



House
Legislative
Analysis
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EXPLOITATION OF HUMAN REMAINS IN SHIPWRECKS

House Bill 4523 as enrolled
Public Act 62 of 1997
Sponsor: Rep. Pat Gagliardi

Senate Bill 305 as enrolled
Public Act 63 of 1997
Sponsor: Senator Walter H. North

Third Analysis (7-8-97)
House Committee: Tourism
**Senate Committee: Local, Urban
and State Affairs**

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. Many people, including family members of the victims of these shipwrecks, believe that displaying pictures or videotapes of human remains is disrespectful to the memory of the sailors who lost their lives in these tragedies. In response, legislation has been proposed to prohibit such activities, and to subject violators to severe penalties.

THE CONTENT OF THE BILLS:

House Bill 4523 and Senate Bill 305 would amend Chapter XXVI of the Michigan Penal Code (MCL 750.160a and 750.160b, respectively), 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, and to subject violators to a fine, imprisonment, or both. Exceptions to the prohibition would be provided 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. House Bill 4523 and Senate Bill 305 are tie-barred to each other.

Definitions. House Bill 4523 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.

Penalties. Under Senate Bill 305, 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 bills would take effect October 1, 1997.

FISCAL IMPLICATIONS:

The House Fiscal Agency says that House Bill 4523 would have no significant impact on state funds. (4-4-97)

According to the Senate Fiscal Agency, Senate Bill 305 would have an indeterminate impact on state funds, resulting from the increased costs of apprehending, prosecuting, and sanctioning violators. However, the number of expected violators is unknown. (4-18-97)

ARGUMENTS:

For:

The bills would offer protections to the surviving relatives of sailors who lost their lives in shipwrecks on the Great Lakes and in other similar circumstances. The legislation would prohibit someone from either photographing a body or the remains of one, or publicly 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. Families of crew members and others believe these sites should be left undisturbed and treated as a graveyard. In an attempt to preserve their sanctity, the bills 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, or in a mine or other similar location where it is impractical to remove the remains of victims of such tragedies.

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). Reportedly, the Canadian government has enacted a law that prohibits filming or distributing footage of human remains from the Fitzgerald, although it does not prohibit displaying photos taken of this wreckage before the law was enacted. Apparently, Canadian licenses for diving expeditions near the Fitzgerald specify that filming human remains is prohibited, and that if human remains are inadvertently recorded, these images should not be made public, but should be destroyed. Adopting the bills would extend similar protections to victims of shipwrecks located in Michigan waters, and would encourage other Great Lakes' states to do the same.

Response:

It is not clear why bodies in shipwrecks or other "graves" should be treated differently from bodies found and photographed at other terrible accident scenes and tragedies, such as at the bombing of a federal building in Oklahoma City, the Kennedy assassinations, or the Holocaust.

Against:

The bills 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 bills could very well be ruled unconstitutional.

Against:

The bills contain 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 bills don'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.

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.