

Federal Legislative Repatriation Measures

August 3, 2016

1. Safeguard Tribal Objects of Patrimony (STOP) Act: S. 3127 and H.R. 5854

Procedural Status.

- **S. 3127** was introduced on July 6, 2016, and referred to the Committee on Indian Affairs.
- Sponsor: Heinrich (D-NM). Cosponsors: Udall (D-NM); Flake (R-AZ); McCain (R-AZ); Tester (D-MT); Murkowski (R-AL); Daines (R-MT).
- **H.R. 5854** was introduced on July 14, 2016, and referred to the Natural Resources and the Judiciary Committees. It mirrors S. 3127.
- Sponsor: Lujan (D-NM). Cosponsor: Lujan Grisham (D-NM).

Major Provisions.

- Increases Native American Graves Protection and Repatriation Act (NAGPRA) sentences and penalties.
- Prohibits exportation of Native American cultural objects.
- For two years after enactment, provides immunity from federal criminal prosecution when individuals repatriate all Native American cultural objects in their possession.
- Calls on the Comptroller General, working with the Attorney General, Secretary of the Interior, and Secretary of State, to prepare a congressional report that includes: an estimate of the number of Native American cultural objects illegally trafficked domestically and internationally; the extent of prosecution under NAGPRA, the Archaeological Resources Protection Act (ARPA), and the Antiquities Act; and recommendations for eliminating illegal trafficking and securing repatriation.
- Creates a tribal working group facilitated by the Secretary of the Interior that will contribute information for the report and provide advice regarding methods for implementing the report's recommendations.

2. Protection of the Right of Tribes to stop the Export of Cultural and Traditional (PROTECT) Patrimony Resolution: H.Con.Res. 122 and S.Con.Res. 49

Procedural Status.

- **H.Con.Res. 122** was introduced on March 2, 2016, and referred to the Judiciary, the Foreign Affairs, and the Natural Resources Committees and the Indian, Insular and Alaska Native Affairs and the Crime, Terrorism, Homeland Security, and Investigations Subcommittees.
- Sponsor: Pearce (R-NM). Cosponsors: Cole (R-OK); McCollum (D-MN); Lujan (D-NM); Lujan Grisham (D-NM); Smith (D-WA); Mulvaney (R-SC); Takai (D-HI); Kirkpatrick (D-AZ); Grijalva (D-AZ); Young (R-AK); Gosar (R-AZ); Cook (R-CA); Kilmer (D-WAS); Zinke (R-MT); Torres (D-CA); Aguilar (D-CA).
- **S.Con.Res. 49** was introduced on July 14, 2016, and referred to the Committee on Indian Affairs. It is similar but not identical to H.Con.Res. 122.
- Sponsor: Udall (D-NM). Cosponsors: McCain (R-AZ); Heinrich (D-NM).

Major Provisions.

- Acknowledges the importance of tribal cultural items to tribes' cultural survival, ongoing issues associated with illegal trafficking, difficulties tribes face in regaining possession of their cultural items once they have been exported, and the need to increase investigations and prosecutions under NAGPRA and ARPA.
- Condemns the theft, illegal possession or sale, transfer, and export of tribal cultural items.
- Calls on federal agencies and the Attorney General to consult with tribes in addressing the issue, taking affirmative action to stop illegal practices, and securing repatriation.
- Calls on the Comptroller General to conduct a study to determine the scope of illegal trafficking domestically and internationally, and to identify steps required to end illegal trafficking and exportation and to secure repatriation.
- Supports development of explicit restrictions on exportation.
- Encourages state and local governments, interest groups, and organizations to work cooperatively to deter the theft, illegal possession or sale, transfer, and export of tribal cultural items and to secure repatriation.

3. Congressionally Requested GAO Report

- On June 28, 2016, Goodlatte (R-VA), Chairman of the House Judiciary Committee, Sensenbrenner (R-WI), Chairman of the House Subcommittee on Crime, Terrorism, Homeland Security, and Investigations, and Representative Pearce (R-NM) requested the Comptroller General conduct an investigation and prepare a report.
- The investigation is to cover actions the federal government has taken or could take to prevent removal of Native American cultural items and illegal trafficking; the status of federal repatriation efforts; the results of enforcement actions; and information about the trafficking market.
- This report is similar but not identical to the report requested in the PROTECT Patrimony Resolution.

4. House Interior Appropriations Funding for Cultural Items Unit - \$1 Million

- In **House Report 114-632**, released on July 14, 2016, the House Appropriations Committee recommended \$1,000,000 in the FY 2017 Department of the Interior budget to support the development of a Cultural Items Unit within the Bureau of Indian Affairs Division of Law Enforcement tasked with investigating violations of NAGPRA and other similar federal laws.
- *“Public Safety and Justice.—The recommendation includes \$384,730,000 for Public Safety and Justice, \$7,307,000 above the fiscal year 2016 enacted level, and \$11,270,000 above the budget request. . . . The Committee recommends \$1,000,000 to support the development of a Cultural Items Unit within the Division of Law Enforcement tasked with investigating violations of the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001 et seq.), and related law. Although domestic laws such as NAGPRA can be enforced to address the theft of tribal cultural items with both criminal and civil penalties, without active Federal support, tribes are left only to do what they each can independently afford to do to stop the theft and sale of their cultural items. Therefore, the Committee supports the BIA in developing the capacity to coordinate investigations of violations of NAGPRA and related law.”* p. 42