



House
Legislative
Analysis
Section
Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

EXPLOITATION OF HUMAN REMAINS IN SHIPWRECKS

House Bill 4523 as passed by
the House
Second Analysis (4-18-97)

Sponsor: Rep. Pat Gagliardi
Committee: Tourism

THE APPARENT PROBLEM:

Michigan's Great Lakes bottomlands preserves are popular tourist attractions and attract hundreds of divers nationwide who enjoy exploring shipwrecks, some famous, either for personal enjoyment or sometimes for purposes of research and study. In some instances, divers have filmed shipwrecks and used this information for various purposes, such as documentary films or perhaps to help medical researchers determine the effects of long-term entombment on a dead human body when it remains in very deep, and extremely cold, waters over a span of several years. In 1994, a diving expedition was made to film a particularly famous shipwreck, the Edmund Fitzgerald, and the area directly surrounding it. Among the more dramatic things discovered and filmed were the dead remains of at least one of the 29 sailors who died when the Edmund Fitzgerald sank during a violent November storm in 1975. In this case, however, the resulting film footage was made into a video and has been marketed by its maker for commercial purposes. Some people believe photography or filming of this sort intrudes on the sanctity of those "buried" there, and that offering for public display such pictures or film desecrates the dead and is insensitive to their survivors. In response, legislation has been proposed that would prohibit such activities and subject violators to a severe fine, imprisonment, or both.

THE CONTENT OF THE BILL:

The bill would amend Chapter XXVI of the Penal Code (MCL 750.106a), concerning dead human bodies, to prohibit a person from knowingly photographing or displaying publicly a photograph of all or a portion of a deceased person in a human grave. The bill would provide exceptions to this prohibition if the person was acting in accordance with a court order; was photographing or publicly displaying a photograph for law enforcement, medical, archaeological, or scientific purposes; or, if the decedent's death had occurred less than 100 years before the photographing or public

displaying, had obtained written consent from the decedent's next of kin.

Definitions. The bill would define "bottomlands of the Great Lakes" to mean bottomlands, as that term is defined in Part 761 of the Natural Resources and Environmental Protection Act, which deals with aboriginal records and antiquities; "decedent" would mean a dead human being; "human grave" would mean the site intended for the permanent interment of all or a portion of a decedent, or a location in the state, including the bottomlands of the Great Lakes, that contained all or a portion of a decedent who died in an accident or disaster and from which it was impracticable or not intended to remove all or a portion of the decedent. Under the bill, a location could include a shipwreck and a site in the immediate vicinity of a shipwreck upon which all or a portion of a decedent were located and a mine or other underground location within which all or a portion of a decedent was located. "Photograph" would include an image on videotape, motion picture or other film, or an image captured by digital means.

Penalty. A violation would be a felony, punishable by imprisonment for up to two years, a fine of up to \$5,000, or both.

Effective Date. The bill would take effect October 1, 1997.

FISCAL IMPLICATIONS:

The House Fiscal Agency says that the bill would have no significant impact on state funds. (4-4-97)

ARGUMENTS:

For:

The bill would offer protections to the surviving relatives of sailors who lost their lives in shipwrecks on the Great Lakes by prohibiting someone from either photographing a body or the remains of one, or publicly

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displaying such a photograph, film, or digital image, unless for archeological, scientific, medical, or law enforcement purposes, or -- if the remains were less than 100 years old -- without having the consent of the decedent's next of kin. After the wreck of the Edmund Fitzgerald was discovered, a diver filmed the sunken ship along with a dead human body that presumably was one of the sailors aboard the ship when it sank in 1975. This film was then made into a video and is being sold to the public--which not only desecrates what is essentially a grave site but also displays a crude lack of sensitivity to survivors of the deceased. And apparently, because the body was found at a depth where water temperatures are near freezing, the body was only partially decomposed and is potentially still recognizable. The bill would make it a felony punishable by a severe fine, jail term, or both when someone photographed or filmed a human body found on the bottomlands of the Great Lakes in order to commercially exploit such a tragedy. A similar proposal is being considered in the Canadian province of Ontario (which has jurisdiction over numerous shipwrecks in the Great Lakes, including the Edmund Fitzgerald); adopting the bill would encourage other Great Lakes states to do the same.

Against:

The bill would infringe on the free-speech rights of persons to photograph or film Great Lakes shipwrecks and use these recordings for any of a number of reasons, including to inform the public about the details of shipwrecks. For instance, a film could be made that showed a shipwreck and only quick glimpses of human remains and used for documentary or educational purposes, similar to the kinds of films made by the National Geographic Society which appear frequently on public television and elsewhere. Those who make the effort, and in some cases risk their lives, to film such productions should be free to use their own judgment in determining what to film, how to use such a film, and even whether to earn money doing so. Reportedly, there is disagreement even among survivors of the crew of the Edmund Fitzgerald over such films, where some have been supportive of the films produced and others opposed. In prohibiting legitimate uses of such photography and films, the bill could very well be ruled unconstitutional.

Against:

The bill contains vague language that may not be enforceable. For instance, in general, the bill would prohibit anyone from photographing or displaying a photograph of a deceased person in a human grave, including one that rests on the floor of one of the Great Lakes. One exception to the general rule would be a photographer who obtains permission to photograph from the decedent's next of kin. However, the bill

doesn't specify what steps should be taken in circumstances where the decedent's next of kin is unknown or can't be located. For example, would a photographer or archaeologist have to forego examining an archaeological "find" without this permission? In addition, this exclusion would apply only to the bodies of persons who died up to 100 years before the photographing, or public display of a photograph. This latter provision could make it even more difficult to find a deceased person's next of kin.

POSITIONS:

Representatives of the families of some of those who died on the Edmund Fitzgerald testified before the House committee in support of the bill. (4-9-97)

The Secretary of State's office supports the bill. (4-18-97)

The Great Lakes Shipwreck Historical Society supports the bill. However, the society expressed concern regarding the bill's constraint that permission to photograph or display be obtained from next of kin in cases involving the body of a person who died within 100 years. The society's position is that it would be more reasonable to limit this provision to persons who died within 75 years in situations involving historical documentaries. (4-17-97)

The International Ship Masters Association, which represents approximately 800 active and retired officers on Great Lakes freighters and ships, supports the bill. (4-17-97)

Underwater Diving Technology supports the bill. (4-17-97)

The Great Lakes Maritime Academy supports the bill. The academy takes the view that, since shipwrecks are essentially graveyards, all shipwrecks should be left alone. (4-17-97)

The Michigan Underwater Preserve Council, Inc. is strongly opposed to the bill. (4-18-97)

Great Island Charters, Inc., a Munising company that conducts Lake Superior shipwreck diving and glass bottom shipwreck tours, strongly opposes the bill. (4-18-97)

The Alger Underwater Preserve, of Munising, is strongly opposed to the bill. (4-18-97)

Maritime History in Art opposes the bill. (4-17-97)

Analyst: R. Young

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.