

Introduced: 3/26/73  
Referred: Resources and  
Judiciary

1 IN THE HOUSE

BY BEIRNE

2 *SCS* HOUSE BILL NO. 387 *ams*

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Alaska Historic Preservation  
7 Act."

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

9 \* Section 1. AS 41.35.020(a) is amended to read:

10 (a) The state reserves to itself title to all historic, prehistoric  
11 and archeological resources situated on land owned or controlled by the  
12 state, including tideland and submerged land, and reserves to itself  
13 the exclusive right of field archeology on state-owned or controlled  
14 land. However, nothing in this chapter diminishes the cultural rights  
15 and responsibilities of persons of aboriginal descent or infringes upon  
16 their right of possession and use, exclusive of sale, of those resources  
17 which may be considered of historic, prehistoric or archeological value.

18 \* Sec. 2. AS 41.35.070 is amended to read:

19 Sec. 41.35.070. PRESERVATION OF HISTORIC, PREHISTORIC AND  
20 ARCHEOLOGICAL RESOURCES THREATENED BY PUBLIC CONSTRUCTION. (a) The  
21 department [STATE ARCHEOLOGIST] shall locate, identify and preserve in  
22 suitable records information regarding historic, prehistoric and  
23 archeological sites, locations and remains. The information shall be  
24 submitted to the heads of the executive departments of the state.

25 (b) Before public construction or public improvement of any nature  
26 is undertaken by the state, or by a governmental agency of the state or  
27 by a private person under contract with or licensed by the state or  
28 governmental agency of the state, the department [STATE ARCHEOLOGIST]  
29 may survey the affected area to determine if the area contains historic,

1 prehistoric or archeological values.

2 (c) If the department [STATE ARCHEOLOGIST] determines that historic,  
3 prehistoric or archeological sites, locations or remains will be ad-  
4 versely affected by the public construction or improvement, the proposed  
5 public construction or improvement may not be commenced until the de-  
6 partment [IN COOPERATION WITH THE STATE ARCHEOLOGIST] has performed the  
7 necessary investigation, recording and salvage of the site, location or  
8 remains. All investigation, recording and salvage work shall be per-  
9 formed as expeditiously as possible so that no state construction  
10 project will be unduly impaired, impeded or delayed.

11 (d) If in the course of performing public construction or improve-  
12 ments, historic, prehistoric or archeological sites, locations, remains  
13 or objects are discovered, the department [STATE ARCHEOLOGIST] shall be  
14 notified and its [HIS] concurrence shall be requested in continuing the  
15 construction or improvement. Upon receipt of this notice, the  
16 department [STATE ARCHEOLOGIST] shall survey the area to determine  
17 whether the area contains historic, prehistoric or archeological data  
18 which should be preserved in the public interest. The survey shall  
19 be conducted as expeditiously as possible. If, as a result of the  
20 survey, it is determined that (1) this data exists in the area, (2) the  
21 data has exceptional historic, prehistoric or archeological significance,  
22 and should be collected and preserved in the public interest, and (3)  
23 it is feasible to collect and preserve the data, the department [IN  
24 COOPERATION WITH THE STATE ARCHEOLOGIST] shall perform the necessary  
25 work to collect and preserve the data. This work shall be performed  
26 as expeditiously as possible.

27 (e) If the concurrence of the department [STATE ARCHEOLOGIST],  
28 required under (b) and (c) of this section, is not obtained after 90 days  
29 from the filing of a request for its [HIS] concurrence to proceed with the

1 project, the agency or person performing the construction or improvement  
2 may apply to the governor for permission to proceed without that con-  
3 currence and the governor may take the action he considers best in  
4 overruling or sustaining the department [STATE ARCHEOLOGIST].

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

7 (g) Notwithstanding (a) and (f) of this section, all actions  
8 [OF THE ARCHEOLOGIST] to stop any project must first be approved in  
9 writing by the commissioner of natural resources.

10 \* Sec. 3. AS 41.35.080 is amended to read:

11 Sec. 41.35.080. PERMITS. The commissioner [, WITH THE ADVICE AND  
12 CONCURRENCE OF THE STATE ARCHEOLOGIST,] may issue a permit for the  
13 investigation, excavation, gathering or removal from the natural state,  
14 of any historic, prehistoric or archeological resources of the state.  
15 A permit may be issued only to persons or organizations qualified to  
16 make the investigations, excavations, gatherings or removals and only if  
17 the results of these authorized activities will be made available to the  
18 general public through institutions and museums interested in dissemi-  
19 nating knowledge on the subjects involved. If the historic, prehistoric  
20 or archeological resource involved is one which is, or is located on a  
21 site which is, sacred, holy or of religious significance to a cultural  
22 group, the consent of that cultural group must be obtained before a  
23 permit may be issued under this section.

24 \* Sec. 4. AS 41.35.090 is amended to read:

25 Sec. 41.35.090. NOTICE REQUIRED OF PRIVATE PERSONS. Before any  
26 construction, alteration or improvement of any nature is undertaken on  
27 a privately owned, officially designated state monument or historic site  
28 by any person, he shall give the department [AND THE STATE ARCHEOLOGIST]  
29 three months notice of intention to construct on, alter or improve it.

1 Before the expiration of the three-month notification period, the  
2 department shall either begin eminent domain proceedings under sec.  
3 60(b) of this chapter or undertake or permit the recording and salvaging  
4 of any historic, prehistoric or archeological information considered  
5 necessary.

6 \* Sec. 5. AS 41.35.100 is amended to read:

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

15 \* Sec. 6. AS 41.35.120(1) is amended to read:

16 (1) the director of the Alaska State Museum [STATE ARCHEOLO-  
17 GIST];

18 \* Sec. 7. AS 41.35.120(3) is amended to read:

19 (3) three persons with professionally relevant backgrounds  
20 appointed from each of the following fields: history, [ANTHROPOLOGY,  
21 PALEONTOLOGY,] architecture [, GEOLOGY,] and archeology [, AND NATURAL  
22 HISTORY]; and

23 \* Sec. 8. AS 41.35.180(2) is amended to read:

24 (2) cooperate with the Department of Natural Resources [AND  
25 THE STATE ARCHEOLOGIST] in formulating and administering a statewide  
26 historic sites survey under the National Historic Preservation Act of  
27 1966, Public Law 89-665 (80 Stat. 915);

28 \* Sec. 9. AS 41.35.200(b) is amended to read:

29 (b) It is unlawful for a person to [KNOWINGLY] possess, sell,

1 buy or transport within the state, or offer to sell, buy or transport  
2 within the state, historic, prehistoric or archeological resources  
3 taken or acquired in violation of this section or 16 U.S.C. 433.

4 \* Sec. 10. AS 44.37 is amended by adding a new section to read:

5 Sec. 44.37.040. DUTIES OF DEPARTMENT WITH RESPECT TO HISTORIC  
6 PRESERVATION AND ARCHEOLOGY. The Department of Natural Resources shall:

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

10 (2) cooperate with the Historic Sites Advisory Committee  
11 in performing their functions under AS 41.35;

12 (3) ensure that historic, prehistoric and archeological  
13 resources are properly reported by persons or agencies engaged in public  
14 construction work and protect sites and objects of significance dis-  
15 covered at state sites or discovered during the course of public con-  
16 struction and encourage the protection of sites and objects discovered  
17 during the course of any other construction work;

18 (4) investigate reported historic, prehistoric or archeo-  
19 logical resources and appraise them for any future excavation, preserva-  
20 tion and interpretation;

21 (5) serve as a central clearinghouse for information on all  
22 historic, prehistoric and archeological resource excavation in the state.

23 \* Sec. 11. AS 44.37.190 is repealed.  
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