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1 IN THE HOUSE

2

HOUSE BILL NO. 436

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to historic, prehistoric, and arche-
7 ological resources."

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

9 * Section 1. AS 41.35.010 is amended to read:

10 Sec. 41.35.010. DECLARATION OF POLICY. It is the policy of the
11 state to preserve and protect the historic, prehistoric, and arche-
12 ological resources of Alaska from loss, desecration, and destruction so
13 that the scientific, historic, and cultural heritage embodied in these
14 resources may pass undiminished to future generations. To this end,
15 the legislature finds and declares that the historic, prehistoric, and
16 archeological resources of the state are properly the subject of
17 concerted and coordinated efforts exercised on behalf of the general
18 welfare of the public in order that these resources may be located,
19 preserved, studied, exhibited, and evaluated. The legislature also
20 finds and declares that historic, prehistoric, and archeological
21 resources that are disinterred Native human remains or funerary ob-
22 jects should be returned to the tribal or cultural group whenever the
23 tribal or cultural origins of the remains or objects are reasonably
24 identifiable.

25 * Sec. 2. AS 41.35.020 is amended to read:

26 Sec. 41.35.020. TITLE TO HISTORIC, PREHISTORIC, AND ARCHEOLOGI-
27 CAL RESOURCES; LOCAL DISPLAY. (a) Except as provided in (c) of this
28 section, the [THE] state reserves to itself title to all historic,
29 prehistoric, and archeological resources situated on land owned or

1 controlled by the state, including tideland and submerged land, and
2 reserves to itself the exclusive right of field archeology on state-
3 owned or controlled land. However, nothing in AS 41.35.010 - 41.35.-
4 240 diminishes the cultural rights and responsibilities of persons of
5 aboriginal descent or infringes upon their right of possession and use
6 of those resources that [WHICH] may be considered of historic, prehis-
7 toric, or archeological value.

8 (b) Although title to historic, prehistoric, and archeological
9 resources is, except as provided in (c) of this section, in the
10 state, local cultural groups may obtain from the state, or retain, for
11 study or display, artifacts and other items of these resources from
12 their respective cultures or areas if the committee created in AS
13 41.35.110 finds that (1) the group has a durable building with wea-
14 therproof and fireproof construction and humidity control and other
15 factors necessary to serve as a museum that [WHICH] will assure safe
16 preservation of the items, (2) the item sought to be obtained is not
17 one for which there is an undue risk of damage during transportation,
18 and (3) the item sought to be obtained or retained is not one requir-
19 ing special treatment or care beyond the ability or means of the group
20 requesting it. A group retaining such an item or obtaining one from
21 the state shall house it in the museum building and shall make every
22 reasonable effort to assure its safe preservation. If the committee
23 finds that a local cultural group is not properly taking care of an
24 item the group shall return it to the department.

25 * Sec. 3. AS 41.35.020 is amended by adding a new subsection to read:

26 (c) Title to historic, prehistoric, and archeological resources
27 that consist of disinterred Native human remains or funerary objects
28 lies in the tribal or cultural group from which the remains or objects
29 originated when the origins are reasonably identifiable.

1 * Sec. 4. AS 41.35.030 is amended to read:

2 Sec. 41.35.030. DESIGNATION OF MONUMENTS AND HISTORIC SITES.
3 Upon the recommendation of the committee, the governor may declare by
4 public order any particular historic, prehistoric, or archeological
5 structure, deposit, site, or other object of scientific or historic
6 interest that is situated on land owned or controlled by the state to
7 be a state monument or historic site, and the governor may designate
8 as a part of the monument or site as much land as is considered neces-
9 sary for the proper access, care, and management of the object or site
10 to be protected. When an object or site is situated on land held in
11 private ownership, it may be declared a state monument or historic
12 site in the same manner, with the written consent of the owner. When
13 a site includes Native human remains or funerary objects for which the
14 tribal or cultural origins are reasonably identifiable, the site may
15 not be designated as a state monument or historic site without the
16 written consent of the tribal or cultural group from which the remains
17 originated.

18 * Sec. 5. AS 41.35.040 is amended to read:

19 Sec. 41.35.040. ADMINISTRATION AND FINANCIAL SUPPORT OF MONU-
20 MENTS AND HISTORIC SITES. State-owned monuments, sites, and other
21 historic, prehistoric, or archeological properties owned or purchased
22 by the state are under the control of the department, and their main-
23 tenance shall be covered in the appropriations made to the department.
24 Privately owned state monuments or historic sites are eligible to
25 receive state support for their maintenance, restoration, and reha-
26 bilitation if they are kept accessible to the general public, they are
27 in compliance with state laws pertaining to Native human remains and
28 funerary objects, and application for support is made in conformity
29 with regulations adopted by the commissioner.

1 * Sec. 6. AS 41.35.060 is amended to read:

2 Sec. 41.35.060. POWER TO ACQUIRE HISTORIC, PREHISTORIC, OR
3 ARCHEOLOGICAL PROPERTIES. (a) The department, with the recommenda-
4 tion of the committee, may acquire real and personal properties that
5 have statewide historic, prehistoric, or archeological significance by
6 gift, purchase, devise, or bequest. If the department acquires disin-
7 terred Native human remains or funerary objects under this subsection,
8 it shall return the remains or objects to the tribal or cultural group
9 from which they originated if the tribe or group is reasonably identi-
10 fiable. The department shall preserve and administer property so
11 acquired. The department may acquire property adjacent to the proper-
12 ty having historic, prehistoric, or archeological significance when it
13 is determined to be necessary for the proper use and administration of
14 the significant property.

15 (b) If an historic, prehistoric, or archeological property that
16 [WHICH] has been found by the department, upon the recommendation of
17 the committee, to be important for state ownership is in danger of
18 being sold or used so that its historic, prehistoric, or archeological
19 value will be destroyed or seriously impaired, or is otherwise in
20 danger of destruction or serious impairment, the department may estab-
21 lish the use of the property in a manner necessary to preserve its
22 historic, prehistoric, or archeological character or value. If the
23 owner of the property does not wish to follow the restrictions of the
24 department, the department may acquire the property by eminent domain
25 under AS 09.55.240 - 09.55.460. This subsection does not apply to
26 real property containing Native human remains or funerary objects if
27 the property is owned by the tribal or cultural group from which the
28 remains originated.

29 * Sec. 7. AS 41.35.070(d) is amended to read:

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

16 * Sec. 8. AS 41.35.070 is amended by adding a new subsection to read:

17 (h) If the department determines during a survey under (d) of
18 this section that the historic, prehistoric, or archeological re-
19 sources discovered include Native human remains or funerary objects
20 for which the tribal or cultural origins are reasonably identifiable,
21 the department shall notify the appropriate tribe or group about their
22 discovery. After collection under (d) of this section, Native human
23 remains and funerary objects shall be returned to the tribe or cul-
24 tural group of origin if the appropriate tribe or cultural group is
25 reasonably identifiable.

26 * Sec. 9. AS 41.35 is amended by adding a new section to read:

27 Sec. 41.35.075. DISCOVERY OF HUMAN REMAINS OR FUNERARY OBJECTS.
28 (a) A person who encounters human remains or funerary objects in or
29 on the ground, other than in a situation covered under AS 41.35.070,

1 shall

2 (1) immediately cease any activity that may cause further
3 disturbance of the area; and

4 (2) within 48 hours, report the presence and location of
5 the remains and objects to the department.

6 (b) Upon receiving a report under (a) of this section, the
7 department shall promptly notify the landowner on whose property the
8 remains or objects were discovered, the attorney general, and the
9 Historic Sites Advisory Committee.

10 (c) Upon notification under (b) of this section, the committee
11 shall assist the department in determining if the remains or objects
12 are historic, prehistoric, or archeological resources of Native ori-
13 gin. If they are historic, prehistoric, or archeological resources of
14 Native origin and it is feasible to collect and preserve them, the
15 department shall perform the necessary work or issue a permit under
16 AS 41.35.080 for their collection.

17 * Sec. 10. AS 41.35.080 is amended to read:

18 Sec. 41.35.080. PERMITS. The commissioner may issue a permit
19 for the investigation, excavation, gathering, or removal from the
20 natural state [,] of any historic, prehistoric, or archeological
21 resources of the state or Native human remains or funerary objects
22 discovered under AS 41.35.070 or 41.35.075. A permit may be issued
23 only to persons or organizations qualified to make the investigations,
24 excavations, gatherings, or removals and only if the results of these
25 authorized activities will be made available to the general public
26 through institutions and museums interested in disseminating knowledge
27 on the subjects involved or returned to the tribe or cultural group of
28 origin. If the historic, prehistoric, or archeological resource
29 involved is one that [WHICH] is, or is located on a site that [WHICH]

1 is, sacred, holy, or of religious significance to a cultural group,
2 the consent of that cultural group must be obtained before a permit
3 may be issued under this section. If the resource is or contains
4 Native human remains or funerary objects for which the tribal or
5 cultural origins are reasonably identifiable, the consent of that
6 tribe or cultural group must be obtained before a permit may be issued
7 under this section.

8 * Sec. 11. AS 41.35.090 is amended to read:

9 Sec. 41.35.090. NOTICE REQUIRED OF PRIVATE PERSONS. Before any
10 construction, alteration, or improvement of any nature is undertaken
11 on a privately owned, officially designated state monument, or histor-
12 ic site by any person, the person shall give the department three
13 months' [MONTHS] notice of intention to construct on, alter, or im-
14 prove it. If the construction, alteration, or improvement involves
15 Native human remains or funerary objects for which the tribal or
16 cultural group of origin is reasonably identifiable, the person shall
17 also give the tribe or cultural group three months' notice of inten-
18 tion to construct, alter, or improve. Before the expiration of the
19 three-month notification period, the department shall either begin
20 eminent domain proceedings under AS 41.35.060(b) or undertake or
21 permit the recording and salvaging of any historic, prehistoric, or
22 archeological information considered necessary.

23 * Sec. 12. AS 41.35.100 is amended to read:

24 Sec. 41.35.100. EXCAVATION AND REMOVAL OF HISTORIC, PREHISTORIC,
25 OR ARCHEOLOGICAL REMAINS ON PRIVATE LAND. Before any historic, pre-
26 historic, or archeological remains are excavated or removed from
27 private land by the department, the written approval of the owner
28 shall first be secured. In the case of Native human remains or fun-
29 erary objects for which the tribal or cultural group of origin is

1 reasonably identifiable, the department must also secure the prior
2 approval of the tribe or cultural group. When the value of the pri-
3 vate land is diminished by the excavation or removal, the owner of the
4 land shall be compensated for the loss at a monetary sum mutually
5 agreed on by the department and the owner or at a monetary sum set by
6 the court.

7 * Sec. 13. AS 41.35 is amended by adding a new section to read:

8 Sec. 41.35.105. DISPOSITION OF NEWLY-DISCOVERED NATIVE HUMAN
9 REMAINS AND FUNERARY OBJECTS. (a) Whenever historic, prehistoric, or
10 archeological resources are discovered under AS 41.35.070 - 41.35.100,
11 the department shall notify the committee. The committee shall
12 promptly assist the department in determining whether the resources
13 include Native human remains or funerary objects. If the resources
14 include Native human remains or funerary objects, the department and
15 committee shall determine with as much specificity as possible the
16 tribal or cultural origin of the remains or objects.

17 (b) If the Native human remains and funerary objects are reason-
18 ably identifiable, the person in possession of them shall notify the
19 appropriate tribe or cultural group and return them to the descendants
20 of the individual, tribe, or cultural group, as the case may be, upon
21 request of the appropriate party unless title to them has been trans-
22 ferred to the person by the appropriate tribe or cultural group.

23 (c) If there is no evidence available to indicate the tribal or
24 cultural origins of Native human remains or funerary objects examined
25 under this section, the person who lawfully possessed them before they
26 were examined under this section remains in lawful possession of them
27 until evidence of their origin becomes available.

28 * Sec. 14. AS 41.35.200(d) is amended to read:

29 (d) A [AN] historic, prehistoric, or archeological resource that

1 [WHICH] is taken in violation of this section shall be seized by any
2 person designated in AS 41.35.220 wherever found and at any time.
3 Objects seized may be disposed of as the commissioner determines by
4 deposit in the proper public depository except that Native human
5 remains and funerary objects shall be disposed of under AS 41.35.105.

6 * Sec. 15. AS 41.35.210 is amended to read:

7 Sec. 41.35.210. CRIMINAL PENALTIES. Except as provided in (b)
8 of this section, a [A] person who is convicted of violating a pro-
9 vision of AS 41.35.010 - 41.35.240 is guilty of a class A misdemeanor.

10 * Sec. 16. AS 41.35.210 is amended by adding new subsections to read:

11 (b) A person who, without authorization of the appropriate
12 Native tribe or cultural group, knowingly possesses Native human
13 remains or funerary objects whose tribal or cultural origins have been
14 determined is guilty of a class C felony.

15 (c) A person required by law to report to the department the
16 person's possession or discovery of historic, prehistoric, or archeo-
17 logical resources so that it can be determined whether the resources
18 are Native human remains or funerary objects who knowingly fails to
19 make the required report or to cooperate in the investigation of the
20 origin of the resources is guilty of a class C felony.

21 * Sec. 17. AS 41.35.230 is amended to read:

22 Sec. 41.35.230. DEFINITIONS. In AS 41.35.010 - 41.35.240,
23 unless the context otherwise requires,

24 (1) [REPEALED

25 (2)] "committee" means the Historic Sites Advisory Commit-
26 tee;

27 (2) "funerary objects" means items that are reasonably
28 believed to have been intentionally placed with the remains of a
29 Native, either at the time of burial or interment or at some

1 subsequent time, as a part of the death rites or ceremonies of a
2 culture;

3 (3) [REPEALED

4 (4)] "historic, prehistoric and archeological resources"
5 includes deposits, structures, ruins, sites, buildings, graves, arti-
6 facts, fossils, or other objects of antiquity which provide informa-
7 tion pertaining to the historical or prehistorical culture of people
8 in the state as well as to the natural history of the state;

9 (4) "Native" means a person who is a descendant or ancestor
10 of the aboriginal races inhabiting the state when it was annexed to
11 the United States or a descendant or ancestor of an Indian or Eskimo
12 who, after the year 1867, migrated into the state from Canada;

13 (5) "reasonably identifiable" means identifiable, by a
14 preponderance of the evidence, as to individual, familial, tribal, or
15 cultural origin based on available archeological, historical, ethno-
16 logical, or other direct circumstantial evidence or expert opinion.

17 * Sec. 18. DISPOSITION OF ITEMS ALREADY HELD. (a) A person who on the
18 effective date of this Act is in possession of historic, prehistoric, and
19 archeological resources that consist of Native human remains or funerary
20 objects, other than a member of a tribe or cultural group from which the
21 remains or objects originated, shall, within 30 days after the effective
22 date of this Act, notify the Department of Natural Resources of the exis-
23 tence and location of the remains and objects. Within 120 days after the
24 effective date of this Act, the person shall

25 (1) determine the tribal or cultural origins of the remains and
26 objects with the most specificity possible and notify the tribe or cultural
27 group of the existence of the remains and objects; or

28 (2) transfer possession of the remains and objects to the de-
29 partment, which shall determine the tribal or cultural origin of the

1 remains and objects and notify the tribe or cultural group.

2 (b) When a preponderance of the evidence ascertained under (a) of
3 this section establishes that the human remains and funerary objects are of
4 a particular individual or are of an individual who was culturally affili-
5 ated with a particular tribe or cultural group, the person in possession of
6 them shall notify the affected tribe or group and return them to the de-
7 scendants of the individual, tribe, or cultural group, as the case may be,
8 upon request of the appropriate party unless title to them has been trans-
9 ferred to the person from the descendant, tribe, or cultural group.

10 (c) Upon request, the Historic Sites Advisory Committee established
11 under AS 41.35.110 - 41.35.190 shall assist in determinations under this
12 section.

13 (d) If there is no evidence available to indicate the tribal or
14 cultural origins of Native human remains or funerary objects examined under
15 this section, the person who lawfully possessed them before they were
16 examined under this section remains in lawful possession of them until
17 evidence of their origin becomes available.

18 (e) A person who does not comply with this section, in addition to
19 other penalties that may be applicable, is not eligible for state funds
20 related to the maintenance of historic, prehistoric, or archeological
21 resources.

22 (f) In this section,

23 (1) "funerary objects," "historic, prehistoric, and archeologi-
24 cal resources," and "Native" have the meanings given in AS 41.35.230, as
25 amended in sec. 17 of this Act;

26 (2) "person" has the meaning given in AS 01.10.060 and also
27 includes a public entity of any type.