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HCS

1 IN THE SENATE

BY HENSLEY AND CROFT

2 SENATE BILL NO. 119

3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SEVENTH LEGISLATURE - FIRST 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 about 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 from the study of these resources.
19 The legislature finds and declares that the historic, prehistoric and
20 archeological resources of the state are properly the subject of con-
21 certed and coordinated efforts exercised on behalf of the general
22 welfare of the public in order that these resources may be located,
23 preserved, studied, exhibited and evaluated.

24 Sec. 41.35.020. TITLE TO HISTORIC, PREHISTORIC AND ARCHEOLOGICAL
25 RESOURCES; LOCAL DISPLAY. (a) The State of Alaska reserves to itself
26 title to all historic, prehistoric and archeological resources situated
27 on land owned or controlled by the state, including tidelands and sub-
28 merged lands, and reserves to itself the exclusive right of field
29 archeology on state-owned or controlled lands. However, nothing in

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1 this chapter diminishes the cultural rights and responsibilities of
2 persons of aboriginal descent or infringes upon their right of posses-
3 sion and use of those resources which may be considered of historic,
4 prehistoric or archeological value.

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

22 Sec. 41.35.030. DESIGNATION OF MONUMENTS AND HISTORIC SITES. Upon
23 the recommendation of the Historic Sites Advisory Committee, the gover-
24 nor may declare by public order any particular historic, prehistoric
25 or archeological structure, deposit, site or other object of scientific
26 or historic interest that is situated on land owned or controlled by
27 the state to be a state monument or historic site and he may designate
28 as a part of the monument or site as much land as is considered
29 necessary for the proper access, care and management of the object or

1 site to be protected. When an object or site is situated on land held
2 in private ownership, it may be declared a state monument or historic
3 site in the same manner, with the written consent of the owner.

4 Sec. 41.35.040. ADMINISTRATION AND FINANCIAL SUPPORT OF MONUMENTS
5 AND HISTORIC SITES. State-owned monuments, sites and other historic,
6 prehistoric or archeological properties owned or purchased by the state
7 are under the control of the Department of Natural Resources and their
8 maintenance shall be covered in the appropriations made to that depart-
9 ment. Privately-owned state monuments or historic sites are eligible
10 to receive state support for their maintenance if they are kept acces-
11 sible to the general public and application for support is made in
12 conformity with regulations adopted by the commissioner of natural
13 resources.

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

16 Sec. 41.35.060. POWER TO ACQUIRE HISTORIC, PREHISTORIC, OR
17 ARCHEOLOGICAL PROPERTIES. (a) The department, with the recommendation
18 of the Historic Sites Advisory Committee, may acquire real and personal
19 properties that have statewide historic, prehistoric, or archeological
20 significance by gift, purchase, devise or bequest. The department
21 shall preserve and administer property so acquired. The department
22 may acquire property adjacent to the property having historic, pre-
23 historic or archeological significance when it is determined to be
24 necessary for the proper use and administration of the significant
25 property.

26 (b) If an historic, prehistoric or archeological property which
27 has been found by the department, upon the recommendation of the
28 Historic Sites Advisory Committee, to be important for state ownership
29 is in danger of being sold or used so that its historic, prehistoric

1 or archeological value will be destroyed or seriously impaired, or is
2 otherwise in danger of destruction or serious impairment, the department
3 may establish the use of the property in a manner necessary to preserve
4 its historic, prehistoric or archeological character or value. If the
5 owner of the property does not wish to follow the restrictions of the
6 department, the department may acquire the property by eminent domain
7 under AS 09.55.240 - 09.55.460.

8 Sec. 41.35.070. PRESERVATION OF HISTORIC, PREHISTORIC AND
9 ARCHEOLOGICAL RESOURCES THREATENED BY PUBLIC CONSTRUCTION. (a) The
10 department in cooperation with the state archeologist shall locate,
11 identify and preserve in suitable records information regarding historic,
12 prehistoric and archeological sites, locations and remains. The infor-
13 mation shall be submitted to the heads of the executive departments of
14 the state.

15 (b) Before any public construction or public improvement of any
16 nature is undertaken by the state, or a governmental agency of the
17 state or by a private person under contract with or licensed by the
18 state or governmental agency of the state, the information required
19 under (a) of this section shall be consulted by the appropriate agency
20 or person to determine if the area to be affected by the public con-
21 struction or improvement contains listed historic, prehistoric or
22 archeological sites, locations or remains. If the affected area con-
23 tains listed sites, locations or remains, the proposed public construc-
24 tion or improvement may not be commenced, or, in the event it has
25 already begun, continued, until the Department of Natural Resources
26 and the state archeologist are advised of the construction or improve-
27 ment and the concurrence of the department in the project is secured.

28 (c) If the department does not concur because the listed site,
29 location or remains will be adversely affected by the public construction

1 or improvement, it shall perform the necessary investigation, recording
2 and salvage of the site, location or remains.

3 (d) If in the course of performing public construction or improve-
4 ments, historic, prehistoric or archeological sites, locations, remains
5 or objects are discovered, the department and the state archeologist
6 shall be notified and the concurrence of the department shall be
7 requested in continuing the construction or improvement. Upon receipt
8 of this notice, the department and the state archeologist shall survey
9 the area to determine whether the area contains historic, prehistoric
10 or archeological data which should be preserved in the public interest.
11 The survey shall be conducted as expeditiously as possible. If, as
12 a result of the survey, it is determined that (1) such data exists
13 in the area, (2) the data has exceptional historic, prehistoric or
14 archeological significance, and should be collected and preserved in
15 the public interest, and (3) it is feasible to collect and preserve
16 the data, the department shall perform the necessary work to collect
17 and preserve the data. This work shall be performed as expeditiously
18 as possible.

19 (e) If the concurrence of the department, required under (b),
20 (c) and (d) of this section, is not obtained after 90 days from the
21 filing of a request for concurrence of the department to proceed with
22 the project, the agency or person performing the construction or
23 improvement may apply to the governor for permission to proceed without
24 the concurrence of the department and the governor may take the action
25 he considers best in overruling or sustaining the department.

26 Sec. 41.35.080. NOTICE REQUIRED BY PRIVATE PERSON. Before any
27 construction, alteration or improvement of any nature is undertaken on
28 a privately-owned, officially designated state monument or historic
29 site by any person, he shall give the department and the state

1 archeologist three months notice of intention to construct on, alter or
2 improve it. Before the expiration of the three-month notification
3 period, the department shall either begin eminent domain proceedings
4 under sec. 50(b) of this chapter or undertake or permit the recording
5 and salvaging of any historic, prehistoric or archeological information
6 considered necessary.

7 Sec. 41.35.090. PERMITS. The commissioner, with the advice and
8 recommendation of the state archeologist, may issue a permit for the
9 investigation, excavation, gathering or removal from the natural state,
10 of any historic, prehistoric or archeological resources of the state.
11 A permit may be issued only to persons or organizations qualified to
12 make the investigations, excavations, gatherings or removals and only
13 if the results of these authorized activities will be made available to
14 the general public through institutions and museums interested in
15 disseminating knowledge on the subjects involved. If the historic,
16 prehistoric or archeological resource involved is one which is, or is
17 located on a site which is, sacred, holy or of religious significance
18 to a cultural group, the consent of that cultural group must be obtained
19 before a permit may be issued under this section.

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

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

1 Advisory Committee.

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

4 (1) one representative from the Alaska State Museum;

5 (2) one representative from the University of Alaska Museum;

6 (3) the state archeologist;

7 (4) four persons with professionally relevant backgrounds
8 appointed to represent each of the following fields: history, archi-
9 tecture, geology and natural history;

10 (5) one representative of the Alaska Historical Society;

11 (6) the commissioner of natural resources;

12 (7) the state liaison officer appointed under the National
13 Historic Preservation Act of 1966, Public Law 89-665, as an ex officio
14 member without vote; and

15 (8) five persons appointed to represent each of the following
16 cultural groups: Aleut, Athapaskan, Northern Eskimo, Southern Eskimo,
17 and Southeastern Alaskan Indian.

18 Sec. 41.35.130. APPOINTMENT OF MEMBERS. Members of the committee
19 are appointed by the governor and confirmed by the legislature meeting
20 in joint session.

21 Sec. 41.35.140. TERM OF MEMBERSHIP. The term of office for a
22 member of the committee is three years, except for those who are members
23 by virtue of their positions with the state. They serve for as
24 long as they remain in the position by virtue of which they are members
25 of the committee. A member appointed to fill a vacancy serves for the
26 unexpired term of the member he succeeds. Of those members listed under
27 sec. 120(1), (2), (4) and (5), upon initial appointment, two shall
28 serve for one year, three for two years, and two for three years.

29 Sec. 41.35.150. COMPENSATION. The members of the committee serve

1 without compensation but are entitled to per diem and travel expenses
2 authorized by law for other boards and commissions.

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

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

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

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

15 (2) cooperate with the Department of Natural Resources and
16 the state archeologist in formulating and administering a statewide
17 historic sites survey under the National Historic Preservation Act of
18 1966, Public Law 89-665;

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

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

27 Sec. 41.35.190. POWERS OF CHAIRMAN. Subject to available appro-
28 priations the chairman may, with the concurrence of a majority of the
29 committee, employ necessary personnel and may contract for the services

1 of experts and other persons who may be needed.

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

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

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

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

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

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

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

29 Sec. 41.35.230. DEFINITIONS. In this chapter, unless the context

1 otherwise requires

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

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

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

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

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

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

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

15 Sec. 44.19.024. STATE ARCHEOLOGIST AND DUTIES. (a) There is
16 established in the Office of the Governor the position of state
17 archeologist. The state archeologist shall be a qualified archeologist.

18 (b) The state archeologist shall

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

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

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

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

1 permits;

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

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

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

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

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

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

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

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

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

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

1 and monuments.

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

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