reported one reason that certain companies were lagging behind was an overreliance on automation. The article reported on the experience of a Federal-Moqul plant in Lancaster, PA, that was revamped in 1987 with state-of-the-art automation. But costs did not go down and the automation reduced the plant's flexibility. To improve performance, the plant was revamped again and most robots and production-line computers were removed.

Of course not every firm has experienced such problems. But the point is that high-technology does not alone hold the answer for our Nation's future commercial competitiveness. I saw firsthand, as Pennsylvania's secretary of labor and industry, the problems that were created by failing to take workers and the work organization into account in efforts toward improvement.

As we consider legislation to implement the President's vision, we cannot forget the human element of the manufacturing process. Firms need to be encouraged to improve their work place practices—not just add machines.

We must make sure that any legislation: First, enables the Federal Government to help gather and promote the best practices in the use of technologies and associated work organizations; second, causes Government technology and training assistance to be diffused to firms in a coordinated manner; and, third, measures the success of Federal technology policies in human terms, including job creation and worker productivity.

The legislation I am introducing today, along with my colleagues, Senators KERRY and KENNEDY, would do just that. We are introducing two pieces of legislation to make sure that workers and work organization are taken into account in Federal efforts to improve the international competitiveness of American manufacturers.

The workplace innovation amendments, would amend the National Competitiveness Act of 1993, to help firms and workers, in a coordinated fashion, to take full advantage of advanced manufacturing technology, to improve productivity and quality, and to adopt high-performance work organizations. In addition, the amendments would help create quality job opportunities by promoting research in, and dissemination of, innovative workplace practices and promote labor-management cooperation.

The Workers Technology Skill Development Act would assist workers to become full partners in the planning and implementation of advanced workplace technologies and advanced workplace practices. It would authorize the Department of Labor to make grants to improve the ability to workers, their representatives and employers in these areas, and authorize the Department to identify, collect, and disseminate information on best workplace practices and workplace assessment tools.

I am pleased to join my colleagues from Massachusetts, Senators KERRY and KENNEDY in introducing this legislation. We have already been working with the chairman of the Senate Commerce Committee and the Departments of Commerce and Labor to have this legislation included in S. 4. For much as it will take cooperation between workers and management to improve a firm's competitiveness—it will take the cooperation of the various branches of Government to make sure that Federal efforts directed to improve our Nation's international competitiveness are effective.●

By Mr. INOUYE (for himself, Mr. BAUCUS, Mr. CAMPBELL, Mr. FEINGOLD, Mr. HATFIELD, Mr. PELL, and Mr. WELLSTONE):

S. 1021. A bill to assure religious freedom to native Americans; to the Committee on Indian Affairs.

NATIVE AMERICAN FREE EXERCISE OF RELIGION ACT OF 1993

Mr. INOUYE. Mr. President, I rise today to introduce legislation that is fundamental to the sovereignty of the Indians nations and which is in furtherance of the policy established in the Joint Resolution American Indian Religious Freedom enacted by Congress in 1978. For, Mr. President, what can be more fundamental to sovereignty than the free exercise of one's religion, one's culture, and one's traditions?

This measure is intended to address in a comprehensive way, the rights of native Americans to practice their traditional religions—a right that most Americans take for granted—a right that has been denied to this Nation's first Americans.

Religious freedom is fundamental to our way of life. It served as the genesis for the founding of our Nation. Religious freedom is critical and integral to our concept of individual liberty.

Sadly however, there has been a long history in this country, of Government suppression of traditional religions practices by native Americans that is unlike the manner in which any other religion in our Nation has been treated.

Mr. President, in 1978, Congress enacted the American Indian Religious Freedom Act (P.L. 95-341), in an effort to establish a policy that would reverse this deplorable treatment. With the passage of the act in 1978, it became the policy of the United States to protect and preserve the right of American Indian, Eskimo, Aleut, and native Hawaiian people to believe, express, and exercise their traditional religions. While it was the intention of the Congress to have these traditional religious practices protected, this desired result has not been accomplished.

Pursuant to the provisions of the act passed in 1978, in their actions, Federal agencies are required, by law, to respect the customs, ceremonies, and traditions of native American religions. The act provided that within 1 year of the law's enactment, Federal agencies would examine their policies and procedures, and work with Native traditional and tribal leaders to assure minimal interference with the religious practices of native people. In August 1979, the Federal Agencies Task Force charged with this responsibility submitted its report to Congress.

The report concluded that due to ignorance and attitudes, Federal policies and practices were directly or indirectly hostile toward native traditional religions or simply indifferent to their religious values. The report cited 522 specific examples of Government infringement upon the free exercise of traditional native American religious practices.

The report documented the widespread practice of denying native American people access to sacred sites on Federal land for the purpose of worship, and in cases where they did gain access, they were often disturbed during their worship by Federal officials and the public. In addition, some sacred sites were needlessly put to other uses which have desecrated them.

Native Americans have been denied the opportunity to gather natural substances which have a sacred or religious significance, and have been disturbed in their use of these natural substances. Finally, native American beliefs involving care and treatment for the dead have not been respected by public officials and restrictions have been imposed by public institutions, such as schools and prisons, on the rights of native Americans to practice their religious beliefs.

The report made 5 legislative proposals and 11 recommendations to the Congress for proposed uniform administrative procedures to correct and remove the identified barriers to Indian religious freedom. With the exception of one recommendation, which was partially addressed in the Native American Graves Protection and Repatriation Act regarding the theft and interstate transport of sacred objects, none of the proposals or recommendations have been acted upon.

Since the passage of the American Indian Religious Freedom Act in 1978, there have been a number of court rulings involving the rights of native Americans to engage in traditional religious practices. Two recent Supreme Court decisions have severely undermined the intent of the act and have denied protection under the first amendment for the unique and important religious beliefs of native Americans.

In 1988, in a case known as Lyng versus Northwest Indian Cemetery Association, the Supreme Court denied protection of a religious site on public land. In so doing, the Court also rejected the traditional first amendment test that the Government had to have a compelling interest to infringe upon the free exercise of religion.

In 1990, the Supreme Court in Employment Division versus Smith denied protection of a native American church practitioner fired from his job for using

peyote during a native American religious ceremony. The Supreme Court's rulings in Lyng and Smith have significantly diminished constitutional and statutory protection of native American religious practices. Both of these decisions demonstrate that while the 1978 act is a sound statement of policy, it requires enforcement authority. That authority is addressed in the measure that I am introducing today.

Mr. President, the legislation reflects input from native Americans and affirmatively addresses specific religious concerns and beliefs central to their lives. The bill addresses native American religious freedom in four areas: First, the legislation provides protection of native American sacred sites and puts into place a mechanism for resolving disputes. Second, the legislation extends first amendment protection to native Americans for the sacramental use of peyote. Third, the legislation protects the rights of native prisoners to the same extent as prisoners of other religious faiths. Finally, the legislation facilitates native American access to and use of eagle feathers and plants for religious purposes.

Native Americans believe that certain locations are most sacred and believe that these sites should be protected. There are currently 44 sacred sites that are threatened by tourism, development, and resource exploitation. The sacramental use of peyote, which is central to the ceremonies of the Native American Church, is a crime punishable by law despite Drug Enforcement Agency exemptions for Native American Church members. Many native American prisoners are denied access to spiritual leaders, and denied the opportunity to practice their religion, despite the fact that other prisoners are consistently provided access to priests, ministers, rabbis, and other religious leaders. There are also prison requirements that conflict with native American religious customs. While eagle feathers and parts of other sacred plants and animals are sometimes used in religious ceremonies, native Americans face criminal prosecution if they are in possession of eagle parts or feathers due to the Bald Eagle and Golden Eagle Protection Act. The legislation would permit use of lawfully obtained eagle feathers.

The bill will also provide clear, legally enforceable authority for the protection of the free exercise of native American religions.

I am pleased to note that the response of native peoples to this legislation has been very favorable. The committee has held six field hearings and the bill reflects many of the recommendations received at the hearings as well as other communications received by the committee from Indian tribes and native American organizations.

In addressing the many problems that face native American communities today, it imperative that we should first address the issue of spirituality and tradition—the very soul of most native American communities. It is essential for native American people across this country to be free to practice their religious ceremonies and to preserve their values and traditions for future generations.

Mr. President, it is clear that there must be a rebalancing of governmental interests to assure the protection of the free exercise of native American religions. The legislation I am introducing today would create this new balance. The religious rights of native Americans have not been adequately protected or respected, and as the trustee of the native peoples of this land, I believe that it is incumbent upon the United States to correct this deficiency. I look forward to congressional attention to this important issues in the 103d Congress. I ask unanimous consent that the full text of the bill be printed in the RECORD following my remarks.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1021

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Native American Free Exercise of Religion Act of 1993".

(b) TABLE OF CONTENTS.—

SEC. 2. POLICY.

It is the policy of the United States, in furtherance of the policy established in the joint resolution entitled "Joint Resolution American Indian Religious Freedom", approved August 11, 1978 (42 U.S.C. 1996), to protect and preserve the inherent right of any Native American to believe, express, and exercise his or her traditional religion, including, but not limited to, access to any Native American religious site, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.

SEC. 3. DEFINITIONS.

For the purposes of this Act, the following definitions shall apply:

(1) AGGRIEVED PARTY.—The term "aggrieved party" means any Native American practitioner, Native American traditional leader, Indian tribe, or Native Hawaiian organization as defined by this Act.

(2) FEDERAL AGENCY.—The term "Federal agency" means any department, agency, or instrumentality of the Federal Government.

(3) FEDERAL OR FEDERALLY ASSISTED UNDERTAKING.—The term "Federal or federally assisted undertaking" means any regulation relating to or any project, activity, or program pertaining to the management, use, or preservation of land (including continuing and new projects, activities, or programs) which is funded in whole or in part by, or under the direct or indirect jurisdiction of, a Federal agency, including—

(A) those carried out by or on behalf of the agency;

(B) those carried out with Federal financial assistance;

(C) those requiring a Federal permit, license or approval; and

(D) those subject to State regulation administered pursuant to a delegation or approval by a Federal agency.

The term "Federal or federally assisted undertakings" does not include regulations, projects, activities, or programs operated, approved, or sponsored by Indian tribes, including, but not limited to, those projects, activities, or programs which are funded in whole or in part by Federal funds pursuant to contract, grant or agreement, or which require Federal permits, licenses or approvals.

(4) GOVERNMENTAL AGENCY.—The term "governmental agency" means any agency, department, or instrumentality of—

(A) the United States; or

(B) a State, in the case of a Federal or federally assisted undertaking described in paragraph (3)(D).

The term "governmental agency" does not include an agency, department, or instrumentality of an Indian tribe.

(5) INDIAN.—The term "Indian" means—

(A) an individual of aboriginal ancestry who is a member of an Indian tribe,

(B) an individual who is an Alaska Native, or

(C) in the case of California Indians, an individual who meets the definition in section 809(b) of the Indian Health Care Improvement Act (25 U.S.C. 1679(b)), except that an Indian community need not be served by a local program of the Indian Health Service in order to qualify as an Indian community for purposes of this definition.

(6) INDIAN LANDS.—The term "Indian lands" means all lands within the limits of any Indian reservation; public domain Indian allotments; all other lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation; all dependent Indian communities; and all fee lands owned by an Indian tribe.

(7) INDIAN TRIBE.—The term "Indian tribe" means—

(A) any tribe, band, nation, pueblo, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians,

(B) any Indian group that has been formally recognized as an Indian tribe by a State legislature or by a State commission or similar organization legislatively vested with State tribal recognition authority,

(C) any Indian tribe whose federally recognized status has been terminated, and

(D) any non-federally recognized tribe that has—

(i) filed a petition for acknowledgement with the Branch of Federal Acknowledgement of the Bureau of Indian Affairs of the Department of the Interior or is the subject of pending legislation in the Congress seeking federally recognized status, and

(ii) is recognized as an Indian tribe by other Indian tribes, communities or groups.

The definition contained in subparagraph (D) shall not apply if the Department of the Interior has acted to deny such tribe's petition for acknowledgement and all appeals of the Department's determination have been exhausted and have been decided in support of the Department's determination.

(8) LAND.—The terms "land", "lands", or "public lands" mean surface and subsurface land within the jurisdiction of the United States or the respective States, including submerged land of any kind or interest therein and all water and waterways occupying, adjacent to, or running through the land.

(9) NATIVE AMERICAN.—The term "Native American" means any Indian or Native Hawaiian.

(10) NATIVE AMERICAN PRACTITIONER.—The term "Native American practitioner" means—

(A) any Native American who practices a Native American religion, or

(B) any Native Hawaiian with an obligation to protect a Native Hawaiian religious site, or any Native Hawaiian who practices a Native Hawaiian religion or engages in a Native Hawaiian ceremonial or ritual undertaking.

(11) NATIVE AMERICAN RELIGION.—The term "Native American religion" means any religion—

(A) which is practiced by Native Americans, and

(B) the origin and interpretation of which is from within a traditional Native American culture or community.

(12) NATIVE AMERICAN RELIGIOUS SITE.—The term "Native American religious site" means any place or area, including, but not limited to, any geophysical or geographical area or feature—

(A) which is sacred to a Native American religion;

(B) where Native American practitioners are required by their religion to gather, harvest, or maintain natural substances or natural products for use in Native American religious ceremonies or rituals or for spiritual purposes, including all places or areas where such natural substances or products are located; or

(C) which is utilized by Native American religious practitioners for ceremonies, rituals, or other spiritual practices.

(13) NATIVE AMERICAN TRADITIONAL LEADER.—The term "Native American traditional leader" means any Native American who—

(A) is recognized by an Indian tribe, Native Hawaiian organization, or Native American traditional organization as being responsible for performing cultural duties relating to the ceremonial or religious traditions of the tribe or traditional organization, or

(B) exercises a leadership role in an Indian tribe, Native Hawaiian organization or Native American traditional organization based upon its cultural, ceremonial, or religious practices.

(14) NATIVE HAWAIIAN.—The term "Native Hawaiian" means any individual who is a descendant of the aboriginal Polynesian people who, prior to 1778, occupied and exercised sovereignty and self-determination in the area that now comprises the State of Hawaii.

(15) NATIVE HAWAIIAN ORGANIZATION.—The term "Native Hawaiian organization" means any organization which is composed primarily of Native Hawaiians, serves and represents the interests of Native Hawaiians and whose members—

(A) practice a Native American religion or conduct traditional ceremonial rituals, or

(B) utilize, preserve and protect Native American religious sites.

(16) STATE.—The term "State" means any State of the United States and any and all political subdivisions thereof.

TITLE I—PROTECTION OF SACRED SITES

SEC. 101. FINDINGS.

The Congress finds that—

(1) throughout American history, the free exercise of traditional Native American religions has been intruded upon, interfered with, and, in some instances, banned by the Federal Government and the devastating impact of these governmental actions continues to the present day;

(2) the religious practices of Native Americans are integral parts of their cultures, traditions and heritages and greatly enhance the vitality of Native American communities and tribes and the well-being of Native Americans in general;

(3) as part of its historic trust responsibility, the Federal Government has the obligation to enact enforceable Federal policies which will protect Native American community and tribal vitality and cultural integrity, and which will not inhibit or interfere with the free exercise of Native American religions;

(4) just as other religions consider certain sites in other parts of the world to be sacred, many Native American religions hold certain lands or natural formations in the United States to be sacred, and, in order for those sites to be in a condition appropriate for religious use, the physical environment, water, plants and animals associated with those sites must be protected;

(5) such Native American religious sites are an integral and vital part of, and inextricably intertwined with, many Native American religions and the religious practices associated with such religions, including the ceremonial use and gathering, harvesting, or maintaining of natural substances or natural products for those purposes;

(6) many of these Native American religious sites are found on lands which were part of the aboriginal territory of the Indians but which now are held by the Federal Government, or are the subject of Federal or federally assisted undertakings;

(7) lack of sensitivity to, or understanding of, Native American religions on the part of Federal agencies has resulted in the absence of a coherent policy for the protection of Native American religious sites and the failure by Federal agencies to consider the impacts of Federal and federally assisted undertakings upon Native American religious sites;

(8) the Supreme Court of the United States, in the case of Lyng v. Northwest Indian Cemetery Association, 485 U.S. 439 (1988) ruled that the free exercise clause of the First Amendment does not restrict the Government's management of its lands, even if certain governmental actions would infringe upon or destroy the ability to practice religion, so long as the Government's action does not compel individuals to act in a manner which is contrary to their religious beliefs;

(9) the holding in the case of Lyng v. Northwest Indian Cemetery Association creates a chilling and discriminatory effect on the free exercise of Native American religions;

(10) the Supreme Court of the United States, in the case of Employment Division v. Smith, 494 U.S. 872 (1990) extended the Lyng doctrine to all "valid and neutral laws of general applicability" not intended to specifically infringe upon religious practice and held that the First Amendment does not exempt practitioners who use peyote in Native American religious ceremonies from complying with "neutral" State laws prohibiting peyote use, notwithstanding the chilling effect of such laws upon their right to freely practice their religion;

(11) Native Hawaiians have distinct rights under Federal law as beneficiaries of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108) and the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union", approved March 18, 1959 (73 Stat. 4);

(12) the United States trust responsibility for lands set aside for the benefit of Native Hawaiians has never been extinguished;

(13) the Federal policy of self-determination and self-governance is recognized to extend to all Native Americans;

(14) Congress has enacted numerous laws which regulate and restrict the discretion of Federal agencies for the sake of environmental, historical, economic, and cultural concerns, but has never enacted a judicially enforceable law comparably restricting agency discretion for the sake of the site-specific requirements associated with the free exercise of Native American religions;

(15) the lack of a judicially enforceable Federal law and of a coherent Federal policy to accommodate the uniqueness of Native American religions imposes unique and unequal disadvantages on Native American religions, gravely restricting the free exercise of Native American religions and impairing the vitality of Native American communities and Indian tribes; and

(16) Congress has the authority to enact such a law pursuant to section 8, Article I, of the Constitution and the First and Fourteenth Amendments.

SEC. 102. FEDERAL LAND MANAGEMENT; USE AND PRESERVATION.

(a) IN GENERAL.—Notwithstanding any other provision of law each Federal agency shall manage any lands under its jurisdiction in a manner that complies with the provisions of this Act.

(b) PLANNING PROCESS.—Each Federal agency involved in Federal or federally assisted undertakings, including, but not limited to, activities pursuant to the National Forest Management Act (16 U.S.C. 1600 et seq.), and the Federal Land Policy and Management Act (43 U.S.C. 1701 et seq.), shall as part of its planning process—

(1) consult with Indian tribes and Native Hawaiian organizations identified pursuant to section 103, as well as Native American traditional leaders who can be identified by the agency to have an interest in the land in question;

(2) provide for notice of all Federal or federally assisted undertakings with the potential to have an impact on certain specified lands to an Indian tribe, Native Hawaiian organization, or Native American traditional leader if such tribe, organization, or leader places the agency on notice, in writing, that it is interested in receiving notice of all such undertakings;

(3) ensure that its land management plans are consistent with the provisions and policies of this Act; and

(4) maintain the confidentiality of specific details of a Native American religion or the significance of a Native American religious site to that religion in accordance with the

procedures specified in sections 107 and 108 of this Act.

(c) ACCESS.—

(1) IN GENERAL.—Unless the President determines that national security concerns are directly affected, in which case the provisions of section 105 shall apply, Native American practitioners shall be permitted access to Native American religious sites located on Federal lands at all times, including the right to gather, harvest, or maintain natural substances or natural products for Native American religious purposes.

(2) PROHIBITION AGAINST VEHICLES.—Paragraph (1) does not authorize the use of motorized vehicles or other forms of mechanized transport in roadless areas where such use is prohibited by law, nor affect the application of the Endangered Species Act, except as provided for by section 501(b) of this Act.

(3) TEMPORARY CLOSING.—Upon the request of an Indian tribe, Native Hawaiian organization, or Native American traditional leader, the Secretary of the department whose land is involved may from time to time temporarily close to general public use one or more specific portions of Federal land in order to protect the privacy of religious cultural activities in such areas by Native Americans. Any such closure shall be made so as to affect the smallest practicable area for the minimum period necessary for such purposes.

(d) REGULATIONS.—The Secretary of the Interior, in consultation with Indian tribes and Native Hawaiian organizations, shall promulgate uniform regulations relating to—

(1) Federal planning processes pertaining to the management, use or preservation of land; and

(2) notice to and consultation with Indian tribes, Native Hawaiian organizations, Native American traditional leaders and Native American practitioners as required by sections 103 and 104 of this Act.

The regulations shall be sufficiently flexible to enable consultation to meet the unique needs of Indian tribes, Native Hawaiian organizations, Native American traditional leaders and Native American practitioners.

SEC. 103. NOTICE.

(a) IDENTIFICATION OF LANDS BY SECRETARY.—

(1) IN GENERAL.—For the purpose of assuring that a governmental agency properly determines whether a proposed undertaking will have an impact on the exercise of a Native American religion and which affected parties should be provided notice of a proposed undertaking, the Secretary of the Interior, in conjunction with tribal governments, shall identify land areas with which an Indian tribe has aboriginal, historic, or religious ties.

(2) ONGOING IDENTIFICATION.—Paragraph (1) does not preclude a tribal government from continuing to conduct an ongoing identification process, which may supplement the process required by this subsection.

(b) DUTY OF AGENCIES.—

(1) TRIBAL LANDS.—Before a governmental agency proceeds on lands identified pursuant to subsection (a) with any Federal or federally assisted undertaking that may have an impact on the exercise of a Native American religion, the agency shall provide a geographical description of the lands affected by the undertaking (including information on metes and bounds of the lands in question, where available) and a description of the undertaking to—

(A) the Secretary of the Interior;

(B) each Indian tribe which has aboriginal, historic, or religious ties to the land affected by a proposed Federal or federally assisted undertaking; and

(C) each Native American traditional leader known by the agency who may have an interest in the land affected by the proposed undertaking.

(2) LANDS IN HAWAII.—Before a governmental agency proceeds on lands in the State of Hawaii with any Federal or federally assisted undertaking that may have an impact on the exercise of a Native American religion, the agency shall publish a geographical description of the lands affected by the undertaking (including information on metes and bounds of lands in question, where available) and a description of the undertaking in a newspaper of general circulation for a period of 2 weeks.

(3) DOCUMENTATION.—The governmental agency shall fully document the efforts made to provide the information to Indian tribes, Native Hawaiian organizations and Native American traditional leaders as required by this section or any applicable regulations, guidelines, or policies.

(c) NOTICE BY TRIBE.—

(1) IN GENERAL.—Within 90 days of receiving the notice provided under subsection (b), or within the time limit of any comment period permitted or required by any Federal law applicable to the Federal or federally assisted undertaking, whichever is later, an Indian tribe, Native Hawaiian organization, or Native American traditional leader invoking the protection of this title may provide notice to the governmental agency whether the proposed Federal or federally assisted undertaking may result in changes in the character or use of one or more Native American religious sites which are located on lands with which the Indian tribe or Native Hawaiian organization has aboriginal, historic, or religious ties.

(2) NO DUTY TO RESPOND.—Paragraph (1) does not impose a duty upon any Indian tribe, Native Hawaiian organization, or Native American traditional leader to respond to any notice under this section.

(3) ADDITIONAL INFORMATION.—The Indian tribe, Native Hawaiian organization, or Native American traditional leader acting pursuant to paragraph (1) may also provide the agency with information as to any Native American traditional leaders or practitioners who should be included in the notice and consultation requirements of this section and section 104.

(d) 90-DAY PROHIBITION AGAINST ACTIVITY FOLLOWING NOTICE TO TRIBES.—No action to approve, commence, or complete a Federal or federally assisted undertaking that is subject to this section shall be taken by a governmental agency for a period of 90 days following the date on which notice is provided under subsection (b) to Indian tribes and Native Hawaiian organizations unless or until—

(1) the matter is resolved pursuant to the procedures of this Act;

(2) the period of consultation required under section 104 has been completed; or

(3) all parties entitled to such notice consent to a shorter time period.

SEC. 104. CONSULTATION.

(a) IN GENERAL.—

(1) EFFECT OF NOTICE BY TRIBE.—If an Indian tribe, Native Hawaiian organization, or Native American traditional leader indicates in writing within 90 days of receiving notice under section 102, or within the time limit of any comment period permitted or required by any Federal law applicable to the Federal or federally assisted undertaking, whichever is later, that a Federal or federally assisted undertaking will or may alter or disturb the integrity of Native American religious sites or the sanctity thereof, or interfere with the access thereto, or adversely impact upon the exercise of a Native American religion or the conduct of a Native American religious practice, except as provided in paragraph (2), the governmental agency engaged in the Federal or federally assisted undertaking shall immediately discontinue such undertaking until the agency performs the duties described in paragraphs (3) and (4).

(2) INADVERTENT DISCOVERY.—If in the process of a Federal or federally assisted undertaking, a Native American religious site is inadvertently discovered, the governmental agency engaged in the undertaking shall immediately discontinue such undertaking until the agency performs the duties set forth in paragraphs (3) and (4).

(3) CONSULTATION.—The governmental agency shall consult with any interested party, including Native American practitioners with a direct interest in the Native American religious site in question, concerning the nature of the adverse impact and alternatives that would minimize or prevent an adverse impact, including any alternatives identified by an Indian tribe, Native Hawaiian organization, or Native American traditional leader that has filed a written objection under this subsection.

(4) EVALUATION OF COMMENTS.—The governmental agency shall prepare and make available to the tribe, organization or traditional leader, as well as Native American practitioners who have been involved in the consultation process, a document evaluating and responding to the comments received. The document shall include an analysis of adverse impacts upon the site and the use thereof and an analysis of alternatives to the proposed action, including any alternative offered by an Indian tribe, Native Hawaiian organization, or Native American traditional leader submitting a written objection under paragraph (1) and a no action alternative.

(5) ADDITIONAL INFORMATION.—In any case where the governmental agency is also required to prepare a document analyzing the impact of its undertaking or decision pursuant to the National Environmental Policy Act (43 U.S.C 4321 et seq.), the National Historic Preservation Act (16 U.S.C. 470 et seq.) or any other applicable law, such agency shall incorporate the analysis required by this section into the contents of the document.

(b) CASES WHERE SECRECY IS REQUIRED.—

(1) IN GENERAL.—In the case of those Indian tribes whose traditional religious tenets prohibit disclosure of information concerning their Native American religious sites or religious beliefs or practices, and mandate secrecy and internal sanctions to enforce those prohibitions, and where the tribal government of the affected Indian tribe so certifies and invokes this subsection—

(A) the tribal government shall not be required to reveal the location of the Native American religious site or in what manner the undertaking would have an impact on the site or any information concerning their religious beliefs or practices;

(B) the tribal government shall not be required to explain in what manner any proposed alternative is or is not less intrusive upon the adversely affected Native American religious practice or religious sites which may be adversely affected than the original proposed Federal or federally assisted undertaking; and

(C) in engaging in consultation and preparing any document required by this Act, the governmental agency shall not include an analysis of adverse impacts upon the site or the use thereof or the Indian tribe's religious beliefs and practices.

(2) AFTER CONSULTATION.—If after consultation—

(A) the governmental agency agrees to pursue a less intrusive alternative proposed by the Indian tribe or some other alternative

which the Indian tribe agrees would be less intrusive; or

(B) if no alternative is identified which the Indian tribe agrees is less intrusive;

the governmental agency shall be deemed to have met its obligation to consider and pursue the least intrusive alternative under this Act in regard to the objection raised to the Federal or federally assisted undertaking by the Indian tribe invoking this subsection.

(c) RULE OF CONSTRUCTION.—Where the provisions of subsection (b) have been invoked, those requirements shall control in all circumstances and shall supersede any conflicting provisions in this Act or any other provision of law.

(d) DISCLOSURE REQUIRED.—Within 30 days of receipt of any written objection under subsection (a), the governmental agency proposing the Federal or federally assisted undertaking which gave rise to that notice shall disclose to and shall make available to the objecting party, all plats, maps, plans, specifications, socioeconomic, environmental, scientific, archaeological or historical studies, and comments and information in that agency's possession bearing on said undertaking.

(e) SPECIAL RULE FOR PUEBLOS REGARDING STANDING.—In the case of a proposed Federal or federally assisted undertaking affecting the management, use, or preservation of public land involving potential adverse religious impacts on any of the Indian pueblos of New Mexico or any of their religious sites, the only party with standing to file an objection or participate in consultation under this section, or to file an action under section 105 or 501, shall be the governor of the affected pueblo or the governor's designee.

SEC. 105. BURDEN OF PROOF.

(a) IN GENERAL.—

(1) BURDEN ON AGGRIEVED PARTY.—Except as provided in subsection (b), in any action brought under section 501(a), the aggrieved party shall have the burden of proving that the Federal or federally assisted undertaking or the State action having an impact upon the management, use, or preservation of public land, is posing or will pose a substantial threat of undermining or frustrating a Native American religion or a Native American religious practice.

(2) BURDEN ON AGENCY.—If the aggrieved party meets its burden of proof under paragraph (1), the Federal agency or State shall have the burden of proving that the governmental interest in the Federal or federally assisted undertaking or the State action is compelling.

(3) LEAST INTRUSIVE COURSE OF ACTION.—If the aggrieved party fails to meet its burden of proof under paragraph (1), but establishes that the Federal or federally assisted undertaking or the State action will alter or disturb the integrity of a Native American religious site or the sanctity thereof, or will have an adverse impact upon the exercise of a Native American religion or the conduct of a Native American religious practice, or if the Federal agency or State meets its burden of proof in paragraph (2), the Federal agency or State shall have the burden of proving that it has selected the course of action least intrusive on the Native American religious site or the Native American religion or religious practice.

(b) CASES WHERE SECRECY IS REQUIRED.—In the case of any proceeding involving a Native American religious site or associated religious practices of an Indian tribe described in section 104(b), if the Indian tribe objects to the Federal or federally assisted undertaking or State action based upon any of the grounds specified in section 104(a), the provisions of section 104(b) shall apply and the Federal agency or State shall have the burden of proving that—

(1) it has a compelling interest in pursuing the Federal or federally assisted undertaking or the State action as originally proposed;

(2) it is essential that the Federal agency's or State's compelling interest be furthered as originally proposed; and

(3) none of the less intrusive alternatives (if any) identified in the consultation process, or by the Indian tribe, will adequately advance that compelling governmental interest.

The Federal agency or State shall retain this burden of proof at all stages of any proceeding or decisionmaking process involving an Indian tribe described in section 104(b) as to objections raised by that Indian tribe.

(c) FAILURE OF AGENCY TO MEET BURDEN.—If a Federal agency or State does not meet its burden of proof under this section, it shall not proceed with the proposed undertaking. For purposes of this section and section 501, the phrase "burden of proof" means the burden of production and the burden of persuasion.

(d) ESTABLISHMENT OF ADMINISTRATIVE PROCEDURE.—

(1) IN GENERAL.—A Federal agency may, by regulation, establish an administrative procedure to implement the requirements of this section.

(2) EXHAUSTION REQUIREMENT.—An aggrieved party must use a procedure established under paragraph (1) before filing an action in a Federal court pursuant to section 501(a).

(3) NEW FACTUAL FINDINGS.—If an action is filed in Federal court after exhaustion of administrative remedies, the court shall not defer to the factual findings of the Federal agency, but shall make its own factual findings based upon the record compiled by the Federal agency as well as other evidence that may be permitted by the court under Federal law.

SEC. 106. TRIBAL AUTHORITY OVER NATIVE AMERICAN RELIGIOUS SITES ON INDIAN LANDS.

(a) RIGHT OF TRIBE.—All Federal or federally assisted undertakings on Indian lands which may result in changes in the character or use of a Native American religious site or which may have an impact on access to a Native American religious site shall, unless requested otherwise by the Indian tribe on whose lands the undertakings will take place, be conducted in conformance with the laws or customs of the tribe.

(b) AGREEMENTS.—Any governmental agency proposing a Federal or federally assisted undertaking on Indian lands which may result in changes in the character or use of a Native American religious site or which may have an impact upon access to a Native American religious site, may enter into an agreement with the Indian tribe on whose lands the undertaking will take place for purposes of assuring conformance with the laws or customs of the tribe.

(c) PROTECTION BY TRIBES.—Indian tribes may regulate and protect Native American religious sites located on Indian lands.

(d) OTHER AUTHORITIES.—

(1) SOVEREIGN AUTHORITY OF TRIBES.—The provisions of this section are in addition to and not in lieu of the inherent sovereign authority of Indian tribes to regulate and protect Native American religious sites located on Indian lands.

(2) NATIONAL SECURITY.—The provisions of this section shall not apply if the President determines that national security concerns are directly affected by a Federal or federally assisted undertaking.

(3) DUTY TO NOTIFY.—This section does not relieve a governmental agency of any duty pursuant to section 103 to notify an Indian tribe of a Federal or federally assisted undertaking on Indian lands which may result in changes in the character or use of a Native American religious site.

SEC. 107. APPLICATION OF OTHER LAWS.

(a) IN GENERAL.—Nothing in this title shall be construed to deprive any person or entity of any other rights which might be provided under the laws, regulations, guidelines, or policies of the Federal, State, and tribal governments, including but not limited to the National Historic Preservation Act (16 U.S.C. 470 et seq.), to receive notice of, comment upon, or otherwise participate in the decisionmaking process regarding a Federal or federally assisted undertaking.

(b) EXISTING PROCEDURES.—To the maximum extent possible, the procedures required by this Act shall be incorporated into existing procedures applicable to the management of Federal lands and decisionmaking processes of Federal agencies engaged in Federal or federally assisted undertakings.

SEC. 108. CONFIDENTIALITY.

(a) IN GENERAL.—Notwithstanding any other provision of law, whenever information has been obtained as a result of or in connection with a proceeding pursuant to section 105 or 501 or consultation pursuant to sections 102 and 104, all references pertaining to—

(1) specific details of a Native American religion or the significance of a Native American religious site to that religion; or

(2) the location of that religious site;

shall be deleted from the record of a Federal agency or court before the record is released to any party or the general public pursuant to the Freedom of Information Act (5 U.S.C. 552) or any other applicable law.

(b) SUPPLEMENTATION OF RECORD.—The agency or court shall supplement the record described in subsection (a) to include the general results and conclusions of the administrative or judicial review to the extent necessary to provide other interested parties with sufficient information to understand the nature of, and basis for, a decision by the Federal agency or court.

(c) EXCEPTIONS.—This section shall not apply—

(1) where all parties to a proceeding (excluding the Federal Government) waive its application, and

(2) in case of a Native Hawaiian religious site, where the information is sought by a Native Hawaiian organization for the purpose of protecting such site.

(d) OTHER LAW.—Indian tribes, Native Hawaiian organizations, Native American traditional leaders, and Native American practitioners seeking to maintain the confidentiality of information relating to Native American religious sites may also seek redress through existing laws requiring that certain information be withheld from the public, including, but not limited to the National Historic Preservation Act (16 U.S.C. 470w-3) and the Archaeological Resources Protection Act (16 U.S.C. huh).

SEC. 109. CRIMINAL SANCTIONS.

(a) DAMAGING RELIGIOUS SITES.—

(1) INITIAL VIOLATION.—Any person who knowingly damages or defaces a known Native American religious site located on Federal land, except as part of an approved Federal or federally assisted undertaking or an action authorized by a governmental agency with the authority to approve such activity, shall, upon conviction, be fined not more than $10,000, or imprisoned not more than 1 year, or both.

(2) SUBSEQUENT VIOLATIONS.—In the case of a second or subsequent violation, a person shall be fined not more than $100,000, or imprisoned not more than 5 years, or both.

(b) RELEASE OF INFORMATION.—

(1) INITIAL VIOLATION.—Any person who knowingly releases any information required to be held confidential pursuant to this title shall, upon conviction, be fined not more than $10,000, or imprisoned not more than 1 year, or both.

(2) SUBSEQUENT VIOLATIONS.—In the case of a second or subsequent violation, be fined not more than $100,000, or imprisoned not more than 5 years, or both.

TITLE II—TRADITIONAL USE OF PEYOTE

SEC. 201. FINDINGS.

The Congress finds that—

(1) some Indian people have used the peyote cactus in religious ceremonies for sacramental and healing purposes for many generations, and such uses have been significant in perpetuating Indian tribes and cultures by promoting and strengthening the unique cultural cohesiveness of Indian tribes;

(2) since 1965, this religious ceremonial use of peyote by Indians has been protected by Federal regulation, which exempts such use from Federal laws governing controlled substances, and the Drug Enforcement Administration has manifested its continuing support of this Federal regulatory system;

(3) the State of Texas encompasses virtually the sole area in the United States in which peyote grows, and for many years has administered an effective regulatory system which limits the distribution of peyote to Indians for ceremonial purposes;

(4) while numerous States have enacted a variety of laws which protect the ceremonial use of peyote by Indians, many others have not, and this lack of uniformity has created hardships for Indian people who participate in such ceremonies;

(5) the traditional ceremonial use by Indians of the peyote cactus is integral to a way of life that plays a significant role in combating the scourge of alcohol and drug abuse among some Indian people;

(6) the United States has a unique and special historic trust responsibility for the protection and preservation of Indian tribes and cultures, and the duty to protect the continuing cultural cohesiveness and integrity of Indian tribes and cultures;

(7) it is the duty of the United States to protect and preserve tribal values and standards through its special historic trust responsibility to Indian tribes and cultures;

(8) existing Federal and State laws, regulations and judicial decisions are inadequate to fully protect the ongoing traditional uses of the peyote cactus in Indian ceremonies;

(9) general prohibitions against the abusive use of peyote, without an exception for the bona fide religious use of peyote by Indians, lead to discrimination against Indians by reason of their religious beliefs and practices; and

(10) as applied to the traditional use of peyote for religious purposes by Indians, otherwise neutral laws and regulations may serve to stigmatize and marginalize Indian tribes and cultures and increase the risk that they will be exposed to discriminatory treatment.

SEC. 202. TRADITIONAL USE OF PEYOTE.

(a) IN GENERAL.—Notwithstanding any other provision of law, the use, possession, or transportation by an Indian of peyote for bona fide ceremonial purposes in connection with the practice of a Native American religion by an Indian is lawful and shall not be prohibited by the Federal Government or any State. No Indian shall be penalized or discriminated against on the basis of such use, possession or transportation, including, but not limited to, denial of otherwise applicable benefits under public assistance programs.

(b) REGULATION AUTHORIZED.—This section does not prohibit such reasonable regulation and registration of those persons who import, cultivate, harvest or distribute peyote as may be consistent with the purpose of this title.

(c) TEXAS LAW.—This section does not prohibit application of the provisions of section 481.111(a) of Vernon's Texas Code Annotated, in effect on the date of enactment of this Act, insofar as those provisions pertain to the cultivation, harvest or distribution of peyote.

TITLE III—PRISONERS' RIGHTS

SEC. 301. RIGHTS.

(a) IN GENERAL.—

(1) ACCESS.—Notwithstanding any other provision of law, Native American prisoners who practice a Native American religion shall have, on a regular basis comparable to that access afforded prisoners who practice Judeo-Christian religions, access to—

(A) Native American traditional leaders who shall be afforded the same status, rights and privileges as religious leaders of Judeo-Christian faiths;

(B) subject to paragraph (6), items and materials utilized in religious ceremonies; and

(C) Native American religious facilities.

(2) MATERIALS.—Items and materials utilized in religious ceremonies are those items and materials, including foods for religious diets, identified by a Native American traditional leader. Prison authorities shall treat these items in the same manner as the religious items and materials utilized in ceremonies of the Judeo-Christian faith.

(3) HAIR.—

(A) RIGHT OF PRISONER.—Except in those circumstances where subparagraph (B) applies, Native American prisoners who desire to wear their hair according to the religious customs of their Indian tribes may do so provided that the prisoner demonstrates that—

(i) the practice is rooted in Native American religious beliefs; and

(ii) these beliefs are sincerely held by the Native American prisoner.

(B) DENIAL OF REQUEST.—If a Native American prisoner satisfies the criteria in paragraph (3)(A), the prison authorities may deny such request only where they can demonstrate that the legitimate institutional needs of the prison cannot be met by viable less restrictive means which would not create an undue administrative burden.

(4) DEFINITION OF "RELIGIOUS FACILITIES".—The term "religious facilities" includes sweat lodges, teepees, and access to other secure, out-of-doors locations within prison grounds if such facilities are identified by a Native American traditional leader to facilitate a religious ceremony.

(5) DISCRIMINATION PROHIBITED.—No Native American prisoner shall be penalized or discriminated against on the basis of Native American religious practices, and all prison and parole benefits or privileges extended to prisoners for engaging in religious activity shall be afforded to Native American prisoners who participate in Native American religious practices.

(6) SCOPE OF SUBSECTION.—Paragraph (1) shall not be construed as requiring prison authorities to permit (nor prohibit them from permitting) access to peyote or Native American religious sites.

(b) COMMISSION TO INVESTIGATE RELIGIOUS FREEDOM.—

(1) IN GENERAL.—The Attorney General shall establish the Commission on the Religious Freedom of Native American Prisoners (hereafter in this section referred to as the "Commission") to investigate the conditions of Native American prisoners in the Federal and State prison systems with respect to the free exercise of Native American religions.

(2) REPORT.—Not later than 36 months after the date of enactment of this Act, the Commission shall submit to the Attorney General and the Congress a report containing—

(A) an institution-by-institution assessment of the recognition, protection, and enforcement of the rights of Native American prisoners to practice their religions under this Act; and

(B) specific recommendations for the promulgation of regulations to implement this Act.

(3) COMPOSITION OF COMMISSION.—The Commission shall consist of 5 members, at least 3 of whom shall be Native Americans and—

(A) at least 1 of whom shall be a Native American traditional leader;

(B) at least 1 of whom shall be a Native American ex-offender; and

(C) at least 1 of whom shall be a Native American woman.

(4) NOMINATIONS.—The Native American members selected under paragraph (2) shall be appointed from nominations submitted by Indian tribes, Native Hawaiian organizations and Native American traditional leaders.

(5) CHAIRPERSON.—The Commission shall select 1 of its members to serve as Chairperson.

(6) COMPENSATION.—Each member of the Commission who is not a Federal employee shall be compensated at a rate equal to the daily equivalent of that prescribed for level V of the Executive Schedule under section 5316 of title 5, United States Code. All members of the Commission while away from home or their place of business, in the performance of the duties of the Commission, shall be allowed travel and other related expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government services are allowed expenses under section 5703 of title 5, United States Code.

(7) STAFF.—The Commission may hire, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may pay without regard to the provisions of chapter 51, and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, such staff as necessary to fulfill its duties under this section. In addition, the Commission may request any Federal department or agency to make available to the Commission personnel on a nonreimbursable basis, to assist the Commission in fulfilling such duties.

(8) TERMINATION.—The Commission shall cease to exist upon the expiration of the 60-day period following the date of submission of its report to the Congress.

TITLE IV—RELIGIOUS USE OF EAGLES AND OTHER ANIMALS AND PLANTS

SEC. 401. RELIGIOUS USE OF EAGLES.

(a) IN GENERAL.—Within 1 year after the date of enactment of this Act, the Director of the United States Fish and Wildlife Service (hereafter in this section referred to as the "Director") shall, in consultation with Indian tribes and Native American traditional leaders, develop a plan to—

(1) ensure the prompt disbursement from Federal repositories of available bald or golden eagles, or their parts, nests, or eggs for the religious use of Indians upon receipt of an application from a Native American practitioner;

(2) provide that sufficient numbers of bald or golden eagles are allocated to Native American practitioners to meet the demonstrated need where they are available by reason of accidental deaths, natural deaths, or takings permitted by Federal law; and

(3) simplify and shorten the process by which permits are authorized for the taking, possession, and transportation of bald or golden eagles, or their parts, nests, or eggs for the religious use of Indians.

(b) CONSULTATION WITH REGIONAL ADVISORY COUNCILS.—In developing the plan required by subsection (a), the Director shall consult with the Regional Advisory Councils established pursuant to subsection (c) to determine whether these goals might best be met by decentralizing the system for the disbursement of bald or golden eagles or their parts, nests, or eggs for Native American religious purposes.

(c) REGIONAL ADVISORY COUNCILS.—

(1) ESTABLISHMENT.—Within 120 days after the date of enactment of this Act, the Regional Directors of the United States Fish and Wildlife Service shall establish Regional Advisory Councils.

(2) COMPOSITION.—Each Regional Advisory Council shall consist of 3 Native American traditional leaders appointed by each Regional Director of the United States Fish and Wildlife Service from nominations submitted by Indian tribes and Native American traditional leaders located within the region.

(3) DUTIES.—The Regional Directors and the Regional Advisory Councils, in consultation with Indian tribes and Native American traditional leaders, shall—

(A) develop a plan to—

(i) ensure that all bald and golden eagles and their parts, nests, or eggs which are recovered within the region are promptly transmitted to and collected by the United States Fish and Wildlife Service and made available for distribution as provided by law and consistent with the plan developed by the Director pursuant to subsection (a); and

(ii) expedite the review and approval of permit applications at each regional level;

(B) consult with the Director regarding the advisability of decentralizing the distribution system; and

(C) monitor the operation of the collection, permit, and, if applicable, the distribution system at the regional level.

(4) COMPENSATION.—Members of the Regional Advisory Councils established under paragraph (1) of this section shall serve without pay, but shall be reimbursed at a rate equal to the daily rate for GS-18 of the General Schedule for each day (including travel time) for which the member is actually engaged in council business. Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(d) TRIBAL LAW.—If bald or golden eagles or their parts, nests, or eggs are discovered on Indian lands and the Indian tribe on whose land the eagles or their parts, nests, or eggs were discovered has established or establishes, by tribal law or custom, a procedure for—

(1) issuance of tribal permits to Native American practitioners, and

(2) distribution of bald or golden eagles or their parts, nests, or eggs in accordance with tribal religious custom,

the Indian tribe may distribute said bald or golden eagles or their parts, nests, or eggs to Native American practitioners in accordance with such tribal law or custom.

(e) SCOPE OF SUBSECTION (d).—Subsection (d) applies only to eagles which have died by reason of accidental deaths or natural deaths and does not authorize the taking of live eagles which, subject to standards established in section 501(b), shall continue to be governed by regulations promulgated by the United States Fish and Wildlife Service. An Indian tribe under subsection (d) shall provide an annual report by March 31 of each year to the United States Fish and Wildlife Service summarizing the number and type of bald and golden eagles and their parts, nests, and eggs that have been discovered and distributed during the previous calendar year.

SEC. 402. OTHER ANIMALS AND PLANTS.

(a) PLAN.—Within 1 year after the date of enactment of this Act, the Director of the United States Fish and Wildlife Service shall, in consultation with Indian tribes and Native American traditional leaders, develop a plan to implement the recommendations of the President's 1979 American Indian Religious Freedom Task Force Report regarding the disposition of surplus plant and animal products by Federal agencies.

(b) ASSESSMENT.—In developing this plan, the Director shall—

(1) assess the availability of surplus animals, plants or parts from Federal agencies;

(2) determine whether there is a need for such parts for religious purposes by Native American practitioners; and

(3) evaluate the feasibility of developing a joint uniform set of regulations to govern the disposition of surplus animals, plants or parts which have been confiscated or gathered under the jurisdiction and control of Federal agencies.

TITLE V—JURISDICTION AND REMEDIES

SEC. 501. JURISDICTION AND REMEDIES.

(a) IN GENERAL.—Any appropriate United States district court shall have original jurisdiction over a civil action for equitable or other relief, including damages, brought by an aggrieved party against the United States or a State to enforce the provisions of this Act.

(b) BURDEN OF PROOF.—

(1) IN GENERAL.—Except as provided in titles I through III, if an aggrieved party meets the burden of proving that a governmental action restricts or would restrict the practitioner's free exercise of religion, the governmental authority shall refrain from such action unless it can demonstrate that application of the restriction to the practitioner is essential to further a compelling governmental interest and the application is the least restrictive means of furthering that compelling governmental interest.

(2) SPECIAL RULE FOR NATIVE AMERICAN PRACTITIONERS.—The burden of proof for a Native American practitioner is a showing of any evidence that a restriction upon the practitioner's free exercise of religion exists as a result of Federal or State action. Native American practitioners may elect to provide testimony about their beliefs in camera or in some other protective procedure.

(c) ATTORNEY'S FEES.—An aggrieved party who is a prevailing party in any administrative or judicial proceeding brought pursuant to this Act shall be entitled to attorney's fees, expert witness fees, and costs under the provisions of section 504 of title 5, United States Code, and section 2412 of title 28, United States Code.

TITLE VI—MISCELLANEOUS

SEC. 601. SAVINGS CLAUSE.

Nothing in this Act shall be construed as abrogating, diminishing, or otherwise affecting—

(1) the inherent rights of any Indian tribe;

(2) the rights, express or implicit, of any Indian tribe which exist under treaties, Executive Orders and laws of the United States; and

(3) the inherent right of Native Americans to practice their religions.

SEC. 602. SEVERABILITY.

If any title or section of this Act, or any provision or portion thereof, is declared to be unconstitutional, invalid, or inoperative in whole or in part, by a court of competent jurisdiction, such title, section, provision or portion thereof shall, to the extent it is not unconstitutional, invalid, or inoperative, be enforced and effectuated, and no such determination shall be deemed to invalidate or make ineffectual the remaining provisions of the title, section, or provision.

SEC. 603. AUTHORIZATION OF APPROPRIATIONS.

There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

SEC. 604. EFFECTIVE DATE.

This Act takes effect on the date of its enactment. Application and enforcement of this Act does not depend upon the promulgation of regulations by any governmental agency.●

Mr. HATFIELD. Mr. President, I am pleased today to cosponsor the Native American Free Exercise of Religion Act of 1993. Earlier this year, I rejoined the Committee on Indian Affairs after having served on the committee in the 95th and 96th Congresses. I am very much looking forward to working again on such important issues as religious freedom with Chairman INOUYE, Vice Chairman MCCAIN, and the many other distinguished members of the committee.

The issue addressed by the Native American Free Exercise of Religion Act drives to the very heart of what this country should, and indeed does, represent to other nations all around the globe. The protection that we afford the free exercise of religion stands as a sterling example to the rest of the world of what a free thinking society must demand of its government.

As Americans, most of us take these religious freedoms for granted. We grow up worshipping every week or every day without thinking about the daily persecution that our ancestors suffered before coming to this great land. Continuing from the colonial period through today, there has been a constant flow of people into this country who have found refuge in the great ideals of those who founded this new concept of freedom.

But, just as the first amendment was created by the Founding Fathers to protect themselves and their posterity from persecution as suffered in Europe, so must it continue to protect the free exercise of religion for those Americans whose ancestors were already on this land when our new Nation was formed. The rich diversity that we enjoy in this country demands that practices which are an integral part of a culture, tradition, and heritage be protected.

As of late, some question has arisen regarding this country's commitment to protecting the free exercise of religion for all Americans. This is especially evident in some recent decisions of the Supreme Court. In my home State of Oregon, we are very familiar with one of the cases, *Employment Division* v. *Smith*, 494 U.S. 872 (1990). In this instance the court held that an Oregon State law of general affect could abridge the free practice of religious rituals such as use of peyote by bona fide members of the Native American Church.

I have also cosponsored the Religious Freedom Restoration Act which would return the law to pre-Smith status. And while I believe that the impact of this debate reaches far beyond any particular religion, I believe that the spe-

cific provisions in the Native American Free Exercise of Religion Act addressing the Smith decision are needed to ensure protection for native American practices.

In addition, it is important that another decision, *Lyng* v. *Northwest Indian Cemetery Association*, 485 U.S. 439 (1988), not be allowed to continue to deny native American input into Government actions that might affect historically sacred sites. These lands and natural formations are integral to the exercise of many native American religious ceremonies involving the physical environment, water, plants, and animals associated with those sites.

Similarly, it is only fitting that native American prisoners who practice a native American religion should have access to traditional leaders and facilities comparable to the access afforded prisoners who practice Judeo-Christian religions. However, it is reasonable to place certain limits on these freedoms such as allowing prison authorities to deny prisoners access to peyote and religious sites.

These examples of issues addressed by the Native American Free Exercise of Religion Act illuminate the very essence of the words of the first amendment. More than just a long set of clauses in an aged document, these words constitute an assurance of freedom granted by the Government to all people. No one religion is above any other; no philosophy reigns supreme. As Americans, each of us is assured protection, within reasonable boundaries, to practice our sincerely held religious faiths as we believe. Almost everyday news of barbaric actions in other countries reminds us all too well of why this constitutional protection is just as critical now as it was when ratified over 200 years ago. I commend Chairman INOUYE for his work in addressing this difficult issue and urge swift passage of this bill.

Mr. WELLSTONE. Mr. President, I am pleased to join today with Senator INOUYE in sponsoring the Native American Free Exercise of Religion Act of 1993 [NAFERA]. Senator INOUYE is to be congratulated not only for introducing this legislation today, but for the leadership he has shown in putting together the bill. Senator INOUYE and his staff have spent a great deal of time on the road, traveling around the country, listening to native Americans, religious leaders, constitutional scholars, and others before writing this final version of the bill. He worked closely with native groups in many States in order to see that their concerns were met in the proposed legislation. I am proud to note that one of the many field hearings on this legislation took place in my State, Minnesota, and I think that some of the views expressed there have had some impact on the form this legislation has finally taken. This is, Mr. President, a good example for all of us to follow—a legislative process in which the people affected by the legislation are included, not just as examples of the wrong we intend to right, in a brief hearing here in Washington, but as consultants on the very elements of the bill itself.

Throughout the series of hearings held around the country on NAFERA, one theme repeated itself over and over again: our traditional understanding of how to protect religious freedom, based on a European understanding of religion, is insufficient to protect the rights of the first Americans. I believe that the bill we are introducing today will move this country toward a broader definition of religion and, in doing so, make it possible for all Americans to enjoy the freedom to worship in their own manner.

About a year ago, the distinguished anthropologist Jack Weatherford, who teaches at Macalester College in St. Paul, published a stirring opinion piece in the Minneapolis Star-Tribune, calling on Congress to guarantee the rights of native Americans to worship in their traditional ways, on their traditional sacred sites. Professor Weatherford wrote, and I am quoting directly here, that:

> Of all the spiritual suffering a people can undergo, the separation from traditional religious sites seems to be one of the most painful and often one of the most difficult to justify by any government. for religions such as Judaism, Islam, Taoism, Hinduism and Christianity, the sacred site usually is a temple, church, monastery or shrine. For the native peoples who follow traditional ways of worship, the site more often is a sacred brook, a quiet forest, a rocky promontory, a special lake or some other natural spot that has not been transformed into a man-made edifice.

This sort of suffering, as Professor Weatherford and many others have noted, occurs all over this country, every day. Indian sacred sites are destroyed by builders, sometimes even on Federal lands. Indians are prevented from practicing forms of worship that require isolation, peace, and quiet because their sites are invaded by tourists. In other cases, conflicts erupt around traditional practices simply because non-Indians do not understand them and feel threatened by them. This has often been the case with the ritual use of peyote. This lack of understanding has also played a role in the difficulties Indian inmates have faced in having access to traditional practitioners when in prison. Mr. President, it is time for us to find a way to put an end to these difficulties and to provide native Americans with the same chances for freedom of worship that we already provide to most other Americans.

I think that I can, as a Jewish American, make a claim to a special understanding of some of the issues at stake here. Every year, for the past 2,000 years, Jews have celebrated the holiday of Passover, commemorating the exodus of our ancestors from slavery in Egypt and their eventual return to the land of Israel. And every year, every Jewish family has finished its ritual dinner, the seder, with the phrase, "next year in Jerusalem." To many, this is not meant to refer to some spiritual Jerusalem, some paradise in the afterlife. It is a reference to the real city and the real place. Of course, today there is serious controversy around what part of Israel should be considered sacred to Jews and what parts can be returned to the Palestinian people. But my main point here is that as a Jew, I do not find it at all strange that a people should mark their history and the history of their spirituality in real, concrete places. Jews have often done this. So, I might add, have many other peoples.

What we are talking about here is not religion in the sense it is often understood in the United States. Religion, for traditional native Americans, is not some set of practices easily distinguished from everyday life, accomplished in specific buildings, with particular religious authorities presiding. Instead, religion is deeply intertwined with the very fabric of native American cultural identities. At our hearing in Minnesota we heard witnesses speak in moving terms about these ties and about the importance of traditional spirituality in their everyday lives. But, again, I want to stress some parallels here. How often have we heard the debate about whether Judaism is a culture or a religion? In the end, for most Jews, you cannot separate the two. The same is true for native Americans.

I think that it is clear that when we talk about religious freedom for native Americans, our first problem is to clear up the obvious misunderstandings about what is under consideration. For native Americans, religion means something different than it does for the dominant religions in this country. But once we understand what that meaning is, it should be a simple matter for us to understand that their freedom to worship ought to be guaranteed. I am sure that I do not need to remind my colleagues that freedom of religion is one of the fundamental rights provided for every citizen of this country.

But I think we need to go just a little further in our understanding of this question. The Congress of the United States, and with it, the entire Federal Government, has an obligation to protect the rights of Indian tribes. This is called the trust relationship. I want to stress that while there are general reasons of religious freedom behind the legislation we are introducing today, the Native American Free Exercise of Religion Act of 1993, is needed because we have an obligation to protect Indian rights to free worship. The question is not, should we protect Indian religious freedom? Instead, we must ask, how can we best live up to our obligation to protect that freedom?

This is an important question, because one might legitimately want to ask why we need a bill to address specifically the religious freedom of native Americans, instead of a bill that addresses all religious at one time. There is, of course, such a bill, the Re-

ligious Freedom Restoration Act [RFRA], which has been recently introduced by my colleague from Massachusetts, Senator KENNEDY, and of which I am an original co-sponsor. I believe that there is a strong argument to be made that both of these bills ought to be made into law. RFRA is designed to respond in a very general way to judicial decisions that have been made in recent years restricting the right to free practice of religion. It will restore the compelling interest test as the constitutional standard for the free exercise of religion. It sets a standard of a "least restrictive means" for furthering any compelling government interest in restricting free exercise. I want to stress that these standards worked well for many years, for most religions in this country. And that is a very good reason to support RFRA.

But leaving the definition of such standards up to the judiciary has not proven very effective for native American religions. In NAFERA, on the other hand, we provide language that makes clear the particularities of native religious practices we intend to address. Historically, Indian law and policy have been defined by the judiciary because we have often not made our intentions very clear here in Congress. With this bill, we are making our intentions very clear. Native Americans deserve the same religious freedoms as all other Americans and, if their religious priorities are very different from those of other Americans, we can use this bill to make sure that those differences are understood by the courts. For this reason alone, NAFERA is needed in addition to RFRA.

Yet there is another area where RFRA does not address in any clear way the specific needs of Native American religious practice. As Prof. Philip Frickey, of the University of Minnesota Law School, said in his testimony before the Indian Affairs Committee, RFRA fails to clearly address the fundamental issue of native access to sacred sites. While, as Professor Frickey points out, RFRA is designed to restore the compelling interest/least restrictive means tests, in the important Lyng case, where a road was built across a sacred site, the court decided that the Government's action did not burden native religious practice because, and I am citing Professor Frickey's testimony here, it did not "'coerce' native Americans 'into violating their religious beliefs' or 'penalize religious activity by denying any person an equal share of the rights, benefits, or privileges enjoyed by other persons'." Professor Frickey goes on to say that "Lyng thus arguably redefined a 'burden' on the free exercise of religion to include only coercion or penalties surrounding the practice of religion, and to exclude the destruction of religious beliefs. Because the RFRA provides no independent, congressional definition of 'burden', it seems reasonable to fear that Lyng would be decided the same way under RFRA as it was under the first amendment." In other words, in Lyng, Indian religions were understood as if they were just like other religions, a set of beliefs with no particular attachment to the land. RFRA provides no way to address the specificity of native religious practices. In NAFERA, we do. Mr. President, we cannot rely on RFRA to protect native American religion. We need to pass NAFERA as well. I am sure that upcoming hearings on NAFERA will further build the case I have outlined here.

Mr. President, if we are to guarantee the religious freedom of native Americans we need to make sure that all Americans understand that traditional native religions are different from those we usually have in mind when we speak of religious freedom. NAFERA is designed with native specificity in mind and, if passed, it will provide the means to protect native practices and to educate the public about those practices. The support of a broad spectrum of religious groups shows that that educational process is already underway. If we pass this bill, we can go even further in that process. What we are seeking is to find a way to preserve the rights of native Americans to worship freely, in their own manner, the spirits of their choosing. We are looking for the means to end the spiritual suffering of many native Americans described by Professor Weatherford. This bill is good public policy, Mr. President. I would like, once more, to thank Senator INOUYE for introducing it and call upon my colleagues to join me in support of it.

Mr. MCCAIN. Mr. President, today Senator INOUYE, the distinguished chairman of the Committee on Indian Affairs, has introduced the Native American Free Exercise of Religion Act of 1993. This bill involves a very complicated area of law which provokes strong and deeply held views. I want to commend Chairman INOUYE for his leadership on this important issue. As is his usual custom, Senator INOUYE has already invested a considerable amount of personal time chairing field hearings and conducting meetings to ascertain the concerns and views of tribal and traditional religious leaders. These consultations have led to the introduction of this bill which seeks to advance the policy established in 1978 under the American Indian Religious Freedom Act [AIRFA].

Mr. President, for the past several weeks a number of Indian tribes and members of the American Indian Religious Freedom Coalition have written to me urging my cosponsorship of this bill. I want to thank everyone who has taken the time to share with me their concerns regarding Indian religious freedom issues. I want to convey to the Indian tribes, religious leaders, and coalition members my hope that this bill will spark a genuine consensus on the changes that are necessary to make AIRFA into an effective law. After careful review and notwithstanding a deep commitment to the goal of religious freedom, I have reluctantly decided not to cosponsor this bill.

Owing to the high level of interest in this issue, and because I do not want anyone to misinterpret my decision not to cosponsor this measure as being insensitive to the religious beliefs held by native Americans, I have decided to make this statement for the RECORD. This statement provides my general view on this issue and highlights a few of the specific concerns I have about the bill.

First, as some individuals will recall, I introduced S. 1124, the American Indian Religious Freedom Act Amendments of 1989, in the 101st Congress. Representative Udall introduced similar legislation in the House and both bills were the subject of hearings in the 101st Congress. While S. 1124 only addressed the issue of access to sacred sites, the bill set forth my general view that as a result of the enormous controversy among native Americans, Federal officials, and other parties, regarding the interpretation and implementation of AIRFA, the Congress had to provide further guidance for the resolution of the conflicts between the concepts inherent in Indian and native cultures and Federal land management practices. This balance of competing interests must be fully informed by the Constitution, our moral and legal obligations to native Americans, and the legitimate interest of the Federal Government in the sound management of Federal lands for the benefit of all Americans.

Under S. 1124, Federal lands which are considered sacred and indispensable to a native American religion and are necessary to the conduct of that religion were entitled to protection. These lands could not have been managed in a way that would have posed a substantial and realistic threat of undermining and frustrating the native American religion or religious practice. Under that bill, Federal officials were granted latitude to carry out legal responsibilities of the Federal Government; to protect a compelling governmental interest, or to protect a vested property right. These land management officials were required, to the greatest extent feasible, to select the course of action that would have been the least intrusive on traditional native American religions or religious practices. Nothing in S. 1124 compelled a Federal official to totally deny public access to Federal lands. The bill established explicit burdens of proof for all parties in any judicial challenge to a Federal land management decision. Petitioners in such cases would have been required to prove that the Federal decision posed a substantial and realistic threat of undermining and frustrating a traditional native American religion or religious practice. If this burden of proof was met, the Federal agency was required to show that its decision was necessitated by law, to protect a compelling governmental interest, or to protect a

vested property right. In all cases the agency was required to prove that their decision reflected the course of action which was the least intrusive on the traditional native American religion or religious practice. The Federal courts were given the authority to enter any order necessary to carry out the purposes of the bill.

I have purposely described S. 1124 because I want to remind interested parties that even though that bill was narrowly drafted it was opposed by the Justice Department on the ground that it violated the establishment clause of the Constitution. Other witnesses said that S. 1124 would create an unconstitutional Federal entanglement by requiring Federal agencies to make certain administrative determinations regarding religious practices. The proponents of the bill introduced today should be prepared to state why the two constitutional concerns noted above do not apply to this bill which contains far more restrictive provisions on Federal land managers than those included in S. 1124.

Second, I note that the Judiciary Committee has already acted on S. 578, the Religious Freedom Restoration Act. H.R. 1308, the companion legislation, passed the House on May 11. Both bills would overturn the 1990 Supreme Court ruling in Employment Division versus Smith by restoring the compelling interest standard on a State government which seeks to pass a law limiting religious freedom. In light of this recent congressional action, I am interested in knowing why the religious freedom bills referenced above do not address the fundamental concerns raised under titles I and III of this new bill. If the concerns have been addressed, then it seems to me that considerable time and expense can be saved by narrowing the focus of the bill to the remaining titles.

Third, I am concerned that the bill attempts to micromanage various Federal activities on issues involving eagle feathers, animal parts, and prisoners' rights. In addition, I am concerned that the commission called for in title III and the regional councils called for in title IV are unnecessary. It appears to me from the testimony I've reviewed on prisoners' rights and on the use of eagle feathers and plants, that the proponents of this bill are prepared to recommend administrative steps that can be taken by the cognizant Federal or State agencies. Again, time and expense can be saved without sacrificing the purposes of both titles. I am interested in knowing specific actions the proponents have taken since 1989 to work with the various Federal agencies to explore possible administrative remedies to the issues raised in both titles.

Finally, I am concerned that the omnibus character of this bill will make it much more difficult if not impossible to complete the legislative process. This point will perhaps become more apparent in the House of Representatives where a bill of this complexity will be referred to more than one committee. Such a result will only serve to delay the goal of making AIRFA into an effective law. While I recognize that each of the titles in the bill address important Indian religious freedom concerns, I believe it is incumbent on the tribal proponents to advise the Congress whether they are willing to amend AIRFA by breaking the bill into its various parts or to proceed with the bill in its entirety. I realize the thought of compromise is perhaps the most distant concept in the minds of tribal proponents today, however, all of us must deal with the art of the possible. In this instance, it may only be possible to consider one or more titles of the bill at this point in time while other titles are temporarily set aside. As I mentioned at the beginning of my statement, the issues surrounding AIRFA are complex and provoke strong and deeply held views. Examining Indian affairs issues in the legislative arena usually requires a significant amount of time owing to the enormous amount of education that most Members of Congress require to make informed judgments on pending issues. The size and complexity of this bill and the potential constitutional issues involved will require an unusual amount of time and patience by all parties.

In closing, let me repeat that it continues to be my hope that we will be able to achieve a consensus on advancing the policy goals of AIRFA. I am concerned, however, that the current approach, however well intended, will not yield the desired results and will only prolong the day when religious freedom can be ensured for all native Americans. I believe it is incumbent upon me as a U.S. Senator and as the vice chairman of the Committee on Indian Affairs to provide the Indian people with a legislative analysis that is straightforward and candid. I believe it is incumbent upon the Indian people to recognize the legislative constraints under which all Members of Congress must operate. Finally, I believe it is incumbent upon my colleagues and the Federal agencies to reexamine current policies and to seriously consider measures that can be taken to assure that those who occupied the lands of our Nation before us are ensured of their religious freedom.

By Mr. BRADLEY (for himself and Mr. LAUTENBERG):

S. 1022. A bill to prohibit the Secretary of the Interior from issuing oil and gas leases for waters off the coast of the State of New Jersey until the year 2000, and for other purposes; to the Committee on Energy and Natural Resources.

THE NEW JERSEY OFFSHORE OIL AND GAS MORATORIUM ACT

• Mr. BRADLEY. Mr. President, I am very pleased to introduce today, with my colleague, Senator LAUTENBERG, the Offshore Oil and Gas Moratorium Act. This legislation will add New Jersey to the other coastal areas for which moratoriums on oil and gas offshore development exist.

In July 1991, the U.S. Department of the Interior issued a 5-year comprehensive program for oil and gas development on the Outer Continental Shelf. This document is the blueprint for the Interior Department's efforts and goals for near-term development off the Jersey shore.

This document identified the mid-Atlantic region, which would include a number of tracts off the Jersey shore, for continued planning and lease sales in 1994 and 1997.

These proposals are much more likely to result in anxiety, bad press, and, ultimately, another blow to our coastal economy than to any significant discoveries of oil or gas. In the late 1970's, roughly 28 exploratory wells were drilled off our coast. Are any of these wells still producing oil or gas? No. All 28 are plugged and abandoned. Were there any commercial discoveries of oil and gas? No. Who expects there to be found significant quantities of oil or gas off our shore? I don't know of anyone.

This past summer was a happy one on the shore. On the beachwalk, many, many people expressed their joy in the clean water and beaches. There was a refreshing sense of optimism there. We don't need a new dark cloud to dampen this enthusiasm. We don't need to reconsider the issue of oil and gas leasing.

In last year's natural energy strategy bill, I included a ban on leasing off our coast until 2000. Unfortunately, even though both Houses agreed to my language, the whole title dealing with offshore issues was dropped because of other controversies. We didn't win; we didn't lose; we were rained out. It's time for a replay.

Every now and then, it's appropriate to draw a bright line: Some things you just don't do. They're not worth it. You don't violate the pristine Arctic plain in Alaska. And you don't burden a coastal ecology that's struggling to survive. You just don't drill off of our Jersey shore.

I ask unanimous consent that the text of my bill be printed following my remarks.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1022

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "New Jersey Offshore Oil and Gas Moratorium Act".

SEC. 2. DEFINITIONS.

As used in this Act.

(1) LEASE.—The term "lease" has the same meaning as is provided in section 2(c) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(c)).

(2) PRELEASING ACTIVITY.—The term "preleasing activity" means any activity conducted before a lease sale is held including—

(i) the scheduling of a lease;