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1 IN THE HOUSE

BY THE HEALTH, WELFARE
AND EDUCATION COMMITTEE

2 CS FOR HOUSE BILL NO. 812

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to historic preservation."

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

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

9 CHAPTER 35. ALASKA HISTORIC PRESERVATION ACT.

10 Sec. 41.35.010. DECLARATION OF PURPOSE. The legislature is
11 concerned over the fact that the most recent past has seen the neglect,
12 desecration, loss and destruction of the historic, prehistoric and
13 archeological resources of Alaska with a resulting loss to the people
14 of the state of knowledge concerning their heritage. The legislature
15 determines that the public has an interest in the preservation of all
16 historic, prehistoric and archeological resources for their scientific
17 and historical information and value and that the public has a right
18 to the knowledge to be derived and gained from the study of these
19 resources. The legislature finds and declares that the historic, pre-
20 historic and archeological resources of the state are properly the
21 subject of concerted and coordinated efforts exercised on behalf of
22 the general welfare of the public in order that these resources may be
23 located, preserved, studied, exhibited and evaluated.

24 Sec. 41.35.020. TITLE TO HISTORIC, PREHISTORIC AND ARCHEOLOGICAL
25 RESOURCES. The State of Alaska reserves to itself title to all his-
26 toric, prehistoric and archeological resources situated on land owned
27 or controlled by the state, including tidelands and submerged lands,
28 and reserves to itself the exclusive right of field archeology on state
29 owned or controlled lands. However, nothing in this chapter may be

1 considered to diminish the cultural rights and responsibilities of
2 persons of aboriginal descent or infringe upon their right of possession
3 and use of those resources which may be considered of historic, pre-
4 historic or archeological value.

5 Sec. 41.35.030. DESIGNATION OF MONUMENTS AND HISTORIC SITES.

6 Upon the recommendation of the Historic Sites Advisory Committee, the
7 governor may declare by public order any particular historic, prehis-
8 toric or archeological structure, deposit, site or other object of
9 scientific or historic interest that is situated on land owned or con-
10 trolled by the state to be a state monument or historic site and he
11 may designate as a part of the monument or site as much land as is con-
12 sidered necessary for the proper access, care and management of the
13 object or site to be protected. When an object or site is situated on
14 land held in private ownership, it may be declared a state monument or
15 historic site in the same manner, with the written consent of the owner.

16 Sec. 41.35.040. ADMINISTRATION AND FINANCIAL SUPPORT OF MONUMENTS
17 AND HISTORIC SITES. State-owned monuments, sites and other historic,
18 prehistoric or archeological properties owned or purchased by the state
19 are under the control of the Department of Natural Resources and their
20 maintenance shall be covered in the appropriations made to that depart-
21 ment. Privately owned state monuments or historic sites are eligible
22 to receive state support for their maintenance if they are kept acces-
23 sible to the general public and application for support is made in
24 conformity with regulations adopted by the commissioner of natural
25 resources.

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

28 Sec. 41.35.060. POWER TO ACQUIRE HISTORIC, PREHISTORIC, OR
29 ARCHEOLOGICAL PROPERTIES. (a) The department, with the recommendation

1 of the Historic Sites Advisory Committee, may acquire real and personal
2 properties that have statewide historic, prehistoric, or archaeological
3 significance by gift, purchase, devise or bequest. The department
4 shall preserve and administer property so acquired. The department
5 may acquire property adjacent to the property having historic, pre-
6 historic or archeological significance when it is determined to be
7 necessary for the proper use and administration of the significant
8 property.

9 (b) If a historic, prehistoric or archeological property which
10 has been found by the department, upon the recommendation of the
11 Historic Sites Advisory Committee, to be important for state owner-
12 ship is in danger of being sold or used so that its historic, pre-
13 historic or archeological value will be destroyed or seriously
14 impaired, or is otherwise in danger of destruction or serious impairment,
15 the department may establish the use of the property in a manner neces-
16 sary to preserve its historic, prehistoric or archeological character
17 or value. If the owner of the property does not wish to follow the
18 restrictions of the department, the department may acquire the property
19 by eminent domain under AS 09.55.240 - 09.55.460.

20 Sec. 41.35.070. PRESERVATION OF HISTORIC, PREHISTORIC AND
21 ARCHEOLOGICAL RESOURCES THREATENED BY PUBLIC CONSTRUCTION. (a) The
22 department in cooperation with the state archeologist shall locate,
23 identify and preserve in suitable records information regarding his-
24 toric, prehistoric and archeological sites, locations and remains. The
25 information shall be submitted to the heads of the executive depart-
26 ments of the state.

27 (b) Before any public construction or public improvement of any
28 nature is undertaken by the state, or a governmental agency of the
29 state or by a private person under contract with or licensed by the

1 state or governmental agency of the state, the information required
2 under (a) of this section shall be consulted by the appropriate agency
3 or person to determine if the area to be affected by the public con-
4 struction or improvement contains listed historic, prehistoric or
5 archeological sites, locations or remains. If the affected area con-
6 tains listed sites, locations or remains, the proposed public
7 construction or improvement may not be commenced, or, in the event
8 it has already begun, continued, until the Department of Natural
9 Resources and the state archeologist are advised of the construction
10 or improvement and the concurrence of the department in the project
11 is secured.

12 (c) If the department does not concur because the listed site,
13 location or remains will be adversely affected by the public construc-
14 tion or improvement, it shall perform the necessary investigation,
15 recording and salvage of the site, location or remains.

16 (d) If in the course of performing public construction or im-
17 provements, historic, prehistoric or archeological sites, locations,
18 remains or objects are discovered, the department and the state archeo-
19 logist shall be notified and the concurrence of the department shall
20 be requested in continuing the construction or improvement. Upon
21 receipt of this notice, the department and the state archeologist shall
22 survey the area to determine whether the area contains historic, pre-
23 historic or archeological data which should be preserved in the public
24 interest. The survey shall be conducted as expeditiously as possible.
25 If, as a result of the survey, it is determined that (1) such data
26 exists in the area, (2) that the data has exceptional historic, pre-
27 historic or archeological significance, and should be collected and
28 preserved in the public interest, and (3) that it is feasible to
29 collect and preserve the data, the department shall perform the

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

3 (e) If the concurrence of the department, required under (b),
4 (c) and (d) of this section, is not obtained after 90 days from the
5 filing of a request for concurrence of the department to proceed with
6 the project, the agency or person performing the construction or
7 improvement may apply to the governor for permission to proceed with-
8 out the concurrence of the department and the governor may take the
9 action he considers best in overruling or sustaining the department.

10 Sec. 41.35.080. NOTICE REQUIRED BY PRIVATE PERSON. Before any
11 construction, alteration or improvement of any nature is undertaken on
12 a privately owned, officially designated state monument or historic
13 site by any person, he shall give the department and the state archeolo-
14 gist three months notice of intention to construct on, alter or
15 improve it. After the expiration of the three-month notification
16 period, the department shall either begin eminent domain proceedings
17 under sec. 50(b) of this chapter or undertake or permit the recording
18 and salvaging of any historic, prehistoric or archeological information
19 considered necessary.

20 Sec. 41.35.090. PERMITS. The commissioner, with the advice and
21 recommendation of the state archeologist, may issue a permit for the
22 investigation, excavation, gathering or removal from the natural state,
23 of any historic, prehistoric or archeological resources of the state.
24 A permit may be issued only to persons or organizations qualified to
25 make the investigations, excavations, gatherings or removals and only
26 if the results of these authorized activities will be made available to
27 the general public through institutions and museums interested in
28 disseminating knowledge on the subjects involved. If the historic,
29 prehistoric or archeological resource involved is one which is, or is

1 located on a site which is, sacred, holy or of religious significance
2 to a cultural group, the consent of that cultural group must be obtained
3 before a permit may be issued under this section.

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

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

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

- 17 (1) one representative from the Alaska State Museum;
- 18 (2) one representative from the University of Alaska Museum;
- 19 (3) the state archeologist;
- 20 (4) four persons with professionally relevant backgrounds
21 appointed to represent each of the following fields: history, archi-
22 tecture, geology and natural history;
- 23 (5) one representative of the Alaska Historical Society;
- 24 (6) the commissioner of natural resources;
- 25 (7) the State Liaison Officer appointed under the National
26 Historic Preservation Act of 1966, Public Law 89-665, as an ex officio
27 member without vote; and
- 28 (8) four persons appointed to represent each of the following
29 cultural groups: Aleut, Athapaskan, Eskimo and Southeastern Alaskan

1 Indians.

2 Sec. 41.35.130. APPOINTMENT OF MEMBERS. Members of the committee
3 are appointed by the governor and confirmed by the legislature meeting
4 in joint session.

5 Sec. 41.35.140. TERM OF MEMBERSHIP. The term of office for a
6 member of the committee is three years, except for those who are mem-
7 bers by virtue of their positions with the state. They serve for as
8 long as they remain in the position by virtue of which they are members
9 of the committee. A member appointed to fill a vacancy serves for the
10 unexpired term of the member he succeeds. Of those members listed under
11 sec. 120(1), (2), (4) and (5), upon initial appointment, two shall
12 serve for one year, three for two years, and two for three years.

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

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

18 Sec. 41.35.170. MEETINGS AND QUORUM. The committee shall meet
19 at least twice a year. Additional meetings may be called by the chair-
20 man or by petition of at least five members. Five members of the com-
21 mittee constitute a quorum.

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

24 (1) develop criteria for the evaluation of state monuments
25 and historic sites and all real and personal property which may be con-
26 sidered to be of historic, prehistoric or archeological significance
27 as would justify their acquisition and ownership by the state;

28 (2) cooperate with the Department of Natural Resources and
29 the state archeologist in formulating and administering a statewide

1 historic sites survey under the National Historic Preservation Act of
2 1966, Public Law 89-665;

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

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

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

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

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

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

27 (d) A historic, prehistoric or archeological resource which is
28 taken in violation of this section shall be seized by any person
29 designated in sec. 220 of this chapter wherever found and at any time.

1 Objects seized may be disposed of as the commissioner determines by
2 deposit in the proper public depository.

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

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

- 9 (1) an employee of the department authorized by the commis-
10 sioner;
11 (2) a police officer in the state;
12 (3) any other person authorized by the commissioner.

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

- 15 (1) "commissioner" means the commissioner of natural
16 resources;
17 (2) "committee" means the Historic Sites Advisory Committee;
18 (3) "department" means the Department of Natural Resources;
19 (4) "historic, prehistoric and archeological resources"
20 include deposits, structures, ruins, sites, buildings, graves, arti-
21 facts, fossils, or other objects of antiquity which provide information
22 pertaining to the historical or prehistorical culture of people in the
23 state as well as to the natural history of the state.

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

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

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

28 Sec. 44.19.024. STATE ARCHEOLOGIST AND DUTIES. (a) There is
29 established in the Office of the Governor the position of state

1 archeologist. The state archeologist shall be a qualified archeologist.

2 (b) The state archeologist shall

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

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

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

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

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

21 (6) investigate reported historic, prehistoric or archeo-
22 logical sites and appraise them for any future excavation; and

23 (7) serve as a central clearing-house for information on
24 all historic, prehistoric and archeological site excavation in the
25 state.

26 * Sec. 4. AS 14.56.010 is amended to read:

27 CHAPTER 56. THE STATE LIBRARY AND HISTORICAL
28 LIBRARY AND ARCHIVES [MUSEUM].

29 Sec. 14.56.010. DEPARTMENT OF EDUCATION TO GOVERN LIBRARY AND

1 ARCHIVES. The Department of Education shall manage and have complete
2 charge of all of the property contained in the institutions known as
3 the state library, [AND] state historical library, and state archives.
4 The state library, [AND] state historical library and archives shall
5 be maintained in the state capital.

6 * Sec. 5. AS 14.56.080(3) is repealed.

7 * Sec. 6. AS 14.56 is amended by adding new sections to read:

8 Sec. 14.56.090. STATE ARCHIVES DUTIES. The department shall

9 (1) negotiate for, acquire and receive public records of
10 legal or administrative value or of historical interest, including
11 noncurrent public records of the state, political subdivisions of the
12 state and defunct public agencies which may be transferred to and
13 accepted in official custody in the state archives where they will be
14 preserved, protected and arranged according to approved archival
15 practice;

16 (2) cooperate with records management in the Department of
17 Administration in the development of standards for records creation,
18 maintenance and service, with disposal of public records subject to
19 approval from the archives;

20 (3) have the right of reasonable access to and examination
21 of all public records in the state, unless otherwise prohibited by
22 law;

23 (4) adopt a seal for official use and for certification of
24 record copies which shall have the same effect as if made by the
25 original custodian of the records;

26 (5) make copies of archival materials available, unless
27 restricted by law or by specified terms and conditions of their deposit,
28 to any person for a reasonable fee;

29 (6) recover records of any public office in the Territory

1 or State of Alaska by negotiating for their return or by notifying
2 the attorney general to initiate recovery proceedings;

3 (7) acquire and maintain private records, papers and manu-
4 scripts concerning Alaska which are of historic interest or signifi-
5 cance;

6 (8) publish guides, inventories, reports, bulletins and
7 other publications to promote the objectives of the archives; and

8 (9) report to the governor and the legislature on the
9 activities and requirements of the archives with recommendations for
10 improving services to the state.

11 * Sec. 7. AS 40.20 is amended by adding a new section to read:

12 Sec. 40.20.040. PUBLIC RECORDS DEFINED. In this chapter "public
13 records" include all written or printed documents, books, papers,
14 letters, photographs, maps, sound recordings, tapes, and other records
15 regardless of physical form, made or received under law or in the
16 transaction of public business by an agency of the state or a political
17 subdivision of the state.

18 * Sec. 8. AS 29.10 is amended by adding a new section to read:

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

24 * Sec. 9. AS 29.15 is amended by adding a new section to read:

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

28 * Sec. 10. AS 29.20 is amended by adding a new section to read:

29 Sec. 29.20.065. HISTORIC SITES, BUILDINGS AND MONUMENTS. The

1 board of trustees of a city of the third class may provide for the
2 preservation, maintenance and protection of historic sites, buildings
3 and monuments.

4 * Sec. 11. AS 29.25 is amended by adding a new section to read:

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

11 * Sec. 12. AS 29.10 is amended by adding a new section to read:

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

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