

Original sponsors: Hensley and Croft

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1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2

HOUSE CS FOR 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."

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

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

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CHAPTER 35. ALASKA HISTORIC PRESERVATION ACT.

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Sec. 41.35.010. DECLARATION OF POLICY. It is the policy of the

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state to preserve and protect the historic, prehistoric and archeological

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resources of Alaska from loss, desecration and destruction so that the

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scientific, historic and cultural heritage embodied in these resources

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may pass undiminished to future generations. To this end, the legisla-

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ture finds and declares that the historic, prehistoric and archeological

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resources of the state are properly the subject of concerted and co-

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ordinated efforts exercised on behalf of the general welfare of the

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public in order that these resources may be located, preserved, studied,

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exhibited and evaluated.

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Sec. 41.35.020. TITLE TO HISTORIC, PREHISTORIC AND ARCHEOLOGICAL

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RESOURCES; LOCAL DISPLAY. (a) The State of Alaska reserves to itself

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title to all historic, prehistoric and archeological resources situated

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on land owned or controlled by the state, including tidelands and sub-

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merged lands, and reserves to itself the exclusive right of field

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archeology on state-owned or controlled lands. However, nothing in

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this chapter diminishes the cultural rights and responsibilities of

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persons of aboriginal descent or infringes upon their right of posses-

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sion and use of those resources which may be considered of historic,

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prehistoric or archeological value.

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

18 Sec. 41.35.030. DESIGNATION OF MONUMENTS AND HISTORIC SITES. Upon
19 the recommendation of the Historic Sites Advisory Committee, the gover-
20 nor may declare by public order any particular historic, prehistoric
21 or archeological structure, deposit, site or other object of scientific
22 or historic interest that is situated on land owned or controlled by
23 the state to be a state monument or historic site and he may designate
24 as a part of the monument or site as much land as is considered
25 necessary for the proper access, care and management of the object or
26 site to be protected. When an object or site is situated on land held
27 in private ownership, it may be declared a state monument or historic
28 site in the same manner, with the written consent of the owner.

29 Sec. 41.35.040. ADMINISTRATION AND FINANCIAL SUPPORT OF MONUMENTS

1 AND HISTORIC SITES. State-owned monuments, sites and other historic,
2 prehistoric or archeological properties owned or purchased by the state
3 are under the control of the Department of Natural Resources and their
4 maintenance shall be covered in the appropriations made to that depart-
5 ment. Privately-owned state monuments or historic sites are eligible
6 to receive state support for their maintenance, restoration and rehabili-
7 tation if they are kept accessible to the general public and application
8 for support is made in conformity with regulations adopted by the com-
9 missioner of natural resources.

10 Sec. 41.35.050. REGULATIONS. The commissioner of natural re-
11 sources shall adopt regulations to carry out the purposes of this chapter.

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

22 (b) If an historic, prehistoric or archeological property which
23 has been found by the department, upon the recommendation of the
24 Historic Sites Advisory Committee, to be important for state ownership
25 is in danger of being sold or used so that its historic, prehistoric
26 or archeological value will be destroyed or seriously impaired, or is
27 otherwise in danger of destruction or serious impairment, the department
28 may establish the use of the property in a manner necessary to preserve
29 its historic, prehistoric or archeological character or value. If the

1 owner of the property does not wish to follow the restrictions of the
2 department, the department may acquire the property by eminent domain
3 under AS 09.55.240 - 09.55.460.

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

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

16 (c) If the state archeologist determines that historic, prehistoric
17 or archeological sites, locations or remains will be adversely affected
18 by the public construction or improvement, the proposed public construc-
19 tion or improvement may not be commenced until the department in co-
20 operation with the state archeologist has performed the necessary
21 investigation, recording and salvage of the site, location or remains.
22 All investigation, recording and salvage work shall be performed as
23 expeditiously as possible so that no state construction project will
24 be unduly impaired, impeded or delayed.

25 (d) If in the course of performing public construction or improve-
26 ments, historic, prehistoric or archeological sites, locations, remains
27 or objects are discovered, the state archeologist shall be notified
28 and his concurrence shall be requested in continuing the construction
29 or improvement. Upon receipt of this notice, the state archeologist

1 shall survey the area to determine whether the area contains historic,
2 prehistoric or archeological data which should be preserved in the public
3 interest. The survey shall be conducted as expeditiously as possible.
4 If, as a result of the survey, it is determined that (1) such data
5 exists in the area, (2) the data has exceptional historic, prehistoric
6 or archeological significance, and should be collected and preserved
7 in the public interest, and (3) it is feasible to collect and preserve
8 the data, the department in cooperation with the state archeologist
9 shall perform the necessary work to collect and preserve the data.
10 This work shall be performed as expeditiously as possible.

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

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

21 Sec. 41.35.080. PERMITS. The commissioner, with the advice and
22 concurrence of the state archeologist, may issue a permit for the
23 investigation, excavation, gathering or removal from the natural state,
24 of any historic, prehistoric or archeological resources of the state.
25 A permit may be issued only to persons or organizations qualified to
26 make the investigations, excavations, gatherings or removals and only
27 if the results of these authorized activities will be made available to
28 the general public through institutions and museums interested in
29 disseminating knowledge on the subjects involved. If the historic,

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

5 Sec. 41.35.090. NOTICE REQUIRED OF PRIVATE PERSONS. Before any
6 construction, alteration or improvement of any nature is undertaken on
7 a privately-owned, officially designated state monument or historic
8 site by any person, he shall give the department and the state archeolo-
9 gist three months notice of intention to construct on, alter or improve
10 it. Before the expiration of the three-month notification period, the
11 department shall either begin eminent domain proceedings under sec.
12 50(b) of this chapter or undertake or permit the recording and salvaging
13 of any historic, prehistoric or archeological information considered
14 necessary.

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

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

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

- 28 (1) the state archeologist;
29 (2) the state liaison officer appointed under the National

1 Historic Preservation Act of 1966, Public Law 89 - 665;

2 (3) three persons with professionally relevant backgrounds
3 appointed from the following fields: history, anthropology, paleontology,
4 architecture, geology, archeology, and natural history; and

5 (4) two persons appointed to represent indigenous ethnic
6 groups.

7 Sec. 41.35.130. APPOINTMENT OF MEMBERS. Members of the committee
8 are appointed by the governor and confirmed by the legislature meeting
9 in joint session.

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

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

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

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

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

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

5 (2) cooperate with the Department of Natural Resources and
6 the state archeologist in formulating and administering a statewide
7 historic sites survey under the National Historic Preservation Act of
8 1966, Public Law 89 - 665;

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

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

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

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

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

29 (c) No person may unlawfully destroy, mutilate, deface, injure,

1 remove or excavate a gravesite or a tomb, monument, gravestone or
2 other structure or object at a gravesite, even though the gravesite
3 appears to be abandoned, lost or neglected.

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

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

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

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

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

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

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

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

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

5 Sec. 44.19.024. STATE ARCHEOLOGIST AND DUTIES. (a) There is
6 established in the Alaska State Museum the position of state archeolo-
7 gist. The state archeologist shall be a qualified archeologist.

8 (b) The state archeologist shall

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

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

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

18 (4) cooperate with the commissioner of natural resources
19 in reviewing and issuing investigation, excavation, gathering and re-
20 moval permits;

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

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

29 (7) serve as a central clearinghouse for information on all

1 historic, prehistoric and archeological site excavation in the state.

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

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

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

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

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

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

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

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

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

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

29 Sec. 09:55.250. CLASSIFICATION OF ESTATES AND LANDS SUBJECT TO BE

1 TAKEN. The following is a classification of the estates and rights in
2 lands subject to be taken for public use:

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

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

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