



# LAWS OF ALASKA

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Source

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Chapter No.

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## AN ACT

Relating to historic preservation.

### BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

\* Section 1. AS 41 is amended by adding a new chapter to read:

#### CHAPTER 35. ALASKA HISTORIC PRESERVATION ACT.

Sec. 41.35.010. DECLARATION OF POLICY. It is the policy of the state to preserve and protect the historic, prehistoric and archeological resources of Alaska from loss, desecration and destruction so that the scientific, historic and cultural heritage embodied in these resources may pass undiminished to future generations. To this end, the legislature finds and declares that the historic, prehistoric and archeological resources of the state are properly the subject of concerted and coordinated efforts exercised on behalf of the general welfare of the public in order that these resources may be located, preserved, studied, exhibited and evaluated.

Sec. 41.35.020. TITLE TO HISTORIC, PREHISTORIC AND ARCHEOLOGICAL RESOURCES; LOCAL DISPLAY. (a) The State of Alaska reserves to itself title to all historic, prehistoric and archeological resources situated on land owned or controlled by the state, including tideland and submerged land, and reserves to itself the exclusive right of field archeology on state-owned or controlled land. However, nothing in this chapter diminishes the cultural rights and responsibilities of persons of aboriginal descent or infringes upon their right of possession and use of those resources which may be considered of historic, prehistoric or archeological value.

(b) Although title to historic, prehistoric and archeological resources is in the State of Alaska, local cultural groups may obtain from the state, or retain, for study or display, artifacts and other items of these resources from their respective cultures or areas if the advisory committee created in sec. 110 of this chapter finds that (1) the group has a durable building with weatherproof and fireproof construction and humidity control and other factors necessary to serve as a museum which will assure safe preservation of the items, (2) the item sought to be obtained is not one for which there is an undue risk of damage during transportation, and (3) the item sought to be obtained or retained is not one requiring special treatment or care beyond the ability or means of the group requesting it. A group retaining such an item or obtaining one from the state shall house it in the museum building and shall make every reasonable effort to assure its safe preservation. If the advisory committee finds that a local cultural group is not properly taking care of an item the group shall return it to the department.

Sec. 41.35.030. DESIGNATION OF MONUMENTS AND HISTORIC SITES. Upon the recommendation of the Historic Sites Advisory Committee, the governor may declare by public order any particular historic, prehistoric or archeological structure, deposit, site or other object of scientific or historic interest that is situated on land owned or controlled by the state to be a state monument or historic site and he may designate as a part of the monument or site as much land as is considered necessary for the proper access, care and management of the object or site to be protected. When an object or site is situated on land held in private ownership, it may be declared a state monument or historic site in the same manner, with the written consent of the owner.

Sec. 41.35.040. ADMINISTRATION AND FINANCIAL SUPPORT OF MONUMENTS AND HISTORIC SITES. State-owned monuments, sites and other historic, prehistoric or archeological properties owned or purchased by the state are under the control of the Department of Natural Resources and their maintenance shall be covered in the appropriations made to that department. Privately owned state monuments or historic sites are eligible to receive state support for their maintenance, restoration and rehabilitation if they are kept accessible to the general public and application for support is made in conformity with regulations adopted by the commissioner of natural resources.

Sec. 41.35.050. REGULATIONS. The commissioner of natural resources shall adopt regulations to carry out the purposes of this chapter.

Sec. 41.35.060. POWER TO ACQUIRE HISTORIC, PREHISTORIC OR ARCHEOLOGICAL PROPERTIES. (a) The department, with the recommendation of the Historic Sites Advisory Committee, may acquire real and personal properties that have statewide historic, prehistoric or archeological significance by gift, purchase, devise or bequest. The department shall preserve and administer property so acquired. The department may acquire property adjacent to

the property having historic, prehistoric or archeological significance when it is determined to be necessary for the proper use and administration of the significant property.

(b) If an historic, prehistoric or archeological property which has been found by the department, upon the recommendation of the Historic Sites Advisory Committee, to be important for state ownership is in danger of being sold or used so that its historic, prehistoric or archeological value will be destroyed or seriously impaired, or is otherwise in danger of destruction or serious impairment, the department may establish the use of the property in a manner necessary to preserve its historic, prehistoric or archeological character or value. If the owner of the property does not wish to follow the restrictions of the department, the department may acquire the property by eminent domain under AS 09.55.240 - 09.55.460.

Sec. 41.35.070. PRESERVATION OF HISTORIC, PREHISTORIC AND ARCHEOLOGICAL RESOURCES THREATENED BY PUBLIC CONSTRUCTION. (a) The state archeologist shall locate, identify and preserve in suitable records information regarding historic, prehistoric and archeological sites, locations and remains. The information shall be submitted to the heads of the executive departments of the state.

(b) Before any public construction or public improvement of any nature is undertaken by the state, or a governmental agency of the state or by a private person under contract with or licensed by the state or governmental agency of the state, the state archeologist may survey the affected area to determine if the area contains historic, prehistoric or archeological values.

(c) If the state archeologist determines that historic, prehistoric or archeological sites, locations or remains will be adversely affected by the public construction or improvement, the proposed public construction or improvement may not be commenced until the department in cooperation with the state archeologist has performed the necessary investigation, recording and salvage of the site, location or remains. All investigation, recording and salvage work shall be performed as expeditiously as possible so that no state construction project will be unduly impaired, impeded or delayed.

(d) If in the course of performing public construction or improvements, historic, prehistoric or archeological sites, locations, remains or objects are discovered, the state archeologist shall be notified and his concurrence shall be requested in continuing the construction or improvement. Upon receipt of this notice, the state archeologist shall survey the area to determine whether the area contains historic, prehistoric or archeological data which should be preserved in the public interest. The survey shall be conducted as expeditiously as possible. If, as a result of the survey, it is determined that (1) such data exists in the area, (2) the data has exceptional historic, prehistoric or archeological significance, and should be collected and preserved in the public interest, and (3) it is feasible to collect and preserve the data, the department in cooperation with the state archeologist

shall perform the necessary work to collect and preserve the data. This work shall be performed as expeditiously as possible.

(e) If the concurrence of the state archeologist, required under (b) and (c) of this section, is not obtained after 90 days from the filing of a request for his concurrence to proceed with the project, the agency or person performing the construction or improvement may apply to the governor for permission to proceed without such concurrence and the governor may take the action he considers best in overruling or sustaining the state archeologist.

(f) The costs of investigation, recording and salvage of the site shall be reimbursed by the agency sponsoring the construction project.

(g) Notwithstanding (a) and (f) of this section, all actions of the archeologist to stop any project must first be approved in writing by the commissioner of natural resources.

Sec. 41.35.080. PERMITS. The commissioner, with the advice and concurrence of the state archeologist, may issue a permit for the investigation, excavation, gathering or removal from the natural state, of any historic, prehistoric or archeological resources of the state. A permit may be issued only to persons or organizations qualified to make the investigations, excavations, gatherings or removals and only if the results of these authorized activities will be made available to the general public through institutions and museums interested in disseminating knowledge on the subjects involved. If the historic, prehistoric or archeological resource involved is one which is, or is located on a site which is, sacred, holy or of religious significance to a cultural group, the consent of that cultural group must be obtained before a permit may be issued under this section.

Sec. 41.35.090. NOTICE REQUIRED OF PRIVATE PERSONS. Before any construction, alteration or improvement of any nature is undertaken on a privately owned, officially designated state monument or historic site by any person, he shall give the department and the state archeologist three months notice of intention to construct on, alter or improve it. Before the expiration of the three-month notification period, the department shall either begin eminent domain proceedings under sec. 50(b) of this chapter or undertake or permit the recording and salvaging of any historic, prehistoric or archeological information considered necessary.

Sec. 41.35.100. EXCAVATION AND REMOVAL OF HISTORIC, PREHISTORIC OR ARCHEOLOGICAL REMAINS ON PRIVATE LAND. Before any historic, prehistoric or archeological remains are excavated or removed from private land by the department or the state archeologist, the written approval of the owner shall first be secured. When the value of the private land is diminished by the excavation or removal, the owner of the land shall be compensated for the loss at a monetary sum mutually agreed on by the department and the owner or at a monetary sum set by the court.

Sec. 41.35.110. HISTORIC SITES ADVISORY COMMITTEE. There is created in the Department of Natural Resources the Historic Sites Advisory Committee.

Sec. 41.35.120. COMPOSITION OF COMMITTEE. The committee consists of the following persons:

- (1) the state archeologist;
- (2) the state liaison officer appointed under the National Historic Preservation Act of 1966, Public Law 89-665;
- (3) three persons with professionally relevant backgrounds appointed from the following fields: history, anthropology, paleontology, architecture, geology, archeology, and natural history; and
- (4) two persons appointed to represent indigenous ethnic groups.

Sec. 41.35.130. APPOINTMENT OF MEMBERS. Members of the committee are appointed by the governor and confirmed by the legislature meeting in joint session. The members of the committee shall serve at the pleasure of the governor.

Sec. 41.35.140. TERM OF MEMBERSHIP. The term of office for a member of the committee is three years, except for those who are members by virtue of their positions with the state. They serve for as long as they remain in the position by virtue of which they are members of the committee. A member appointed to fill a vacancy serves for the unexpired term of the member he succeeds. Of those members listed under sec. 120(3) and (4) of this chapter, upon initial appointment, one shall serve for one year, two for two years, and two for three years.

Sec. 41.35.150. COMPENSATION. The members of the committee serve without compensation but are entitled to per diem and travel expenses authorized by law for other boards and commissions.

Sec. 41.35.160. OFFICERS. At the first meeting of each year, the committee shall elect a chairman from among its members.

Sec. 41.35.170. MEETINGS AND QUORUM. The committee shall meet at least twice a year. Additional meetings may be called by the chairman or by petition of at least five members. Five members of the committee constitutes a quorum.

Sec. 41.35.180. DUTIES OF THE COMMITTEE. The Historic Sites Advisory Committee shall

- (1) develop criteria for the evaluation of state monuments and historic sites and all real and personal property which may be considered to be of historic, prehistoric or archeological significance as would justify their acquisition and ownership by the state;
- (2) cooperate with the Department of Natural

Resources and the state archeologist in formulating and administering a statewide historic sites survey under the National Historic Preservation Act of 1966, Public Law 89-665;

(3) review those surveys and historic preservation plans that may be required, and approve properties for nomination to the National Register as provided for in the National Historic Preservation Act of 1966, Public Law 89-665;

(4) provide necessary assistance to the governor and the legislature for achieving balanced and coordinated state policies and programs for the preservation of the state's historic, prehistoric and archeological resources.

Sec. 41.35.190. POWERS OF CHAIRMAN. Subject to available appropriations the chairman may, with the concurrence of a majority of the committee, employ necessary personnel and may contract for the services of experts and other persons who may be needed.

Sec. 41.35.200. UNLAWFUL ACTS. (a) It is unlawful for a person to appropriate, excavate, remove, injure, or destroy, without a permit from the commissioner, any historic, prehistoric or archeological resources of the state.

(b) It is unlawful for a person to knowingly possess, sell, buy or transport within the state, or offer to sell, buy or transport within the state, historic, prehistoric or archeological resources taken or acquired in violation of this section or 16 U.S.C. 433.

(c) No person may unlawfully destroy, mutilate, deface, injure, remove or excavate a gravesite or a tomb, monument, gravestone or other structure or object at a gravesite, even though the gravesite appears to be abandoned, lost or neglected.

(d) An historic, prehistoric or archeological resource which is taken in violation of this section shall be seized by any person designated in sec. 220 of this chapter wherever found and at any time. Objects seized may be disposed of as the commissioner determines by deposit in the proper public depository.

Sec. 41.35.210. PENALTIES. A person who violates a provision of this chapter is guilty of a misdemeanor, and upon conviction is punishable by a fine of \$1,000, or by imprisonment for not more than six months, or by both.

Sec. 41.35.220. ENFORCEMENT AUTHORITY. The following persons are peace officers of the state and shall enforce this chapter:

- (1) an employee of the department authorized by the commissioner;
- (2) a peace officer in the state;
- (3) any other person authorized by the commissioner.

Sec. 41.35.230. DEFINITIONS. In this chapter, unless the context otherwise requires,

(1) "commissioner" means the commissioner of natural resources;

(2) "committee" means the Historic Sites Advisory Committee;

(3) "department" means the Department of Natural Resources;

(4) "historic, prehistoric and archeological resources" include deposits, structures, ruins, sites, buildings, graves, artifacts, fossils, or other objects of antiquity which provide information pertaining to the historical or prehistorical culture of people in the state as well as to the natural history of the state.

Sec. 41.35.240. TITLE OF CHAPTER. This chapter may be cited as the Alaska Historic Preservation Act.

\* Sec. 2. AS 38.12 and 38.25 are repealed.

\* Sec. 3. AS 44.19 is amended by adding a new section to read:

Sec. 44.19.024. STATE ARCHEOLOGIST AND DUTIES. (a) There is established in the Department of Natural Resources the position of state archeologist. The state archeologist shall be a qualified archeologist who shall serve at the pleasure of the governor.

(b) The state archeologist shall

(1) sponsor, engage in and direct fundamental research into the archeology of the state and encourage and coordinate archeological research and investigation undertaken in the state;

(2) cooperate with the Department of Natural Resources and the Historic Sites Advisory Committee in performing their functions under AS 41.35;

(3) cooperate with the Department of Natural Resources in preparing an inventory of historic, prehistoric and archeological sites in the state;

(4) cooperate with the commissioner of natural resources in reviewing and issuing investigation, excavation, gathering and removal permits;

(5) ensure that historic, prehistoric and archeological sites are properly reported by persons or agencies engaged in public construction work and protect sites and objects of significance discovered at state sites or discovered during the course of public construction and encourage the protection of sites and objects discovered during the course of any other construction work;

(6) investigate reported historic, prehistoric or archeological sites and appraise them for any future excavation; and

(7) serve as a central clearinghouse for information on all historic, prehistoric and archeological site excavation in the state.

\* Sec. 4. AS 29.10 is amended by adding new sections to read:

Sec. 29.10.223. EXCEPTIONS FOR HISTORIC SITES, BUILDINGS AND MONUMENTS. Exceptions to the regulations provided for in secs. 213 and 219 of this chapter may be made in order to provide for the preservation, maintenance and protection of historic sites, buildings and monuments.

Sec. 29.10.344. EXEMPTION OF HISTORIC SITES, BUILDINGS AND MONUMENTS. In levying, assessing and collecting taxes for school and city purposes, the council or assembly may by ordinance classify and exempt from taxation historic sites, buildings and monuments.

\* Sec. 5. AS 29.15 is amended by adding a new section in art. 3 to read:

Sec. 29.15.205. HISTORIC SITES, BUILDINGS AND MONUMENTS. The board of trustees may provide for the preservation, maintenance and protection of historic sites, buildings and monuments.

\* Sec. 6. AS 29.20 is amended by adding a new section to read:

Sec. 29.20.065. HISTORIC SITES, BUILDINGS AND MONUMENTS. The board of trustees of a city of the third class may provide for the preservation, maintenance and protection of historic sites, buildings and monuments.

\* Sec. 7. AS 29.25 is amended by adding a new section to read:

Sec. 29.25.305. ZONING EXCEPTIONS FOR HISTORIC SITES, BUILDINGS AND MONUMENTS. Exceptions to the zoning ordinances provided for under sec. 300 of this chapter and other ordinances regulating building requirements and specifications may be made in order to provide for the preservation, maintenance and protection of historic sites, buildings and monuments.

\* Sec. 8. AS 09.55.250 is amended to read:

Sec. 09.55.250. CLASSIFICATION OF ESTATES AND LANDS SUBJECT TO BE TAKEN. The following is a classification of the estates and rights in lands subject to be taken for public use:

(1) a fee simple, when taken for public buildings or grounds, or for permanent buildings, for reservoirs and dams and permanent flooding occasioned by them, or for an outlet for a flow, or a place for the deposit of debris or tailings of a mine, or when, in the judgment of the Department of Natural Resources, Department of Public Works, or the Department of Highways, a fee simple is necessary for any of the purposes for which the department, on behalf of the state, is authorized by law to acquire

real property by condemnation;

(2) an easement when taken for any other use;

(3) the right of entry upon an occupation of lands, and the right to take from the land earth, gravel, stones, trees, and timber as may be necessary for a public use.