

**IMPROVING THE PROTECTION AND MANAGEMENT OF  
ARCHAEOLOGICAL RESOURCES ON FEDERAL LAND**

SEPTEMBER 30 (legislative day, SEPTEMBER 26), 1988.—Ordered to be printed

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

**REPORT**

[To accompany S. 1985]

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

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 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 23, 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

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.

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. 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 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-

lished 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 archaeological 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 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

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 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.

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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. 1314, H.R. 4068, and S. 1985, all of which would amend the Archaeological Resources Protection Act of 1979.

S. 1314 AND H.R. 4068, TO STRENGTHEN THE ENFORCEMENT PROVISIONS  
OF ARPA

S. 1314 and H.R. 4068 would strengthen the Archaeological Resources Protection Act (ARPA). We support the enactment of S. 1314. 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.

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-

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.

#### CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes the following changes in existing law made by the bill, S. 1985, as reported (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, and existing law to which no change is proposed is shown in *roman*):

#### ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979

AN ACT To protect archaeological resources on public lands and Indian lands, and for other purposes

*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".

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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.

*"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.*

