

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.

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,