provides that qualified institutions may be issued permits for the excavation of archaeological sites. It also provides criminal penalties for unauthorized excavations.

However, in the late 1970's, the courts invalidated a crucial section of the Antiquities Act, thus creating the need for stronger legislation.

In 1979, I wrote the Archaeological Resources Protection Act (ARPA). ARPA toughened the laws protecting archaeological resources on Federal lands by imposing severe criminal penalties for unauthorized excavation, damage, destruction, or removal of archaeological resources. It provides fines up to \$100,000 and five years in jail for criminal violations. It also allows Federal land managers to impose civil penalties for violations and grant rewards for information on violations.

Mr. President, the Senate now has before it S. 1985, a bill that I introduced that would amend ARPA to improve the protection and management of archaeological resources on Federal lands.

The recently released GAO study found that the BLM, Forest Service, and the National Park Service have surveyed less than 6 percent of their lands in the Four Corners States for cultural resources and violations of laws protecting them. Only 7 percent of the estimated 2 million archaeological sites in the Four Corners States have been recorded. Most of the archaeological surveys performed in recent years have been conducted to obtain clearances for development projects and, therefore, are not necessarily directed at those areas having the greatest archaeological resource potential.

S. 1985 would strengthen the provisions of ARPA by directing BLM, the Park Service, the Forest Service, and other Federal agencies to develop plans to survey the lands under their control to determine the nature and extent of archaeological resources on those lands.

This bill would also require the agencies to prepare a schedule for surveying those areas that are likely to contain the most important archaeological resources.

The land management agencies could make more efficient and effective use of the funds and staff resources that are available for protecting their archaeological sites if they had more information on the number, location, and relative significance of these sites.

If the agencies do not locate and protect their most important archae-

ological resources, looters may destroy these resources before the agencies identify them.

Finally, S. 1985 directs the agencies to develop processes for reporting suspected incidents of looting of archaeological resources on their lands.

Improved documentation of looting activity would provide the land management agencies with better data to use in deciding the amount of funds and staff to request for, and allocate to, the protection of sites and to the apprehension and prosecution of looters.

The provisions of S. 1985 were supported by the GAO in its report on the looting of archaeological resources.

Mr. President, we need to strengthen our laws. There is no doubt about that. But it isn't sufficient to simply strengthen existing statutes. We need to provide adequate resources and direction to the land management and law enforcement agencies to ensure that the laws are enforced.

Last year, the Congress provided significant increases in the BLM and Park Service budgets for cultural resource management.

Unfortunately, the President's budget for fiscal year 1989 proposed cuts in funding for cultural resource management. At the Forest Service, the proposed cut was \$2 million, or 13 percent. BLM cultural resource management programs were proposed to be decreased by 5 percent. Three Park Service programs for cultural resources management were slated for elimination.

The administration's proposed funding reductions were unjustified. Archaeological looting is reaching crisis proportions. We need to provide our land management agencies with adequate resources to confront this crisis.

I am pleased that the Congress agreed with me and rejected the administration's proposals.

The Interior Appropriations Act just signed by the President increases the Forest Service cultural resources management budget by 13 percent over its current level, bringing it to \$15.9 million.

The act continues the three Park Service cultural resources management programs that the administration proposed to eliminate. These programs will be funded at their current level of \$49 million.

The Interior Appropriations Act also increases BLM's budget for cultural resources management by \$400,000 above the President's request, thus restoring it to its base level of \$6.6 million.

Last year, at my urging, Congress also earmarked \$1 million in the Department of Justice budget to be used to enhance efforts to identify and prosecute individuals who loot archaeological sites on Federal land.

Mr. President, it is clear that the Federal Government's efforts to protect archaeological resources on the lands under its control have been woefully inadequate. We stand by while our Nation's archaeological heritage is stolen and sold as quaint curios. Just as we would not stand idly by and allow the theft of Plymouth Rock, we can no longer allow this to continue.

The failure to protect our Nation's archaeological resources constitutes a breach of faith by the Federal Government. As the trustee of these lands for the American people, the Federal Government has an obligation to assure that these resources are not destroyed or stolen by those who have no respect for the past.

I urge the Members of the Senate to keep faith with the Americans of the past and the Americans of the future and support S. 1985 to extend greater protection to the archaeological resources of our Nation.

The bill (S. 1985) ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 1985

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Archaeological Resources Protection Act of 1979 (Public Law 96-95; 16 U.S.C. 4701) be amended to add the following new section after section 13:

"Sec. 14. The Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Board of the Tennessee Valley Authority shall—

"(a) develop plans for surveying lands under their control to determine the nature and extent of archaeological resources on those lands;

"(b) prepare a schedule for surveying lands that are likely to contain the most scientifically valuable archaeological resources; and

"(c) develop documents for the reporting of suspected violations of this act and establish when and how those documents are to be completed by officers, employees, and agents of their respective agencies."

Mr. LAGOMARSINO. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Minnesota [Mr. VENTO] will be recognized for 20 minutes and the gentleman from California [Mr. LAGOMARSINO] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Minnesota [Mr. VENTO].

GENERAL LEAVE

Mr. VENTO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on S. 1985, the Senate bill now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. VENTO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, S. 1985 amends the Archeological Resource Protection Act to direct the Secretaries of the Interior, Agriculture, Defense, and the Chairman of the Board of the Tennessee Valley Authority to develop plans for surveying the lands under their control to assess the nature and extent of archeological resources found there. The bill also directs them to prepare a schedule for surveying those lands expected to have the most scientifically valuable archeological resources. Finally, S. 1985 directs these agency heads to develop means of reporting suspected violations of the Archeological Resources Protection Act.

The principle behind S. 1985 is quite simple: agencies must know what resources they have before they can adequately protect those resources. Agencies should be doing such surveys anyway, but have not been doing them in any proportion to the need. In the meantime, looting of our Nation's archeological heritage continues at an astounding rate. Looters trying to find a few intact pots often damage entire archeological sites and make retrieval of the scientific information such sites contain impossible. That is a loss of our heritage in both tangible artifacts and in knowledge about the past.

S. 1985 makes it very clear that we in the Congress expect archeological resources to receive better protection. It will help in the creation of appropriate data bases for agencies charged with managing vast amounts of land with extensive archeological resources. It will enable us to better protect our Nation's archeological resources. Mr. Speaker, I endorse S. 1985 and urge its passage.

Mr. Speaker, I reserve the balance of my time.

Mr. LAGOMARSINO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the chairman of the subcommittee, the gentleman from Minnesota [Mr. VENTO] has explained the bill very well, and adequately. What it does is to direct the BLM, the Park Service, Forest Service, the chairman of the board of the TVA, and other Federal land managers to survey what they have in the way of archeological resources so we can protect them.

Mr. Speaker, I cannot think of anything more important that they should be doing in any event, so I strongly support the bill and urge my colleagues to vote for this bill.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. VENTO. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Minnesota [Mr. VENTO] that the House suspend the rules and pass the Senate bill, S. 1985.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

□ 1400

IMPROVING PROTECTION AND MANAGEMENT OF ARCHEOLOGICAL RESOURCES ON FEDERAL LAND

Mr. VENTO. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 1985) to improve the protection and management of archeological resources on Federal land.

The Clerk read as follows:

S. 1985

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Archeological Resources Protection Act of 1979 (Public Law 96-95; 16 U.S.C. 470ii) be amended to add the following new section after section 13:

"Sec. 14. The Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Board of the Tennessee Valley Authority shall—

"(a) develop plans for surveying lands under their control to determine the nature and extent of archeological resources on those lands;

"(b) prepare a schedule for surveying lands that are likely to contain the most scientifically valuable archeological resources; and

"(c) develop documents for the reporting of suspected violations of this act and establish when and how those documents are to be completed by officers, employees, and agents of their respective agencies."

The SPEAKER pro tempore. (Mr. GONZALEZ). Is a second demanded?

lowing: ", or attempt to excavate, remove, damage, or otherwise alter or deface".

[(d)](c) Section 8(d) of such Act is amended by striking "\$5,000" and inserting in lieu thereof "\$500".

[(e)](d) Section 10 of such Act is amended by adding the following new subsection at the end thereof:

"(c) Each Federal land manager shall establish a program to increase public awareness of the significance of the archaeological resources located on public lands and Indian lands and the need to protect such resources. Each such land manager shall submit an annual report to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate regarding the actions taken under such program."

The amendments were agreed to.

The amendments were ordered to be engrossed, the bill was read the third time, and passed.

ARCHAEOLOGICAL RESOURCES PROTECTION ACT AMENDMENTS

The Senate proceeded to consider the bill (H.R. 4068) to amend the Archaeological Protection Act of 1979 to strengthen the enforcement provisions of that Act, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italics.)

H.R. 4068

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AMENDMENTS TO ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979.

[(a) Section 3(1) of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa and following) is amended by striking out "which are of archaeological interest".]

[(b)](a) Section 3(3) of such Act is amended by striking out the semicolon at the end thereof and substituting a period.

[(c)](b) Section 8(a) of such Act is amended by inserting after "deface" the fol-

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Minnesota [Mr. VENTO] will be recognized for 20 minutes, and the gentleman from Idaho [Mr. CRAIG] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Minnesota [Mr. VENTO].

GENERAL LEAVE

Mr. VENTO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate amendments to H.R. 4068 now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There is no objection.

Mr. VENTO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, our Nation's archeological heritage is being plundered for the profit of a few people. In the process, we are losing much information about our past and about those peoples who lived on this continent before us. In their search for a few commercially valuable pots, looters destroy home sites, burial sites and all the scientific evidence that could be used to gain greater understanding of how these people lived.

The destruction of archeological resources goes back many decades. A few years ago, the Archeological Resources Protection Act established various penalties against such destruction. Now, we recognize that the Archeological Resources Protection Act needs to be modified to provide for increased latitude in prosecuting such cases. On July 26, the House passed H.R. 4068 to strengthen the enforcement penalties of the Archeological Resources Protection Act by lowering the felony threshold from \$5,000 to \$500, by making "attempts" criminal actions. As amended, H.R. 4068 also deletes the test "of archeological interests" and adds a provision directing agencies to establish programs to increase public awareness of the significance of archeological resources located on public lands.

Since then, the Senate amended H.R. 4068, by deleting section 1(a). We reluctantly concur in the Senate's amendment. We heard testimony that the phrase "of archeological interest" has confused juries. Too often, they have understood it to mean "of interest to archeologists." For that reason, we deleted it. The Senate's amendment would reinstate that phrase. I want to be very clear that "of archeological interest" refers to all products and evidence of human activity. The 1984 regulations for the Archeological Resources Protection Act defines "of archeological interest" to include all

of the material remains of our predecessors' lives that can provide scientific or humanistic understanding of their lives. The test is not whether archeologists find something of interest but whether such evidence is useful in understanding past human activity. After all, many of us interested in, and concerned about, archeological resources are not archeologists. These resources are part of all of our heritage, and so should be treated. H.R. 4068 will ensure better protection for our Nation's archeological heritage and so I urge its passage.

Mr. Speaker, I yield such time as he may consume to the gentleman from Connecticut [Mr. GEJDENSON].

Mr. GEJDENSON. Mr. Speaker, as the sponsor of H.R. 4068, I am proud to rise in support of its passage today by the House. I would also like to engage in a brief colloquy with Representative VENTO, the chairman of the National Parks and Public Lands Subcommittee, at the conclusion of my statement.

I would first like to thank Chairman VENTO for his assistance in moving this legislation forward. I would also like to thank Chairman UDALL for his strong support for the bill.

Mr. Speaker, the need for this legislation has been demonstrated in testimony before the Subcommittee on General Oversight and Investigations, which I chair. Archeological resources on public lands, which belong to all Americans, are being systematically looted for personal profit. Thousands of years of native-American history, as well as the history of more recent societies, have been carted off for sale in high-price art galleries in our Nation's largest cities.

This illegal activity diminishes our ability to understand and interpret the history of native Americans as well as American history in general. It takes archeological resources out of their original setting, or out of the hands of professional archeologists, and into the homes of wealthy collectors.

In fact, 90 percent of the archeological sites on Federal lands in the Southwest have been looted and vandalized. While Congress passed the Archeological Resources Protection Act [ARPA] in 1979 to protect these resources, the law has only been used once to convict a looter.

H.R. 4068 will strengthen ARPA and allow prosecutors to go after archeological site looters with the full force of the law. By lowering the felony threshold from \$5,000 to \$500, and by making attempt to loot a site a felony, many more looters will be brought to justice.

Unfortunately, the other body removed a provision of H.R. 4068 which struck the requirement in current law that an archeological resource must be "of archeological interest" in order to

ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979 AMENDMENTS

Mr. VENTO. Mr. Speaker, I move to suspend the rules and concur in the Senate amendments to the bill (H.R. 4068) to amend the Archeological Resources Protection Act of 1979 to strengthen the enforcement provisions of that act, and for other purposes.

The Clerk read as follows:

Senate Amendment:
Page 1, strike out lines 5, 6, and 7.
Page 2, line 1, strike out "[(b)]" and insert: "(a)".

Page 2, line 3, strike out "[(c)]" and insert: "(b)".

Page 2, line 6, strike out "[(d)]" and insert: "(c)".

Page 2, line 8, strike out "[(e)]" and insert: "(d)".

The SPEAKER pro tempore. Is a second demanded?

Mr. CRAIG. Mr. Speaker, I demand a second.

be covered by the law. It was my concern that this phrase could allow defense lawyers to try to convince juries of their clients' innocence due to a resource's significance. I am disappointed with the Senate's action. However, I feel that the 1984 regulations implementing ARPA, combined with statements made on the House floor today, will clearly establish the intent of Congress that the phrase "of archeological interest" never be used to justify lenient treatment of looters.

I concur with Chairman VENTO's statement that "of archeological interest" refers to all products and evidence of human activity. The 1984 regulations implementing the phrase "of archeological interest" clearly include all of the material remains of human lives.

Mr. Speaker, I would like to engage the gentleman from Minnesota, Mr. VENTO, chairman of the Subcommittee on National Parks and Public Lands, in a colloquy on provisions of H.R. 4068.

As long as the Federal land manager with jurisdiction over a particular resource or a State historic preservation officer believes that an archeological resource can potentially provide scientific or humanistic understanding of past human behavior, cultural adaptation or related topics, is it the committee's intention that the discovery be declared "of archeological interest?"

Mr. VENTO. Mr. Speaker, will the gentleman yield?

Mr. GEJDENSON. I am happy to yield to the gentleman from Minnesota.

Mr. VENTO. Mr. Speaker, yes, it is.

Mr. GEJDENSON. I would ask the chairman, is it the committee's interpretation of ARPA that the phrase "of archeological interest" is not contingent upon whether archeologists find an archeological resource of academic interest or the prevalence of a certain type of archeological resource?

Mr. VENTO. Yes, it is.

Mr. GEJDENSON. Once Federal land managers have begun the implementation of the public awareness provisions of this legislation, is it the committee's intention that prosecutors can assume that the public and Federal land managers are aware of the significance and interest of archeological resources within the jurisdiction of each Federal land manager?

Mr. VENTO. Yes, that is the committee's intention.

Mr. GEJDENSON. Mr. Speaker, I again thank Chairman VENTO and Chairman UDALL for moving this legislation forward. I would also urge my colleagues to approve this legislation today in order to put teeth into efforts to protect America's quickly diminishing archeological resources.

Mr. VENTO. Mr. Speaker, I reserve the balance of my time.

Mr. CRAIG. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the amended version of H.R. 4068 before us today. The bill is virtually identical to legislation which passed this body in July, except that it removes the provision revising the definition of archeological resources under the Archeological Resources Protection Act of 1979 [ARPA]. The effect of this change is to leave in place the requirement that artifacts must be of "archeological interest" in order to meet the definition of an archeological resource. Although this definition has proven troublesome in the past, the alternative may have resulted in similar problems. In any event, this is one issue which Congress may have to revisit in a more comprehensive fashion at some point in the future.

During House committee action on H.R. 4068, I, along with several of my colleagues, expressed concern regarding the change in the age, from 100 years to 50 years, at which resources would become eligible for protection under ARPA. I am pleased that this legislation retains the current 100-year age limitation which I believe is appropriate.

Mr. Speaker, I believe the amendments embodied in H.R. 4068 will serve to strengthen the enforcement of the Archeological Resources Protection Act. Therefore, it is an important step forward as we continue our efforts to protect our Nation's significant archeological resources and preserve our Nation's heritage.

I urge my colleagues to approve H.R. 4068 today and send it to the President for his signature.

Mr. Speaker, I yield back the balance of my time.

Mr. VENTO. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MURTHA). The question is on the motion offered by the gentleman from Minnesota [Mr. VENTO] that the House suspend the rules and concur in the Senate amendments to the bill, H.R. 4068.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendments were concurred in.

A motion to reconsider was laid on the table.

**NATIVE AMERICAN GRAVES PROTECTION AND
REPATRIATION ACT**

P.L. 101-601, see page 104 Stat. 3048

DATES OF CONSIDERATION AND PASSAGE

House: October 22, 27, 1990

Senate: October 26, 1990

**House Report (Interior and Insular Affairs Committee) No. 101-
877, Oct. 15, 1990**

[To accompany H.R. 5237]

**Senate Report (Indian Affairs Committee) No. 101-473,
Sept. 26, 1990**

[To accompany S. 1980]

Cong. Record Vol. 136 (1990)

*The House bill was passed in lieu of the Senate bill. The House
Report is set out below.*

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The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 5237) to provide for the protection of Native American graves, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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PURPOSE

The purpose of H.R. 5237 is to protect Native American burial sites and the removal of human remains, funerary objects, sacred objects, and objects of cultural patrimony on Federal, Indian and Native Hawaiian lands. The Act also sets up a process by which Federal agencies and museums receiving federal funds will inven-

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tory holdings of such remains and objects and work with appropriate Indian tribes and Native Hawaiian organizations to reach agreement on repatriation or other disposition of these remains and objects.

BRIEF SUMMARY

H.R. 5237, the Native American Grave Protection and Repatriation Act, achieves two main objectives. The first objective deals with Native American human remains, funerary objects, sacred objects and objects of cultural patrimony which are excavated or removed from Federal or tribal lands after the enactment of the Act.

The Act calls for any persons who wish to excavate such items or other archeological items to do so only after receiving a permit pursuant to the Archeological Resources Protection Act (P.L. 96-96). If any of such remains or objects are found on Federal lands and it is known which tribe is closely related to them, that tribe is given the opportunity to reclaim the remains or objects. If the tribe does not want to take possession of the remains or objects, the Secretary of the Interior will determine the disposition of the remains or objects in consultation with Native American, scientific and museum groups.

The Act also addresses those cases involving the incidental discovery of such items on Federal land by persons engaged in other activities such as mining, construction, logging or other similar endeavors. When one or more of these items are found in this manner, the activity must temporarily cease and a reasonable effort must be made to protect the item. Written notification must be made to the Federal land manager in charge and notification must also be given to the appropriate tribe or Native Hawaiian organization if known or easily ascertainable.

Penalties are included for selling, or otherwise profiting from, any Native American human remains, funerary objects, sacred objects or objects of cultural patrimony acquired in violation of this Act.

The second main objective addressed in this Act deals with collections of Native American human remains, associated and unassociated funerary objects, sacred objects, and objects of cultural patrimony currently held or controlled by Federal agencies and museums.

Within 5 years of enactment, all Federal agencies and all museums which receive federal funds, which have possession of, or control over, any Native American human remains or associated funerary object (items which are found with a specific body), are to compile an inventory of such remains or objects and, with the use of available information they have, attempt to identify them as to geographical and cultural affiliation. Upon completion of the inventory, the appropriate tribe or Native Hawaiian organization is to be contacted. If it is clear which tribe or Native Hawaiian organization is related to the remains or objects and that tribe or organization wishes the return of the items, they are to be returned.

Instead of an object-by-object inventory, a written summary of unassociated funerary objects (those items which are known to be funerary objects but are not connected to a specific body), sacred

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objects, and objects of cultural patrimony which are controlled by a Federal agency or museum is to be completed. The summary is to describe the collection, the number of objects in it, and roughly how, when, and from where the collection was received. Following the summary, the appropriate Indian tribe or Native Hawaiian organization is to be contacted and the two sides are to meet to discuss the future disposition of the items in question.

This Act allows for the repatriation of culturally affiliated items as well as any other agreement for disposition or caretaking which may be mutually agreed upon by involved parties.

BACKGROUND

Digging and removing the contents of Native American graves for reasons of profit or curiosity has been common practice. These activities were at their peak during the last century and the early part of this century.

In 1868, the Surgeon General issued an order to all Army field officers to send him Indian skeletons. This was done so that studies could be performed to determine whether the Indian was inferior to the white man due to the size of the Indian's cranium. This action, along with an attitude that accepted the desecration of countless Native American burial sites, resulted in hundreds of thousands Native American human remains and funerary objects being sold or housed in museums and educational institutions around the country.

For many years, Indian tribes have attempted to have the remains and funerary objects of their ancestors returned to them. This effort has touched off an often heated debate on the rights of the Indian versus the importance to museums of the retention of their collections and the scientific value of the items.

NATIONAL DIALOGUE ON MUSEUM/NATIVE AMERICAN RELATIONS

In 1988, the Senate Select Committee on Indian Affairs held a hearing on legislation which provided a process for the repatriation of Native American human remains. Several witnesses requested that the Committee postpone further action on the bill to allow the museum community and the Native American community to have an opportunity to enter into a dialogue on repatriation issues. The Committee agreed and, during 1989, the Barry M. Goldwater Center of Cross Cultural Communication of the Heard Museum in Phoenix, Arizona sponsored the Panel of National Dialogue on Museum-Native American Relations.

Several museum professionals, college professors (including archaeologists and anthropologists), and Indian representatives (including tribal and religious leaders) met and discussed various issues surrounding repatriation during this year-long dialogue.

The panel issued a report citing its findings and recommendations. The panel was not unanimous on all recommendations, but all members did agree that much was gained in understanding the views of others.

The panel recommended that all resolutions be governed by respect for the human rights of Native Americans and the value of scientific study and education. The majority believed that "Respect

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for Native human rights is the paramount principle that should govern resolution of the issue when a claim is made. . . ."

The Panel was split on what to do about human remains which are not culturally identifiable. Some maintained that a system should be developed for repatriation while others believed that the scientific and educational needs should predominate. The report strongly supported dialogue between museums and Indian tribes during all aspects of both the acquisition of sensitive materials, and repatriation requests. The Panel concluded that Federal legislation on this matter was needed.

NATIONAL MUSEUM OF THE AMERICAN INDIAN ACT

On November 28, 1989, the President signed into Public Law 101-185, the National Museum of the American Indian Act. This law established a museum for the American Indian to be built as part of the Smithsonian Institution. Testimony received during consideration of this legislation revealed that the Smithsonian Institution held thousands of Native American human remains and funerary objects. Several tribes and Native Hawaiians having cultural and historical affiliation with these remains stressed their great desire to have the remains of their ancestors returned to them. After long negotiations between interested parties, provisions were included in the legislation which authorized the repatriation of identifiable remains and funerary objects.

H.R. 1381—NATIVE AMERICAN BURIAL SITE PRESERVATION ACT OF 1989

On March 14, 1989, Representative Charles Bennett introduced H.R. 1381, the Native American Burial Site Preservation Act of 1989. This bill would prohibit excavations or removal of any content from any Native American burial site without a State permit. The bill provides penalties for violation with fines of not more than \$10,000 per violation. The bill provided that anything taken in violation of the legislation would become the property of the United States.

H.R. 1646—NATIVE AMERICAN GRAVE AND BURIAL PROTECTION ACT

On March 23, 1989, Representative Morris Udall introduced H.R. 1646, the Native American Grave and Burial Protection Act. This bill would make it illegal to sell, profit, or transport across state lines any Native American skeletal remains without written consent of the lineal descendants or of the governing body of the culturally affiliated tribe. Penalties of fines of not more than \$10,000 per violation would be assessed.

The bill would require all Federal agencies and instrumentalities to list and identify, within 2 years, all Native American skeletal remains and sacred ceremonial objects in their possession or control. Within 3 years, all agencies would notify appropriate tribes of their findings and, within 1 year of notification, the concerned tribe would decide whether or not it wanted the remains or objects returned. If the items were not acquired with the consent of the tribe or legitimate owner and the item is not needed for a scientific study the outcome of which would be of major benefit to the

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United States, the items are to be returned. Any museum not in compliance would not be eligible for further Federal funding.

H.R. 5237—NATIVE AMERICAN GRAVE PROTECTION AND REPATRIATION ACT

After the negotiations by the museum, Indian and scientific communities were completed, Representative Morris Udall introduced H.R. 5237, the Native American Grave Protection and Repatriation Act, on July 10, 1990. As introduced, this bill states that any Native American human remains, funerary objects, sacred objects, and objects of inalienable communal property that are found on Federal or tribal lands after the date of enactment would be considered owned or controlled by (in this order) lineal descendants, the tribe on whose land it was found, the tribe having the closest cultural affiliation with the item, or the tribe which aboriginally occupied the area.

Anyone who discovered any of the items covered by the provisions of the bill accidentally or through activities such as mining, logging, or construction would have to cease the activity, notify the Federal land manager responsible and the appropriate tribe, if known, and make a reasonable effort to protect the items before continuing the activity.

Anyone who profited in violation of the provisions of the bill would be fined in accordance with title 18, United States Code, imprisoned not more than one year, or both, with the penalty increasing to 5 years for a second violation.

All Federal agencies and museums receiving Federal funds which have control over any of the items covered in the bill would, within 5 years, have to inventory and identify the items, notify the affected tribes and make arrangements to return such items if the appropriate tribe made a request. If the Federal agency or museum shows that the item was acquired with the consent of the tribe or if the item was part of a scientific study which was expected to be of major benefit to the country, the request for repatriation could be denied.

As introduced, this bill established a review committee to be composed of 7 members, 4 of whom were to be from nominations made to the Secretary of the Interior from Indian tribes, Native Hawaiian organizations, and traditional Native American religious leaders. The committee's responsibilities would be to monitor the inventory and repatriation activities, review any questions as to the identity or return of any items, arbitrate among tribes any disputes relating to this Act, and compile an inventory of unidentifiable remains and recommend action for disposition of such remains.

Grants were made available to tribes to assist in the repatriation process and to museums to assist in the inventory and identification process.

LEGISLATIVE HEARING

On July 17, 1990, the Committee held a hearing on H.R. 1381, the Native American Burial Site Preservation Act of 1989; H.R. 1646, the Native American Grave and Burial Protection Act; and

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H.R. 5237, the Native American Grave Protection and Repatriation Act. Testimony was presented by professional scientific and museum associations, archaeologists, representatives of individual museums, Indian organizations, Tribal religious leaders, Native Hawaiian representatives, and private art dealers.

Much of the Indian testimony revolved around their rights to the remains and objects held by the museums and the information surrounding the acquisition of such items. Some Indian representatives testified that the spirits of their ancestors would not rest until they are returned to their homeland and that these beliefs have been generally ignored by the museums which house the remains and objects. There was testimony that non-Indian remains which are unearthed are treated much different than those of Indians. The non-Indian remains tend to be quickly studied and then reburied while so many Indian remains are sent to museums and curated.

Testimony received from the scientific community stressed the importance of human remains to scientific study and the need to learn for the future from the past. They expressed concern that if remains are reburied now they will be lost to science forever and not reachable when future study techniques are developed. Most testimony indicated the need for strong legislation to protect burial sites from being looted or desecrated in the future.

Testimony from the museum community stressed the responsibilities which museums have to maintain their collections and concern for liability surrounding repatriation. One witness described a situation where a museum returned Wampum Belts to a tribe. After long negotiations, a mutually agreed upon compromise was implemented whereby the tribe received the belts back to continue their ceremonies and the museum maintained access to the belts for legitimate study and educational purposes. Most agreed that museums needed to become more sensitive to the needs and desires of Native Americans whose remains and objects they house.

Witnesses representing private art dealers testified that Native Americans should not be the sole conservators of their cultural items because all Americans have a right to their history. The Art dealers present denied dealing in human remains per se but did admit that a war shirt in very good condition containing scalp locks could be sold for \$200,000 on the open market.

Discussion and testimony received by the Committee indicated that a process was needed by which Native Americans could gain access to collections housed in museums and Federal agencies.

COMMITTEE AMENDMENT

The Committee adopted an amendment in the nature of a substitute for H.R. 5237. The substitute was developed on the basis of issues and concerns expressed by witnesses at the Committee hearing, questions and positions of Committee Members, correspondence from concerned representatives of the Indian community, the museum and scientific community and the general public, and meetings with Administration officials and other interested parties. A detailed explanation of the substitute is contained in the Section-

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by-Section Analysis portion of this report. Certain major substantive changes effected by the substitute are discussed below.

DEFINITIONS

Definitions of several key terms used in the legislation were changed to tighten and clarify their meaning.

In the definition of "cultural affiliation", the requirement that a tribe show a "shared group identity which can be reasonably traced historically or prehistorically" is intended to ensure that the claimant has a reasonable connection with the materials. Where human remains and associated funerary objects are concerned, the committee is aware that it may be extremely difficult, in many instances, for claimants to trace an item from modern Indian tribes to prehistoric remains without some reasonable gaps in the historic or prehistoric record. In such instances, a finding of cultural affiliation should be based upon an overall evaluation of the totality of the circumstances and evidence pertaining to the connection between the claimant and the material being claimed and should not be precluded solely because of some gaps in the record.

The definition of "sacred objects" is intended to include both objects needed for ceremonies currently practiced by traditional Native American religious practitioners and objects needed to renew ceremonies that are part of traditional religions. The operative part of the definition is that there must be "present day adherents" in either instance. In addition to ongoing ceremonies, the Committee recognizes that the practice of some ceremonies has been interrupted because of governmental coercion, adverse societal conditions or the loss of certain objects through means beyond the control of the tribe at the time. It is the intent of the Committee to permit traditional Native American religious leaders to obtain such objects as are needed for the renewal of ceremonies that are part of their religions.

The definition of "Federal agency" includes the Smithsonian Institution "except as may be inconsistent with the provisions of Public Law 100-185". Public Law 100-185 refers to the Act authorizing the addition of the Museum of the American Indian to the Smithsonian Institution. The Committee does not wish to change the agreements reached under the Museum of the American Indian Act with respect to the inventory and repatriation of native American human remains and funerary objects, but does intend that the Smithsonian fulfill the obligations stipulated in H.R. 5237 regarding sacred objects and objects of cultural patrimony. The Committee further intends for the Smithsonian Institution to comply with obligations stipulated in H.R. 5237 with respect to unassociated funerary objects insofar as such obligations do not weaken those stipulated in Public Law 100-185.

The definition of "right of possession" in section 2(13) of the bill was amended to include language providing that nothing in the paragraph is intended to affect the application of relevant State law to the right of ownership of unassociated funerary objects, sacred objects or objects of cultural patrimony. The language was adopted to meet the concerns of the Justice Department about the possibility of a 5th amendment taking of the private property of

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museums through the application of the terms of the Act. While the Committee did not feel that implementation of the Act would give rise to such a taking, the language was accepted to make clear its intention. The language is not jurisdictional in nature. It does not confer or detract from the existing jurisdiction to determine ownership of an item covered by this Act. Depending upon the circumstances involved, the law which would be applicable by the court of competent jurisdiction could be Federal, State, or tribal. The definition of the right of possession will supplement any existing law in that respect.

The term "tribal land", as defined in section 2(15), is for purposes of this Act only and may be inapplicable in other circumstances. The Committee does not intend that the definition will be determinative of the status of land owned by Native Corporations pursuant to the Alaska Native Claims Settlement Act for any other purposes than for this Act.

OWNERSHIP

Section 3(d) refers to the inadvertent discovery of Native American remains and objects by persons engaged in an otherwise unrelated activity. Section 3(d)(1) states that, after there has been compliance with the other requirements of the subsection, "The activity may resume after a reasonable amount of time". Although a specific time limit was not added here, the Committee does intend to protect the remains and objects found and does not intend to weaken any provisions of other laws, such as Archeological Resources Protection Act, regarding similar situations.

INVENTORY

Section 5(d) refers to notification of Indian tribes and Native Hawaiian organizations no later than 6 months after completion of the inventory requirements. The Committee intends that tribes and organizations be notified as soon as possible after an inventory is completed. The allowance of 6 months to make the notification was added to assist small museums with very limited staffs.

SUMMARY

Due to the possible high number of unassociated funerary objects, sacred objects, and objects of cultural patrimony, this section is intended to make it easier for the Federal agencies, museums, and institutions of higher education to compile and survey the objects they have in their possession or under their control. It is also intended that there be a shorter time frame for completion of the summary (3 years) than for the item-by-item inventory to permit earlier contact with the appropriate tribe so open discussions can begin.

REPATRIATION

Section 7(b) refers to scientific studies the outcome of which would be of major benefit to the United States. The Committee recognizes the importance of scientific studies and urges the scientific community to enter into mutually agreeable situations with culturally affiliated tribes in such matters.

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SHARING OF INFORMATION

Section 7(d) refers to the sharing of information following the preparation of the initial inventory or summary. Any tribe which may have a cultural affiliation with certain items may request any additional available information needed to pursue a claim under the Act. All tribes which receive notice pursuant to the inventory process or those that should have received notice because of a potential cultural affiliation (regardless of whether the showing of such affiliation would be based upon museum records or non-museum sources) would have standing to request such information.

REVIEW COMMITTEE

One of the responsibilities of the Review Committee is to compile an inventory of culturally unidentifiable human remains and develop a process for their disposition. There is general disagreement on the proper disposition of such unidentifiable remains. Some believe that they should be left solely to science while others contend that, since they are not identifiable, they would be of little use to science and should be buried and laid to rest. The Committee looks forward to the Review Committees recommendations in this area. The Committee concurs with the Justice Department comments that section 7 does not accord binding legal force to the Review Committee's actions. As such, the bill did not have to be amended to conform the appointments procedures for the committee to the Constitution's appointments clause.

PENALTY

The penalty provision of section 9 is not meant to be an exclusive remedy for any disputes which may arise from the implementation or interpretation of the terms of the Act nor to preclude resort of any of the parties to remedies which may be available under other existing law.

SAVINGS PROVISIONS

Section 11(1)(B) preserves the right of all parties to enter into other mutually agreeable arrangements than those provided for in this Act. The Committee encourages all sides to negotiate in good faith and attempt to come to agreements, where possible, which would keep certain items available to all those with legitimate interests.

CONSULTATION

The term "consultation", wherever it appears in the bill, means a process involving the open discussion and joint deliberations with respect to potential issues, changes, or actions by all interested parties.

SECTION-BY-SECTION ANALYSIS

Section 1

This section cites this Act as the "Native American Grave Protection and Repatriation Act".

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Section 2

This section contains definitions of various terms used in the legislation.

Section 3

Subsection (a) provides that the ownership or right of control of any Native American human remains, funerary objects, sacred objects or objects of cultural patrimony found on Federal or tribal land after the date of enactment will be under the control of (in this order) lineal descendants, the tribe or Native Hawaiian organization on whose land the item was found, the tribe or Native Hawaiian organization which is the most closely affiliated with the item, or with the tribe or Native Hawaiian organization which is recognized by the Indian Claims Commission as having aboriginally occupied the area.

Subsection (b) provides that the ownership of any item covered under this Act which is not claimed under subsection (a) will be determined by regulations established by the Secretary of Interior after consultation with the review committee established in section 8 of this Act, Native American groups, representatives of museums and the scientific community.

Subsection (c) provides that items covered by this Act can be excavated from Federal or tribal lands if proof exists that a permit has been acquired in accordance with section 4 of the Archaeological Resources Protection Act, that the appropriate tribe or Native Hawaiian organization has been consulted or (in the case of tribal land) consents to the excavation, and if it is agreed that the right of control of any item covered by this Act which is unearthed will be determined in accordance with subsection (a) and (b).

Subsection (d) provides that anyone who discovers any item covered by this Act accidentally, or by an otherwise unrelated activity, on Federal or tribal land shall notify the head of the Federal entity having primary jurisdiction over the land in question and any appropriate tribe or Native Hawaiian organization if known or easily ascertainable. If the item was discovered during an activity such as logging, mining, or construction, the activity must stop and a reasonable effort must be made to protect the item before resuming the activity. This subsection further provides that, if the Federal land managers involved agree, the Secretary of Interior can be delegated the responsibility of such managers with respect to this Act.

Subsection (e) provides that nothing in this section will prevent the governing body of any tribe or Native Hawaiian organization from giving up their rights to any Native American human remains, funerary object or sacred object.

Section 4

Subsection (a) amends chapter 53 of title 18 of the United States Code by adding a new section at the end thereof as follows:

Subsection (a) of the new section provides that any person who knowingly sells, purchases, uses for profit, or transports for sale or profit the human remains of a Native American without the right of possession, as defined in the Native American Grave Protection and Repatriation Act, shall be fined in accordance with title 18 or

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imprisoned for not more than 12 months or both and, for subsequent violations, fined in accordance with title 18 or imprisoned for not more than 5 years or both.

Subsection (b) of the new section provides any person who similarly deals in Native American cultural items in violation of the Native American Grave Protection and Repatriation Act shall be liable to fines and prison terms similar to those provided in subsection (a).

Subsection (b) of section 4 of the bill amends chapter 53 to add the new section title, "Illegal Trafficking in Native American Human Remains and Cultural Items" to the chapter table of contents.

Section 5

Subsection (a) provides that any Federal agency or museum which has possession of, or control over, any Native American human remains or associated funerary objects is to inventory the items and list the geographic and cultural identity of each.

Subsection (b) provides that the inventory in subsection (a) shall be completed, after consultation with tribal and Native Hawaiian organizational officials and traditional religious leaders within 5 years and shall be made available to the review committee established in section 8. This subsection also uses and defines the term "documentation".

Subsection (c) provides for an extension of time for the inventory deadline if good faith can be shown by a museum.

Subsection (d) provides that, following completion of the inventory, all Federal agencies and museums shall notify the affected tribes or Native Hawaiian organizations of any determinations of cultural affiliation within 6 months. The notice shall include how each item was acquired, a list of the human remains and associated funerary objects which are clearly identifiable, and a list of the tribal origin all items which cannot be positively identified, but, given all information available, can be identified by a reasonable belief. This subsection further stipulates that all notices be sent to the Secretary of the Interior and published in the Federal Register.

Subsection (e) provides a definition of the term "inventory" which is used in this section.

Section 6

Subsection (a) provides that all Federal agencies and museums which possess, or have control over, any Native American unassociated funerary objects, sacred objects, or objects of cultural patrimony shall provide a written summary of the objects.

Subsection (b) provides that the summary be done in lieu of the item-by-item inventory of Section 5 and that it be followed by consultation with tribal and Native Hawaiian officials. The summary is to be completed within 3 years of the date of enactment of this Act.

Section 7

Subsection (a) provides for the return of human remains, associated funerary objects, unassociated funerary objects, sacred objects and objects of cultural patrimony which were identified pursuant

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to sections 5 and 6. It further calls for all returns to be completed in consultation with the requesting descendent, tribe or Native Hawaiian organization.

Subsection (b) provides that, if an item covered in this Act is needed for a specific scientific study the outcome of which would be of major benefit to the United States, the item may be kept for the duration of the study and returned within 90 days of completion.

Subsection (c) provides that, if a request is made for the return of an unassociated funerary object, sacred object or object of cultural patrimony, the requesting tribe or organization must first make a showing that the Federal agency or museum does not have a right of possession to that item. If this showing is made, the burden shifts to the agency or museum to show that it does have a right of possession to the object.

Subsection (d) provides that the Federal agency or museum shall share its information with the requesting descendant, tribe or Native Hawaiian organization to assist in making a claim under this section.

Subsection (e) provides that, where there are legitimate competing claims for any cultural item, the Federal agency or museum can retain the item until the requesting parties or the courts decide which requesting party is the appropriate claimant.

Subsection (f) provides that any museum which repatriates items in good faith will not be liable for any claims because of that repatriation.

Section 8

Subsection (a) provides for the establishment, by the Secretary of the Interior, of a committee to monitor and review the implementation of the provisions of this Act.

Subsection (b) provides that the committee shall have seven members, three of whom are to be from nominations submitted to the Secretary of Interior by tribes, Native Hawaiian organizations, and traditional Native American religious leaders with two of those being traditional religious leaders. Three are to be from nominations submitted to the Secretary by national museum organizations and scientific organizations and one who shall be appointed with the consent of the other six. It also provides that the members shall serve without pay but shall be eligible for reimbursement for expenses.

Subsection (c) provides for the responsibilities of the committee which shall be: to choose a chairperson; to monitor the inventory process; to review upon request any findings relating to the identification or return of any items covered by this Act; to facilitate the resolution of any disputes among or between tribes, Native Hawaiian organizations, lineal descendants, Federal agencies, or museums; to compile an inventory of unidentifiable human remains and recommend actions for their disposition; to consult with tribes and Native Hawaiian organizations on anything that affects them; to consult with the Secretary of the Interior in developing regulations to carry out this Act; and to make appropriate recommendations regarding the future care of cultural items to be repatriated.

Subsection (d) provides that the committee shall make its recommendations regarding unidentifiable human remains in consulta-

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tion with tribes, Native Hawaiian organizations, and museum and scientific groups.

Subsection (e) provides that the Secretary of the Interior will ensure that committee members have reasonable access to the items under review and all relevant materials.

Subsection (f) provides that the Secretary of the Interior shall establish rules and provide staff for the committee.

Subsection (g) provides that the committee submit an annual report to Congress.

Subsection (h) provides for the termination of the committee following certification to Congress by the Secretary of the Interior that its work is finished.

Section 9

Subsection (a), paragraph (1), provides that any museum that fails to comply with the requirements of the Act shall be assessed a civil penalty by the Secretary. No such penalty is to be assessed unless the museum has been given adequate notice and opportunity for hearing and each violation is to be a separate offense.

Paragraph (2) provides that the penalty to be assessed shall be determined by regulations promulgated under this Act taking into consideration the value of the item involved, damages suffered, and the number of violations.

Paragraph (3) authorizes the judicial review of any penalty assessed under this subsection by the Federal district courts.

Paragraph (4) provides that, if any museum fails to pay such a penalty after final administrative or judicial action, the Attorney General may initiate appropriate action to collect such penalty.

Paragraph (5) establishes powers and procedures for administrative actions to determine, assess and collect such penalties.

Section 10

Subsection (a) provides for grants to tribes and Native Hawaiian organizations to assist in the return of items covered in this Act.

Subsection (b) provides for grants to museums to assist in the inventory and summary requirements in this Act.

Section 11

Section 11 provides that nothing in this Act should be understood as limiting the authority of any Federal agency or museum to return any items covered in this Act or to stop or limit any other agreements which can be made regarding the disposition of such items. It further provides that this Act should not delay any current actions regarding the return of items. This section provides that this Act does not intend to restrict access to any court or limit any rights of individuals, Indian tribes, or Native Hawaiian organizations. It also states that it is not meant to limit the application of any State or Federal law pertaining to theft or stolen property.

Section 12

Section 12 recognizes the special relationship between the Federal government and Indian tribes and Native Hawaiian organizations.

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Section 13

Section 13 provides that the Secretary of the Interior shall promulgate regulations to carry out this Act within 12 months.

Section 14

Section 14 appropriates such sums as may be necessary to carry out this Act.

COST AND BUDGET ACT COMPLIANCE

The cost and budgetary analysis of H.R. 5237, as evaluated by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 15, 1990.

HON. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 5237, the Native American Grave Protection and Repatriation Act, as ordered reported by the Committee on Interior and Insular Affairs, October 10, 1990. CBO estimates that enactment of this legislation would cost the federal government between \$20 million and \$50 million over five years, assuming appropriation of the necessary funds. The range of total estimated costs is wide primarily because of uncertainty about the cost of compiling an accurate inventory of Native American human remains.

H.R. 5237 would regulate ownership, trade and disposition of Native American remains, burial objects, and objects of sacred or cultural significance. Human remains of funerary objects found on federal land would be returned to the most closely affiliated tribes, permits would be required for excavation of remains found on federal or tribal lands, and it would be illegal to trade in Native American remains of funerary objects.

H.R. 5237 also would require that federal agencies and museums that receive federal funding create inventories of Native remains and associated burial objects, notify tribes of their holdings and return objects to tribes upon request. The bill would require that inventories be completed within five years of enactment. Agencies and museums also would be required to summarize their holdings of other objects covered by the bill. A review committee would be established to oversee the process of repatriation, mediate disputes and review museums' progress in completing inventories. The bill would authorize the appropriation of such sums as are necessary for grants to assist museums in compiling inventories and to assist tribes in pursuing their claims. Although no funds are specifically authorized for federal agencies that have collections of remains and other objects, the estimated costs to these agencies (primarily the Department of the Interior and the Department of the Army) are included in this estimate. The largest federal collectors, the Smithsonian, is already covered by similar provisions in the National Museum of the American Indian Act.

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The main costs from enactment of H.R. 5237 would be the cost to federal agencies of preparing the inventories required by the bill and the cost of grants to museums to assist them in carrying out inventories. To some extent, the total cost is discretionary—the more funds made available, the more accurate and comprehensive will be the information collected by museums. This estimate represents the cost of compiling an initial inventory based on existing information. Two variables determine the cost: the number of remaining and associated objects and the cost to inventory each object. This estimate assumes that museums and federal agencies hold between 100,000 and 200,000 Native American remains that would have to be reviewed.

The cost of preparing an accurate inventory of the original and tribal affiliation of human remains can vary considerably depending on the information already available, the amount of research needed to accurately determine tribal affiliation and the contentiousness surrounding individual pieces. There is considerable disagreement about the nature of the inventory required by H.R. 5237, and widely varied estimates of costs. Based on the experience of museums that already have repatriated remains, we assume costs of \$50 to \$150 per remain, or a total cost of between \$5 million and \$30 million over five years, for museums to provide tribes with the basic information required by the bill. This estimate includes the costs of an inventory of museums' collections, as well as a review of existing information to determine origin. More extensive studies costing up to \$500-\$600 per remain would be necessary to determine the origin of some of the remains; however, such studies generally are not required by H.R. 5237. If museums were required to identify all of their holdings definitively, the costs of this bill would be significantly higher than the \$30 million estimate.

H.R. 5237 also would require an inventory of burial objects associated with the human remains, and a summary by each museum of their holdings of unassociated funerary objects, sacred objects or culturally important objects. CBO estimates that these inventories and summary studies would cost museums about \$10 million over 5 years.

Finally, H.R. 5237 would provide grants to tribes to assist them in the repatriation of the remains and objects covered in the bill. This effort could include assistance in pursuing tribal claims as well as assistance in repatriating the remains. CBO estimates costs of \$5 million to \$10 million over five years for these grants.

As operators of about one-third of all museums, state and local governments could face costs from enactment of H.R. 5237. Assuming appropriation of adequate amounts by the federal government, however, these costs would be covered by federal grants made available under the bill.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Marta Morgan, who can be reached at 226-2860.

Sincerely,

ROBERT D. REISCHAUER,
Director.

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INFLATIONARY IMPACT STATEMENT

Enactment of H.R. 5237 would have no significant impact on inflation.

OVERSIGHT STATEMENT

No specific oversight activities were undertaken by the Committee and no recommendations were submitted to the Committee pursuant to rule X, Clause 2.

COMMITTEE RECOMMENDATIONS

The Committee on Interior and Insular Affairs, by voice vote, approved the bill and recommends its enactment by the House, as amended.

EXECUTIVE COMMUNICATIONS

The Committee requested a report from the Department of the Interior on a similar bill, H.R. 1381, by letters dated June 19, 1989, and February 27, 1990, and on H.R. 1646 by letter dated February 27, 1990. No reports on these bills were received at the time of the filing of this report. Comments on H.R. 5237 from the Army Corps of Engineers, the Department of Justice and the Department of the Interior follows:

Executive communications received on this legislation are as follows:

DEPARTMENT OF THE ARMY,
Washington, DC, August 31, 1990.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This office is responding to your letter of July 13, 1990 requesting the views of the Army Corps of Engineers on H.R. 1381, 101st Congress the "Native American Burial Site Preservation Act of 1989", H.R. 1646, 101st Congress, the "Native American Grave and Burial Protection Act", and H.R. 5237, 101st Congress, the "Native American Grave Protection and Repatriation Act".

The purposes of the bills are to protect Native American burial sites on Federal lands from excavation and vandalism; to prevent the interstate sale of Native American remains; and, in the case of H.R. 1646 and H.R. 5237, to provide a mechanism by which cultural resources can be returned to their native tribe.

The Department of the Army shares your concern for the protection of Native American burial sites; however, these three bills, in our view, are problematic for a number of reasons.

First, many of the provisions in the bills overlap with the provisions of the Archaeological Resources Protection Act (ARPA), which already has a framework in place for the protection of Indian cultural resources. In the ARPA, the term "archaeological resource" would encompass Native American burial sites, as the term means "any material remains of past human life or activities which are of archaeological interest. . .". 16 U.S.C. 470bb. This

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Act authorizes Federal land management agencies to provide permits to persons for the purpose of excavating or removing archaeological resources on public lands. The Act provides that if a permit issued could result in harm to or destruction of any religious or cultural site, the Federal land manager must notify any Indian tribe which may consider the site as having religious or cultural importance. 16 U.S.C. 470cc(b), (c). To avoid duplication of existing law and confusion to program managers, additional protections to Native American burial sites should be framed as amendments to the ARPA.

In addition, we are concerned that some of the provisions in the bills are untenable and conflict with the ARPA. For instance, H.R. 1381 would prohibit the excavation of Native American burial sites, except as permitted by States under State law. This provision conflicts with section 4 of the ARPA, which provides for Federal permits for excavation of archaeological resources. We believe that jurisdiction for permits to excavate or remove Indian remains properly rests with the Federal Government. The Federal government has a fiduciary obligation to ensure that in the execution of laws that protect Indian property, full effect is given to that purpose. Moreover, there is an established rule of construction of the law that Congress' actions towards Indians are to be interpreted in light of the special relationship and special responsibilities of the Government towards the Indians. In our view, to transfer permitting authority to States would usurp the Federal Government's duty to ensure that the law be carried out for the benefit of Indians. Moreover, this provision raises jurisdictional questions as to whether a State can issue permits for activities on Federal property.

H.R. 1626 and H.R. 5237 also contain provisions that would prohibit excavation of Native American remains without notice to and consent of the affiliated Indian tribe or organization. From our perspective, these provisions create an impossible burden for Federal land managers. Whenever possible, the Army Corps of Engineers consults with cultural descendants when human remains and associated items are identified, and we enter into agreements with descendent tribes when sites are likely to contain human remains. Nevertheless, there are circumstances when cultural descendants may not be present or identifiable. By requiring consent from an affiliated tribe before any excavation could take place, these provisions could virtually stop the progress of any Corps project. Essentially, we oppose the overly strict requirements in these two bills, and would favor a balanced approach that would allow for a reasonable effort on the part of Federal land managers to consult with cultural descendants before an area was excavated.

Finally, you requested that the Corps include the current number of Native American skeletal remains and funerary objects in its possession or control and the policy regarding those items. At the present time, the Corps does not have an accurate number of those items for you. However, the Corps is currently revising its regulations on curation and collections management that would require all Corps offices to conduct inventories of curated cultural and human remains. When the regulation is further developed, the

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Corps will be able to proceed on a project by project basis to conduct the necessary inventories.

Sincerely,

ROBERT W. PAGE,
*Assistant Secretary of the
Army (Civil Works).*
C. EDWARD DICKEY,
*Acting Principal Deputy As-
sistant Secretary (Civil
Works).*

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, September 17, 1990.

HON. MORRIS K. UDALL,
*Chairman, Committee on Interior and Insular Affairs, House of
Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: This letter presents the views of the Department of Justice on two related bills: H.R. 5237, the "Native American Grave Protection and Repatriation Act," and H.R. 1646, the "Native American Grave and Burial Protection Act."

H.R. 5237 and H.R. 1646 are similar in substance. Both would protect and provide for repatriation of Native American human remains, objects associated with those remains, and other sacred objects. H.R. 5237 would also protect and provide for repatriation of a fourth category of objects—"inalienable communal property"—defined to include items "having historical, traditional, or cultural importance central to the Native American group or culture" H.R. 5237, § 2(6).¹

On the policy goals and efficacy of these bills, we defer to the federal agencies responsible for administration of Native American programs, particularly the Department of the Interior. As to the legal issues involved, however, we believe that both bills would raise concerns under the Takings Clause of the Constitution. U.S. Const., Amend. V (" . . . nor shall private property be taken for public use, without just compensation"). We first discuss a Takings Clause issue common to the repatriation provisions in both H.R. 5237 and H.R. 1646. We then discuss three further matters unique to one or the other bill.

1. *Repatriation.*—Both H.R. 5237 and H.R. 1646 would call upon private museums to return protected objects upon request from a Native American tribal body affiliated with the particular object. H.R. 5237, § 6(a)(1) and (b)(1); H.R. 1646, § 6.² The precise proce-

¹ A third bill—H.R. 1381, the "Native American Burial Site Preservation Act of 1989"—would prohibit excavation of a Native American burial site. H.R. 1381, § 3. The Department of Justice has no comments on this legislation.

² The term "museum," as used in either bill, would clearly encompass private museums. See H.R. 5237, § 2(9) ("museum" means "any person, State, or local government agency . . . that receives Federal funds and has possession of, or control over" protected objects); H.R. 1646, § 2(7) ("museum" means "any museum, university, government agency, or other institution receiving Federal funds which possesses or has control over any Native skeletal remains or ceremonial objects").

Both bills would also permit requests for repatriation to be made to federal agencies and federal museums. H.R. 5237, § 6(b); H.R. 1646, § 6. This aspect of the two bills does not implicate

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dures for repatriation differ between the two bills. Under H.R. 5237, requests addressed to private museums would turn upon the results of an inventory of Native American objects that the museum itself would be required to complete. H.R. 5237, § 6(a)(1). Only if a private museum establishes the origin of a particular protected object as part of the required inventory may a request for repatriation of that object be made. *Id.* By contrast, H.R. 1646 would not require private museums to conduct inventories, *see* H.R. 1646, § 5 (only federal agencies and instrumentalities must conduct inventories), nor would it make requests for repatriation to any type of museum dependent upon the results of any inventories.

The two bills also differ concerning the grounds upon which a private museum may refuse a request for repatriation. Under H.R. 5237, a private museum would need to show "by a preponderance of the evidence that [it] has right of possession to [the requested] remains or objects." H.R. 5237, § 6(c)(1). H.R. 5237 would define "right of possession" to mean "possession obtained with the voluntary consent of an individual or group that had authority of alienation." H.R. 5237, § 6(d). Under H.R. 1646, a private museum need not grant a request for repatriation if the object sought was "acquired with the consent of the tribe or the Native American owners of such items" or, in the case of skeletal remains, is "indispensable for the completion of a scientific study, the outcome of which would be of major benefit to the United States." H.R. 1646, § 6 (1) and (2).³

Under either bill, any museum that fails to comply with the relevant repatriation provisions would be ineligible to receive federal funding during the period of non-compliance. H.R. 5237, § 6(f); H.R. 1646 § 6. The Supreme Court has recognized that Congress—as part of its spending power—has broad authority to place conditions upon the receipt of federal funds. *See South Dakota v. Dole*, 107 S. Ct. 2793, 2796 (1987). In so doing, Congress may seek to accomplish objectives not otherwise within its Article I powers. *Id.* (upholding the withholding of federal highway funds to induce States to adopt uniform drinking ages, "even if Congress may not regulate drinking ages directly"). Without extensive elaboration, however, the Court has noted that such conditions may not be used to induce "activities that would themselves be unconstitutional." *Id.* at 2798 (citing authorities).

This limitation upon the power of Congress to condition the receipt of federal funds would arguably be implicated by H.R. 5237 and H.R. 1646. Although we have identified no authorities that speak directly to the relationship between the spending power and the Takings Clause, we believe that a strong argument could be made that Congress may not exercise the spending power to accomplish an uncompensated taking of private property, as such action would contravene the Constitution. *Cf. Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987) (state commission may not, absent just

the Takings Clause, as the property in question is that of the United States and, hence, may be repatriated by Congress. U.S. Const., Art. IV, § 3, cl. 2 (power of Congress to dispose of "Property belonging to the United States").

³ By contrast, H.R. 5237 would permit only federal agencies and federal museums to refuse a request on scientific grounds. *See* H.R. 5237, § 6(b).

compensation, condition a permit to rebuild house upon transfer of easement to the public across owner's property).

By its terms, the Takings Clause provides that "private property" shall not be taken for "public use" absent the payment of "just compensation." U.S. Const., Amend. V. We discuss first the "private property" requirement.

Both H.R. 5237 and H.R. 1646 recognize that a private museum need not return a protected object acquired with the consent of a person or tribe with authority to transfer that particular object. H.R. 5237, § 6(d); H.R. 1646, § 6(1). There may, however, be other means by which a private museum might have acquired a property interest in a protected object.

For example, the Antiquities Act of 1906 provides that a permit shall be required for "excavation of archaeological sites" on federal lands. 16 U.S.C. § 432. As a condition for receipt of a permit, the applicant must provide for "permanent preservation [of excavated objects] in public museums." *Id.* A private museum open to the public would have a strong argument that protected objects duly obtained in the past pursuant to such federal permits constitute museum property. Apart from laws concerning federal lands, property interests may be recognized by state law as well. For example, a private museum might have purchased protected objects that were accidentally discovered in the course of construction work or other excavation upon private land.

As currently drafted, however, H.R. 5237 and H.R. 1646 do not appear to exclude from repatriation objects acquired other than through the consent of the relevant Native Americans. Section 6 of H.R. 1646 states that only "the tribe or the Native American owners of [protected] items" may consent to their acquisition. The equivalent provision of H.R. 5237 refers more broadly to "consent of an individual or group that had authority of alienation," but the examples that follow this statement are restricted to consent involving Native Americans. H.R. 5237 § 6(d). The language of both bills would appear to exclude consent by a governmental or private landowner that leads—by design or by accident—to the discovery of Native American artifacts that are later transferred to a private museum. In short, consent by the United States to excavation on federal lands (or, alternatively consent by a private landowner to excavation on his property) may confer a property interest in the objects discovered but would not appear to protect a private museum from the repatriation requirement. The bills thus may affect private property and thereby call into play the Takings Clause.

This problem could be resolved by an amendment to exclude private museums—and, hence, private property—from repatriation. Alternatively, the provisions under which a private museum may decline repatriation might be broadened to exempt all objects in which the museum has a property interest cognizable under federal or state law. Similar legislation introduced in the Senate, for example, would permit a museum to refuse repatriation if it has "legal title" to the requested object. See S. 1980, § 5(c)(1). Either revision, however, would reduce—perhaps significantly—the number of protected objects that would be returned to Native Americans.

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Absent such revisions, further issues would arise under the "public use" and "just compensation" requirements of the Takings Clause. The courts generally will defer to Congress' determination of what constitutes a "public use" of private property. See *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 240 (1984). The Government "does not itself have to use property to legitimate the taking," *id.* at 224; transfers of property from one private party to another have been upheld when designed by the legislature to further a public purpose, see, e.g., *id.* Here, however, Congress has inserted no findings in either H.R. 5237 or H.R. 1646 to explain how the transfer of protected objects from private museums to Native American tribes will advance the public good. Should Congress wish to reach private property through these bills, it would be advisable that such findings be included.

Finally, the Takings Clause requires that "just compensation" be paid for the taking of private property. The absence of a compensation procedure in either H.R. 5237 or H.R. 1646 would not prevent a private museum from obtaining compensation in the event that a taking is effected by either bill. Under the Tucker Act, a private museum may seek such compensation in the Claims Court. 28 U.S.C. §1491(a) (jurisdiction to resolve claims against the United States based upon the Constitution). The payment of compensation to private museums would increase the cost of repatriation legislation. Absent such payments, however, the conditioning of federal funding upon consent to an uncompensated taking—as we have explained—may well be an unconstitutional exercise of the spending power.

2. *Ownership Provision of H.R. 1646.*—As currently drafted, section 4(c) of H.R. 1646 would implicate the Takings Clause. That section would declare that "[a]ny grave goods or sacred ceremonial objects found on public or tribal land shall be deemed to be owned by the tribe" associated with those objects. To avoid the implication that this section would transfer ownership of objects found in the past such that compensation would be due to the previous owners, we recommend amendment of this section to apply only to objects "found after the date this Act becomes law." Such an amendment would clarify that section 4(c), like the protections for Native American artifacts elsewhere in section 4, will have only a prospective application.

3. *Appointment of Review Committee in H.R. 5237.*—Under section 7 of H.R. 5237, the Secretary of the Interior would be required to establish a "review committee" that "shall be composed of 7 members, 4 of whom shall be appointed by the Secretary from nominations submitted by Indian tribes, Native Hawaiian organizations, and traditional Native American religious leaders." H.R. 5237, §7(b)(1). The committee shall, *inter alia*, "review[] upon the request of any affected party any finding relating to" the identification of a protected object or the return of such an object. H.R. 5237, §7(c)(2)

As drafted, the bill would not accord binding legal force to the committee's review. Should Congress intend otherwise, section 7(b)(1) of the bill would need to be amended to conform to the procedures for appointment of the review committee to the Constitution's Appointments Clause. See U.S. Const., Art. II, §2, cl. 2; *Buck-*

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ley v. Valeo, 424 U.S. 1, 126, 141 (1976) (officials exercising "significant authority pursuant to the laws of the United States" must be appointed pursuant to the Appointments Clause). While the Appointments Clause permits Congress to vest the appointment of "inferior Officers" in the President alone, we do not believe that it sanctions limitations upon the power of appointment by reference to a fixed list of nominees, because such a requirement would permit the creator of the list—here, Native American organizations—to share in the appointment power.

4. *Access Requirement of H.R. 5237*.—Section 7(e) of H.R. 5237 also concerns the review committee. This section would require the Secretary of the Interior to "ensure" that the committee will have "full and free access" to any protected objects necessary for their review. In its current form, the language of section 7(e) might implicate the Takings Clause in particular situations. A court will ask whether the particular intrusion "unreasonably impair[s]" the economic value of private property. *PruneYard Shopping Center v. Robins*, 447 U.S. 74, 83 (1980). In this "ad hoc inquiry," the court will regard several factors as "particularly significant—the economic impact of the regulation, the extent to which it interferes with investment-backed expectations, and the character of the governmental action." *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 432 (1982).

Here, a requirement of "full and free" access might be read broadly to authorize the sequestration of protected objects that would otherwise be part of a major exhibition in a private museum. Although the result would turn largely upon the particular facts, a private museum would have a substantial argument that such an intrusion constitutes a taking and, thus, must be accompanied by the payment of just compensation. To avoid such a situation, we recommend amendment of section 7(e) to provide merely for "reasonable access" to protected items by the review committee.

Sincerely,

BRUCE C. NAVARRO,
Deputy Assistant Attorney General.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, October 2, 1990.

HON. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This is to provide you with our views on H.R. 5237, the "Native American Grave Protection and Repatriation Act".

We support the goal of H.R. 5237, but would oppose it unless amended as we suggest below. In addition, we oppose provisions in the bill that would authorize open-ended and unlimited grants to tribes and museums involved in the repatriation process. H.R. 5237 also raises serious constitutional problems that must be satisfactorily addressed prior to enactment. We defer to the Department of

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Justice for an analysis of the legal issues associated with this bill, which has been previously provided to the Committee.

H.R. 5237 would establish criminal penalties for anyone selling or transporting Native American skeletal remains without the consent of the heirs of the deceased or the tribe which is culturally affiliated with the remains. The bill would also establish ownership of grave goods found on public or tribal lands. It would require Federal agencies having possession of Native American skeletal remains or ceremonial objects (1) within five years to inventory them and determine tribal origin; and (2) within six months to notify each tribe of the items in the agency's possession or control. Tribes would be provided an opportunity to decide if they wished the items returned, and Federal agencies would be required to return them unless they are obtained with the consent of the tribal entity, or are indispensable for study. Similar requirements for return of such items would be levied on any museum which receives Federal funds. A review committee would be established to monitor and review the implementation of the inventory and identification process required by this bill.

In March of this year, Secretary Lujan directed the National Park Service to develop a new policy and revise an existing guideline on the treatment of human remains and funerary objects. The National Park Service already has been informally reviewing the current policy and guidelines at the staff level for over a year. This informal review has included meetings with representatives of Indian groups, as well as with archaeological and museum groups. The specifics of the Interior policy and guidelines remain to be defined following more detailed consultation with Indian, archaeological, museum, and other interested groups. However, we have identified certain basic principles that we would need to see incorporated in any legislation which we would support.

Secretary Lujan wants a more sensitive treatment of archaeological human remains, funerary objects, sacred objects, and objects of Native American cultural patrimony by managers on Interior lands. He wants other Federal, State and local agencies that look to the Secretary of the Interior for guidance to adopt similar sensitive approaches. However, the Secretary has indicated that he wants to affirm the right of each tribe to determine the treatment that is afforded human remains and associated objects that are affiliated clearly with that Tribe. This right is central to the purpose of H.R. 5237.

Although the Federal government legally owns human remains, it is our position that the government should have only stewardship responsibilities for human remains and other cultural items which should be held in trust for culturally affiliated groups who can establish rights to their ownership and for the scientific and educational benefits derived from some of these cultural items.

We recognize the legitimate interests of contemporary Native Americans, tribes and tribal components, including extended family groups, in making a claim. Therefore, in cases where human remains and associated funerary objects can be linked to contemporary Native Americans and a claim is made and substantiated, the culturally affiliated group should determine ultimate disposition.

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We further believe that in cases where human remains and associated funerary objects can be linked to contemporary Native Americans, justifiable scientific and humanistic studies may be undertaken with the permission of the acknowledged kin group or tribal representatives who will decide about the appropriate conditions of study and final disposition of the human remains and associated funerary objects.

Under present policy, in cases where human remains and associated funerary objects cannot be linked to contemporary Native Americans or when a claim is not made, the Federal government would maintain its stewardship role, providing the opportunity for future evaluation whenever additional evidence of cultural affiliation is forthcoming and claims are made. In this area, however, the outcome of Secretary Lujan's policy review is not yet certain. We support the effort to stem the removal of these cultural items from their resting places by looting and inadvertent modern disturbances and to halt the trafficking in these items.

We believe that H.R. 5237 would largely incorporate these basic principles. However, the following amendments would be necessary in order for us to support this bill.

In cases where human remains and associated funerary objects cannot be linked to contemporary Native Americans, or where a claim has not been made, we believe it is appropriate for the Federal government to maintain its stewardship role over these remains, but provide the opportunity for future evaluation of cultural affiliation if future claims are made. Therefore, we recommend section 3(a)(2)(B) be changed to read, "in the Indian tribe or Native Hawaiian organization which is affiliated with such objects or remains and which, upon notice, states a claim for such objects or remains."

We believe it would not be proper to use aboriginal occupation as the sole criteria for establishing affinity where no affinity to contemporary groups can be established. In some cases this criterion will be reasonable, in other cases it will not. Therefore, we recommend section 3(a)(2)(C) be deleted.

We agree that the Secretary of the Interior should develop regulations for the treatment and disposition of items that are determined to be unaffiliated with any modern Native American entity. The stewardship role over these items can result in a wide variety of treatments, ranging from museum curation of remains and objects to reburial. If the regulations contemplated in section 3(b) of the bill (providing procedures to be followed in determining proper treatment for unclaimed items) are intended to provide such broad authority, report language establishing this intent is necessary.

In order for repatriation or continued government stewardship of cultural items to operate effectively, inventories of present collections in Interior and other Federal agencies are needed. In order to ensure that cultural items are returned to the appropriate Native American entity, it will sometimes be necessary to gather evidence of relatedness, which would include appropriate combinations of forensic, ethnographic, archaeological, and archival information. Therefore, we recommend that section 5(b)(2), dealing with inventory requirements,

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be amended to allow for additional studies where necessary to ensure a correct determination of affinity. We want to ensure, to the best of our ability, that remains and objects are returned to the correct contemporary groups and those that stay under Federal stewardship are identified properly.

The time and costs for Federal agencies and curation facilities could be substantial. Federal agencies will need to begin evaluating collections for which they have responsibility in order to develop plans and cost estimates. The new regulations on curation of Federal archaeological collections (36 CFR 79), which will become effective on October 12, 1990, will be helpful for agencies beginning to organize their efforts. Scheduling for the repatriation of human remains and associated funerary objects must be realistic. Therefore, we recommend that Federal agencies have available the same provisions for extension of the time requirements for completing their inventories as museums are provided in section 5(c).

Although we believe that many human remains and funerary objects will be identified with affiliated groups through the inventory required by the bill, we are not confident that the broader categories of "sacred objects" and "objects of cultural patrimony" could be treated along these same lines. These terms and the concepts they represent are too broad and unformulated to include within this legislation.

We have had experiences with legislation where the definitions embodied concepts that were too broad to be dealt with effectively by the agencies that had to implement the law. During the mid-1960s the concepts of adaptive use and rehabilitation of historic structures were similarly broad, and only by working on the concepts and learning the necessary limits of use and rehabilitation through trial and error during the 1960s and 1970s were we able to produce the standards and guidelines that direct much of this work today. A similar period of development concerning the identification, treatment, and use of Native American sacred objects and cultural patrimony would provide the same grounds for developing useful and widely accepted standards and guidelines.

Tribal preservation programs working in consensus and consultation with Federal agencies and national preservation programs, would resolve issues of ownership, control, or possession of sacred objects and cultural patrimony. We expect the appropriate concepts, relationships, and procedures concerning sacred objects and cultural patrimony will emerge during the next few years as Tribes, agencies, and other interested organizations work within the existing framework on these issues. We urge that decisions about stronger legislation concerning sacred objects and cultural patrimony be postponed until this process has occurred.

We would support the creation of a review committee as contemplated by this bill. However, this committee should be purely advisory in nature. Therefore, the review committee should be limited to providing oversight and facilitation of the repatriation process. Accordingly, at a minimum, we recommend deletion of section 7(c)(4), which would require the

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review committee to compile an inventory of identifiable human remains that are under the control of each Federal agency or museum.

In conclusion, the Department of the Interior is very concerned that archaeological human remains, funerary objects, sacred objects, and objects of Native American cultural patrimony are treated with the respect and sensitivity which they deserve. However, we would oppose H.R. 5257 unless amended as we described above, including serious constitutional problems and new, open-ended, unlimited grant programs. We look forward to working with the Congress and the affected groups to ensure that we indeed live up to our responsibilities in this area.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's programs.

Sincerely,

SCOTT SEWELL,
Deputy Assistant Secretary.

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