AMENDMENT NO. 682

IN THE SENATE OF THE UNITED STATES—111th Cong., 1st Sess. Insufficient

H. R. 146

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. COBURN to the amendment (No. ______) proposed by

Viz:

1 Strike sections 6304 through 6308 and insert the follow-

2 ing:

3 SEC. 6304. COLLECTION OF PALEONTOLOGICAL RES- 

4 OURCES.

5 (a) PERMIT REQUIREMENT.—

6 (1) IN GENERAL.—Except as provided in this 

7 subtitle, a paleontological resource may not be col-
lected from Federal land without a permit issued under this subtitle by the Secretary.

(2) CASUAL COLLECTING EXCEPTION.—The Secretary shall allow casual collecting without a permit on Federal land controlled or administered by the Bureau of Land Management, the Bureau of Reclamation, and the Forest Service, where such collection is consistent with the laws governing the management of those Federal land and this subtitle.

(3) PREVIOUS PERMIT EXCEPTION.—Nothing in this section shall affect a valid permit issued prior to the date of enactment of this Act.

(b) CRITERIA FOR ISSUANCE OF A PERMIT.—The Secretary may issue a permit for the collection of a paleontological resource pursuant to an application if the Secretary determines that—

(1) the applicant is qualified to carry out the permitted activity;

(2) the permitted activity is undertaken for the purpose of furthering paleontological knowledge or for public education;

(3) the permitted activity is consistent with any management plan applicable to the Federal land concerned; and
(4) the proposed methods of collecting will not threaten significant natural or cultural resources.

(c) PERMIT SPECIFICATIONS.—A permit for the collection of a paleontological resource issued under this section shall contain such terms and conditions as the Secretary deems necessary to carry out the purposes of this subtitle. Every permit shall include requirements that—

(1) the paleontological resource that is collected from Federal land under the permit will remain the property of the United States;

(2) the paleontological resource and copies of associated records will be preserved for the public in an approved repository, to be made available for scientific research and public education; and

(3) specific locality data will not be released by the permittee or repository without the written permission of the Secretary.

(d) MODIFICATION, SUSPENSION, AND REVOCATION OF PERMITS.—

(1) The Secretary may modify, suspend, or revoke a permit issued under this section—

(A) for resource, safety, or other management considerations; or
(B) when there is a violation of term or condition of a permit issued pursuant to this section.

(2) The permit shall be revoked if any person working under the authority of the permit is convicted under section 6306 or is assessed a civil penalty under section 6307.

(e) AREA CLOSURES.—In order to protect paleontological or other resources or to provide for public safety, the Secretary may restrict access to or close areas under the Secretary’s jurisdiction to the collection of paleontological resources.

SEC. 6305. CURATION OF RESOURCES.

Any paleontological resource, and any data and records associated with the resource, collected under a permit, shall be deposited in an approved repository. The Secretary may enter into agreements with non-Federal repositories regarding the curation of these resources, data, and records.

SEC. 6306. PROHIBITED ACTS; CRIMINAL PENALTIES.

(a) IN GENERAL.—A person may not—

(1) excavate, remove, damage, or otherwise alter or deface or attempt to excavate, remove, damage, or otherwise alter or deface any paleontological
resources located on Federal land unless such activity is conducted in accordance with this subtitle;

(2) exchange, transport, export, receive, or offer to exchange, transport, export, or receive any paleontological resource if the person knew or should have known such resource to have been excavated or removed from Federal land in violation of any provisions, rule, regulation, law, ordinance, or permit in effect under Federal law, including this subtitle; or

(3) sell or purchase or offer to sell or purchase any paleontological resource if the person knew or should have known such resource to have been excavated, removed, sold, purchased, exchanged, transported, or received from Federal land.

(b) FALSE LABELING OFFENSES.—A person may not make or submit any false record, account, or label for, or any false identification of, any paleontological resource excavated or removed from Federal land.

(c) PENALTIES.—A person who knowingly violates or counsels, procures, solicits, or employs another person to violate subsection (a) or (b) shall, upon conviction, be fined in accordance with title 18, United States Code, or imprisoned not more than 5 years, or both; but if the sum of the commercial and paleontological value of the paleontological resources involved and the cost of restoration and
repair of such resources does not exceed $500, such person
shall be fined in accordance with title 18, United States
Code, or imprisoned not more than 2 years, or both.

(d) **MULTIPLE OFFENSES.**—In the case of a second
or subsequent violation by the same person, the amount
of the penalty assessed under subsection (c) may be dou-
bled.

(e) **GENERAL EXCEPTION.**—Nothing in subsection
(a) shall apply to any person with respect to any paleon-
tological resource which was in the lawful possession of
such person prior to the date of enactment of this Act.

**SEC. 6307. CIVIL PENALTIES.**

(a) **IN GENERAL.**—

(1) **HEARING.**—A person who violates any pro-
hibition contained in an applicable regulation or per-
mit issued under this subtitle may be assessed a
penalty by the Secretary after the person is given
notice and opportunity for a hearing with respect to
the violation. Each violation shall be considered a
separate offense for purposes of this section.

(2) **AMOUNT OF PENALTY.**—The amount of
such penalty assessed under paragraph (1) shall be
determined under regulations promulgated pursuant
to this subtitle, taking into account the following
factors:
(A) The scientific or fair market value, whichever is greater, of the paleontological re-
source involved, as determined by the Secretary.

(B) The cost of response, restoration, and repair of the resource and the paleontological
site involved.

(C) Any other factors considered relevant by the Secretary assessing the penalty.

(3) MULTIPLE OFFENSES.—In the case of a second or subsequent violation by the same person,
the amount of a penalty assessed under paragraph (2) may be doubled.

(4) LIMITATION.—The amount of any penalty assessed under this subsection for any 1 violation
shall not exceed an amount equal to double the cost of response, restoration, and repair of resources and
paleontological site damage plus double the scientific or fair market value of resources destroyed or not
recovered.

(b) PETITION FOR JUDICIAL REVIEW; COLLECTION OF UNPAID ASSESSMENTS.—

(1) JUDICIAL REVIEW.—Any person against whom an order is issued assessing a penalty under
subsection (a) may file a petition for judicial review of the order in the United States District Court for
the District of Columbia or in the district in which
the violation is alleged to have occurred within the
30-day period beginning on the date the order mak-
ing the assessment was issued. Upon notice of such
filing, the Secretary shall promptly file such a cer-
tified copy of the record on which the order was
issued. The court shall hear the action on the record
made before the Secretary and shall sustain the ac-
tion if it is supported by substantial evidence on the
record considered as a whole.

(2) FAILURE TO PAY.—If any person fails to
pay a penalty under this section within 30 days—

(A) after the order making assessment has
become final and the person has not filed a pe-
tition for judicial review of the order in accord-
ance with paragraph (1); or

(B) after a court in an action brought in
paragraph (1) has entered a final judgment up-
holding the assessment of the penalty, the Sec-
retary may request the Attorney General to in-
stitute a civil action in a district court of the
United States for any district in which the per-
son if found, resides, or transacts business, to
collect the penalty (plus interest at currently
prevailing rates from the date of the final order
or the date of the final judgment, as the case may be). The district court shall have jurisdiction to hear and decide any such action. In such action, the validity, amount, and appropriateness of such penalty shall not be subject to review. Any person who fails to pay on a timely basis the amount of an assessment of a civil penalty as described in the first sentence of this paragraph shall be required to pay, in addition to such amount and interest, attorneys fees and costs for collection proceedings.

(e) Hearings.—Hearings held during proceedings instituted under subsection (a) shall be conducted in accordance with section 554 of title 5, United States Code.

(d) Use of Recovered Amounts.—Penalties collected under this section shall be available to the Secretary and without further appropriation may be used only as follows:

(1) To protect, restore, or repair the paleontological resources and sites which were the subject of the action, and to protect, monitor, and study the resources and sites.

(2) To provide educational materials to the public about paleontological resources and sites.
(3) To provide for the payment of rewards as provided in section 6308.

SEC. 6308. REWARDS AND FORFEITURE.

(a) REWARDS.—The Secretary may pay from penalties collected under section 6306 or 6307 or from appropriated funds—

(1) consistent with amounts established in regulations by the Secretary; or

(2) if no such regulation exists, an amount up to \( \frac{1}{2} \) of the penalties, to any person who furnishes information which leads to the finding of a civil violation, or the conviction of criminal violation, with respect to which the penalty was paid. If several persons provided the information, the amount shall be divided among the persons. No officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall be eligible for payment under this subsection.

(b) FORFEITURE.—All paleontological resources with respect to which a violation under section 6306 or 6307 occurred and which are in the possession of any person, shall be subject to civil forfeiture, or upon conviction, to criminal forfeiture.
(c) TRANSFER OF SEIZED RESOURCES.—The Secretary may transfer administration of seized paleontological resources to Federal or non-Federal educational institutions to be used for scientific or educational purposes.