

HB

97

MINUTES

HB 97 Relating to historical artifacts

Feb. 9. 1979

MEMBERS PRESENT

Branson
Carney
Barr
Parker
Metcalf

MEMBERS ABSENT

O'Connell
Zharoff

Testifying:

Rep. Nels Anderson, Sponsor

Dick Engen, Director of State Library and Museum
Problem with definition of "excavation and
fragmen". Opposed to bill as it "opens the
door" to many problems.

Pat Conheady -- representing Dept. of Natural
Resources-- Opposed

Bill JOrgenson--Opposed

Many concerns and problems with HB 97. NOT ready to
pass it out of Committee

See Tape 1 Side 2 Sections 1475-1730

Introduced: 1/30/79
Referred: Community &
Regional Affairs

1 IN THE HOUSE

BY ANDERSON

2 HOUSE BILL NO. 97

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST 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 41.35.230(4) is amended to read:

10 (4) "historic, prehistoric and archeological resources" in-
11 cludes deposits, structures, ruins, sites, buildings, graves, artifacts,
12 fossils, or other objects of antiquity which provide information per-
13 taining to the historical or prehistorical culture of people in the
14 state as well as to the natural history of the state but does not in-
15 clude fragments of fossilized ivory which can be removed without exca-
16 vation and which are not located on state monuments or historic sites.

17 *Bill Honorable 274-4676 - Approved*
18 *Ferry M. Williams*
19 *Fossilized fragment can provide archeological info*
20 *often associated with early finds*
21 *Legal - state lands - wouldn't change Antiquities*
22 *so on Fed. & private lands it would still*
23 *be illegal. Likely to cause enforcement*
24 *problems on other lands.*
25 *Vague as to what "fragment" is. Could*
26 *be important find.*
27 *Amendment & lead to deletions other*
28 *provision Historic Preservation Act.*
29 *Fed. subject requested - take action on sale*
30 *"equity" & on set artifacts on Fed. lands*

BILL WORK SHEET
(for optional use of committee aides)

No. 4

COMMITTEE ON _____

Received from _____ DATE _____

BILL NO. 97 ORIGINAL SPONSOR _____ OTHER _____

THIS COMMITTEE RECOMMENDED --

Majority Recommendation: _____

Supported by _____

Minority Recommendation: _____

Supported by _____

Other: _____

Brief/flag title: Historic, pictorial & archeological resources

What bill does:

OUR COMMITTEE AMENDMENTS (what they are and what they do (attach if lengthy))

Fiscal Impact -- Is there a fiscal note for the original bill and one which reflects changes made by the amendments: (attach drafts)

LAA Legal/Research contact:

Jim McHenry

Research/supporting information

Attached (?) _____

PERSONS/ORGANIZATIONS:

Supporting bill:

Don Clarkson - 586-6425

Opposing bill:

Dick Berger 2910-

Bill Hannibal 274-4676

Bill Yorganson HSS 465-3388 (W)
Frankie Pies Ah. 6-322 (W)
Historical Society

REMARKS: (use reverse side if necessary)

Jim McHenry 44-35-020

STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 20, 1979

SUBJECT: Criminal penalties for possession of artifacts
(Work Order No. 5826)

TO: Representative Nels A. Anderson, Jr.

FROM: James A. McKenzie *JAM*
Legislative Counsel

In this work order I was asked to construct a solution to the problem of administrative approval being required for removal of relatively insignificant artifacts from state land. The enclosed bill amends the definition of "historic, prehistoric, and archeological resources" in the Alaska Historic Preservation Act to exclude fragments of fossilized ivory which can be removed without excavation and which are not located on state monuments or historic sites.

It can be expected that this type of exception will cause some problems in enforcement of the Act. According to the House Resources committee report on the Act, a copy of which is enclosed, "Testimony was presented to the committee indicating that in the absence of this or similar legislation, an increasing number of tourists, souvenir hunters, and amateur artifact diggers can soon be expected to seriously disturb the existing archeological remains of Alaska's indigenous cultural groups." Richard Engen, Director of Libraries and Museums, feels that a complete ban on removal of artifacts from state land without a permit is necessary to discourage souvenir hunters from digging up and possibly damaging artifacts of substantial historical value. Proving that someone obtained an artifact by excavation is difficult unless the excavating is observed, but proof of possession is much easier. Hence, even though the exception in this bill does not apply to the excavation of fossilized ivory, it could increase the risk that excavation will occur. It is possible as well that some fragments of fossilized ivory may be of historical value. Finally, it should be noted that existing law provides that nothing in the Alaska Historic Preservation Act diminishes the cultural rights and responsibilities of persons of aboriginal descent or infringes upon

Representative Nels A. Anderson, Jr.

Page 2

January 20, 1979

their right of possession and use of those resources which may be considered of historic, prehistoric, or archeological value. AS 41.35.020.

In sum, I was unable to construct a wholly satisfactory solution to the problem you raised because the basic policy of the Alaska Historic Preservation Act is to discourage souvenir hunters, while the likely result of any exception is to encourage them.

JAMcK:jdn

Enclosure

Chapter 35 Alaska Historic Preservation Act

§ 41.35.010

PUBLIC RESOURCES

§ 41.35.020

Section

220. Enforcement authority

230. Definitions

240. Title of chapter

Legislative committee report. — For report on ch. 130, SLA 1971 (HCSSB 119 am H), see 1971 House Journal, p. 579.

Sec. 41.35.010. Declaration of policy. It is the policy of the state to preserve and protect the historic, prehistoric and archeological resources of Alaska from loss, desecration and destruction so that the scientific, historic and cultural heritage embodied in these resources may pass undiminished to future generations. To this end, the legislature finds and declares that the historic, prehistoric and archeological resources of the state are properly the subject of concerted and coordinated efforts exercised on behalf of the general welfare of the public in order that these resources may be located, preserved, studied, exhibited and evaluated. (§ 1 ch 130 SLA 1971)

Sec. 41.35.020. Title to historic, prehistoric and archeological resources; local display. (a) The state reserves to itself title to all historic, prehistoric and archeological resources situated on land owned or controlled by the state, including tideland and submerged land, and reserves to itself the exclusive right of field archeology on state-owned or controlled land. However, nothing in this chapter diminishes the cultural rights and responsibilities of persons of aboriginal descent or infringes upon their right of possession and use of those resources which may be considered of historic, prehistoric or archeological value.

(b) Although title to historic, prehistoric and archeological resources is in the state, local cultural groups may obtain from the state, or retain, for study or display, artifacts and other items of these resources from their respective cultures or areas if the advisory committee created in § 110 of this chapter finds that (1) the group has a durable building with weatherproof and fireproof construction and humidity control and other factors necessary to serve as a museum which will assure safe preservation of the items, (2) the item sought to be obtained is not one for which there is an undue risk of damage during transportation, and (3) the item sought to be obtained or retained is not one requiring special treatment or care beyond the ability or means of the group requesting it. A group retaining such an item or obtaining one from the state shall house it in the museum building and shall make every reasonable effort to assure its safe preservation. If the advisory committee finds that a local cultural group is not properly taking care of an item the group shall return it to the department. (§ 1 ch 130 SLA 1971)

Sec. 41.35.030. Designation of monuments and historic sites. Upon the recommendation of the Historic Sites Advisory Committee, the governor may declare by public order any particular historic, prehistoric or archeological structure, deposit, site or other object of scientific or historic interest that is situated on land owned or controlled by the state to be a state monument or historic site and he may designate as a part of the monument or site as much land as is considered necessary for the proper access, care and management of the object or site to be protected. When an object or site is situated on land held in private ownership, it may be declared a state monument or historic site in the same manner, with the written consent of the owner. (§ 1 ch 130 SLA 1971)

Sec. 41.35.040. Administration and financial support of monuments and historic sites. State-owned monuments, sites and other historic, prehistoric or archeological properties owned or purchased by the state are under the control of the Department of Natural Resources and their maintenance shall be covered in the appropriations made to that department. Privately owned state monuments or historic sites are eligible to receive state support for their maintenance, restoration and rehabilitation if they are kept accessible to the general public and application for support is made in conformity with regulations adopted by the commissioner of natural resources. (§ 1 ch 130 SLA 1971)

Sec. 41.35.050. Regulations. The commissioner of natural resources shall adopt regulations to carry out the purposes of this chapter. (§ 1 ch 130 SLA 1971)

Sec. 41.35.060. Power to acquire historic, prehistoric or archeological properties. (a) The department, with the recommendation of the Historic Sites Advisory Committee, may acquire real and personal properties that have statewide historic, prehistoric or archeological significance by gift, purchase, devise or bequest. The department shall preserve and administer property so acquired. The department may acquire property adjacent to the property having historic, prehistoric or archeological significance when it is determined to be necessary for the proper use and administration of the significant property.

(b) If an historic, prehistoric or archeological property which has been found by the department, upon the recommendation of the Historic Sites Advisory Committee, to be important for state ownership is in danger of being sold or used so that its historic, prehistoric or archeological value will be destroyed or seriously impaired, or is otherwise in danger of destruction or serious impairment, the department may establish the use of the property in a manner necessary to preserve its historic, prehistoric or archeological character or value. If the owner of the property does not wish to follow the restrictions of the department, the department may acquire the property by eminent domain under AS 09.55.240 — 09.55.460. (§ 1 ch 130 SLA 1971)

Sec. 41.35.070. Preservation of historic, prehistoric and archeological resources threatened by public construction. (a) The department shall locate, identify and preserve in suitable records information regarding historic, prehistoric and archeological sites, locations and remains. The information shall be submitted to the heads of the executive departments of the state.

(b) Before public construction or public improvement of any nature is undertaken by the state, or by a governmental agency of the state or by a private person under contract with or licensed by the state or governmental agency of the state, the department may survey the affected area to determine if the area contains historic, prehistoric or archeological values.

(c) If the department determines that historic, prehistoric or archeological sites, locations or remains will be adversely affected by the public construction or improvement, the proposed public construction or improvement may not be commenced until the department has performed the necessary investigation, recording and salvage of the site, location or remains. All investigation, recording and salvage work shall be performed as expeditiously as possible so that no state construction project will be unduly impaired, impeded or delayed.

(d) If in the course of performing public construction or improvements, historic, prehistoric or archeological sites, locations, remains or objects are discovered, the department shall be notified and its concurrence shall be requested in continuing the construction or improvement. Upon receipt of this notice, the department shall survey the area to determine whether the area contains historic, prehistoric or archeological data which should be preserved in the public interest. The survey shall be conducted as expeditiously as possible. If, as a result of the survey, it is determined that (1) this data exists in the area, (2) the data has exceptional historic, prehistoric or archeological significance, and should be collected and preserved in the public interest, and (3) it is feasible to collect and preserve the data, the department shall perform the necessary work to collect and preserve the data. This work shall be performed as expeditiously as possible.

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

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

(g) Notwithstanding (a) — (f) of this section, all actions to stop any project must first be approved in writing by the commissioner of natural resources. (§ 1 ch 130 SLA 1971; am § 1 ch 112 SLA 1974)

Revisor's note (1971). — In ch. 130, SLA 1971, subsection (g) referred to "(a) and (f)." However, the 1974 amendment adding (g) read "(a) — (f)," and the text has been corrected here. (See 1974 Alaska State Journal, p. 1251).

Effect of amendment. — The 1974 amendment substituted "department" for "state archeologist" throughout the

section, deleted "in cooperation with the state archeologist" in the first sentence of subsection (c) and in the fourth sentence of subsection (d), substituted "its concurrence" for "his concurrence" in the first sentence of subsection (d) and in subsection (e), and deleted "of the archeologist" following "all actions" in subsection (g).

Sec. 41.35.080. Permits. The commissioner may issue a permit for the investigation, excavation, gathering or removal from the natural state, of any historic, prehistoric or archeological resources of the state. A permit may be issued only to persons or organizations qualified to make the investigations, excavations, gatherings or removals and only if the results of these authorized activities will be made available to the general public through institutions and museums interested in disseminating knowledge on the subjects involved. If the historic, prehistoric or archeological resource involved is one which is, or is located on a site which is, sacred, holy or of religious significance to a cultural group, the consent of that cultural group must be obtained before a permit may be issued under this section. (§ 1 ch 130 SLA 1971; am § 2 ch 112 SLA 1974)

Effect of amendment. — The 1974 amendment deleted "with the advice and concurrence of the state archeologist"

following "commissioner" near the beginning of the first sentence.

Sec. 41.35.090. Notice required of private persons. Before any construction, alteration or improvement of any nature is undertaken on a privately owned, officially designated state monument or historic site by any person, he shall give the department three months notice of intention to construct on, alter or improve it. Before the expiration of the three-month notification period, the department shall either begin eminent domain proceedings under § 60(b) of this chapter or undertake or permit the recording and salvaging of any historic, prehistoric or archeological information considered necessary. (§ 1 ch 130 SLA 1971; am § 3 ch 112 SLA 1974)

Effect of amendment. — The 1974 amendment deleted "and the state

archeologist" following "department" in the first sentence.

Sec. 41.35.100. Excavation and removal of historic, prehistoric or archeological remains on private land. Before any historic, prehistoric or archeological remains are excavated or removed from private land by the department, the written approval of the owner shall first be secured. When the value of the private land is diminished by the excavation or removal, the owner of the land shall be compensated for the loss at a monetary sum mutually agreed on by the department and

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the owner or at a monetary sum set by the court. (§ 1 ch 130 SLA 1971; am § 4 ch 112 SLA 1974)

Effect of amendment. — The 1974 archeologist" following "department" in amendment deleted "or the state the first sentence.

Sec. 41.35.110. Historic sites advisory committee. There is created in the Department of Natural Resources the Historic Sites Advisory Committee. (§ 1 ch 130 SLA 1971)

Sec. 41.35.120. Composition of committee. The committee consists of the following persons:

- (1) the director of the Alaska State Museum;
- (2) the state liaison officer appointed under the National Historic Preservation Act of 1966, Public Law 89-665 (80 Stat. 915);
- (3) three persons with professionally relevant backgrounds appointed from each of the following fields: history, architecture and archeology; and
- (4) two persons appointed to represent indigenous ethnic groups. (§ 1 ch 130 SLA 1971; am §§ 5, 6 ch 112 SLA 1974)

Effect of amendment. — The 1974 paragraph (3) inserted "each of" and amendment substituted "director of the Alaska State Museum" for "state archeologist" in paragraph (1), and in deleted anthropology, paleontology, geology and natural history from the list of fields.

Sec. 41.35.130. Appointment of members. Members of the committee are appointed by the governor and confirmed by the legislature meeting in joint session. The members of the committee shall serve at the pleasure of the governor. (§ 1 ch 130 SLA 1971)

Sec. 41.35.140. Term of membership. The term of office for a member of the committee is three years, except for those who are members by virtue of their positions with the state. They serve for as long as they remain in the position by virtue of which they are members of the committee. A member appointed to fill a vacancy serves for the unexpired term of the member he succeeds. Of those members listed under § 120(3) and (4) of this chapter, upon initial appointment, one shall serve for one year, two for two years, and two for three years. (§ 1 ch 130 SLA 1971)

Sec. 41.35.150. Compensation. The members of the committee serve without compensation but are entitled to per diem and travel expenses authorized by law for other boards and commissions. (§ 1 ch 130 SLA 1971)

Cross reference.— As to transportation and per diem expenses for members of boards, commissions, etc., see AS 39.20.180.

Sec. 41.35.160. Officers. At the first meeting of each year, the committee shall elect a chairman from among its members. (§ 1 ch 130 SLA 1971)

Sec. 41.35.170. Meetings and quorum. The committee shall meet at least twice a year. Additional meetings may be called by the chairman or by petition of at least five members. Five members of the committee constitutes a quorum. (§ 1 ch 130 SLA 1971)

Sec. 41.35.180. Duties of the committee. The Historic Sites Advisory Committee shall

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

(2) cooperate with the Department of Natural Resources in formulating and administering a statewide historic sites survey under the National Historic Preservation Act of 1966, Public Law 89-665 (80 Stat. 915);

(3) review those surveys and historic preservation plans that may be required, and approve properties for nomination to the National Register as provided for in the National Historic Preservation Act of 1966, Public Law 89-665 (80 Stat. 915);

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

(5) consult with local historical district commissions regarding the establishment of historical districts under AS 29.48.108 — 29.48.110 and the approval of project alterations under AS 45.98.040; recommend, if appropriate, the formulation of additional criteria for the designation of historical districts under AS 29.48.110(b); approve plans for and evaluate the suitability of specific structures for purposes of loan eligibility and continuance under the historical district revolving loan fund (AS 45.98); and consult with the Department of Commerce and Economic Development relative to the adoption of regulations for historical district loans under AS 45.98. (§ 1 ch 30 SLA 1971; am § 7 ch 112 SLA 1974; am § 4 ch 139 SLA 1977)

Effect of amendments. — The 1974 amendment deleted "and the state archeologist" following "Department of Natural Resources" in paragraph (2).

The 1977 amendment added paragraph (5).

Editor's note. — Section 1, ch. 139, SLA 1977, provides: "INTENT. It is the intent

of the legislature to foster an awareness of the need to preserve our historic past to protect those visible aspects of our invaluable heritage so that present and future generations may continue to be enriched by the originality and strength of Alaska's architectural and cultural beginnings."

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Sec. 41.35.190. Powers of chairman. Subject to available appropriations the chairman may, with the concurrence of a majority of the committee, employ necessary personnel and may contract for the services of experts and other persons who may be needed. (§ 1 ch 130 SLA 1971)

Sec. 41.35.200. Unlawful acts. (a) It is unlawful for a person to appropriate, excavate, remove, injure, or destroy, without a permit from the commissioner, any historic, prehistoric or archeological resources of the state.

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

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

(d) An historic, prehistoric or archeological resource which is taken in violation of this section shall be seized by any person designated in § 220 of this chapter wherever found and at any time. Objects seized may be disposed of as the commissioner determines by deposit in the proper public depository. (§ 1 ch 130 SLA 1971; am § 8 ch 112 SLA 1974)

Effect of amendment. — The 1974 "possess, sell, buy or transport" near the amendment deleted "knowingly" preceding beginning of subsection (b).

Sec. 41.35.210. Penalties. A person who violates a provision of this chapter is guilty of a misdemeanor, and upon conviction is punishable by a fine of \$1,000, or by imprisonment for not more than six months, or by both. (§ 1 ch 130 SLA 1971)

Sec. 41.35.220. Enforcement authority. The following persons are peace officers of the state and shall enforce this chapter:

- (1) an employee of the department authorized by the commissioner;
- (2) a peace officer in the state;
- (3) any other person authorized by the commissioner. (§ 1 ch 130 SLA 1971)

Cross reference. — For definition of "peace officer," see AS 01.10.060(6).

Sec. 41.35.230. Definitions. In this chapter, unless the context otherwise requires,

- (1) "commissioner" means the commissioner of natural resources;
- (2) "committee" means the Historic Sites Advisory Committee;
- (3) "department" means the Department of Natural Resources;

§ 41.35.240

ALASKA STATUTES

§ 41.40.040

(4) "historic, prehistoric and archeological resources" includes deposits, structures, ruins, sites, buildings, graves, artifacts, fossils, or other objects of antiquity which provide information pertaining to the historical or prehistorical culture of people in the state as well as to the natural history of the state. (§ 1 ch 130 SLA 1971)

Sec. 41.35.240. Title of chapter. This chapter may be cited as the Alaska Historic Preservation Act. (§ 1 ch 130 SLA 1971)

1979 FEB 8 AM 1 01

02069 POM ANCHORAGE ALASKA 15 02-07 1045P AST

PMS REP NELS ANDERSON

JUN

I SUPPORT HOUSE BILL 97

PAULINE FARR

9427 JEWELL LAKE RD

ANCHORAGE AK 99502

1979 FEB 3 AM 12 41

02067 POM ANCHORAGE ALASKA 15 02-07 1024P AST

PMS REP NELS ANDERSON

JUN

I SUPPORT HOUSE BILL 97

BERTHA MIDYETT

1011 WEST 12TH APT 3

ANCHORAGE ALASKA 99501

Bill -

You might ask Dick
or Bill Engelsen how

Sec. 41-35.020 (marked
sections) is applied?

Chapter 35 Alaska Historic Preservation Act

§ 41.35.010

PUBLIC RESOURCES

§ 41.35.020

Section

220. Enforcement authority

230. Definitions

240. Title of chapter

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(b) Although title to historic, prehistoric and archeological resources is in the state, local cultural groups may obtain from the state, or retain, for study or display, artifacts and other items of these resources from their respective cultures or areas if the advisory committee created in § 110 of this chapter finds that (1) the group has a durable building with weatherproof and fireproof construction and humidity control and other factors necessary to serve as a museum which will assure safe preservation of the items, (2) the item sought to be obtained is not one for which there is an undue risk of damage during transportation, and (3) the item sought to be obtained or retained is not one requiring special treatment or care beyond the ability or means of the group requesting it. A group retaining such an item or obtaining one from the state shall house it in the museum building and shall make every reasonable effort to assure its safe preservation. If the advisory committee finds that a local cultural group is not properly taking care of an item the group shall return it to the department. (§ 1 ch 130 SLA 1971)

Sec. 41.35.030. Designation of monuments and historic sites. Upon the recommendation of the Historic Sites Advisory Committee, the governor may declare by public order any particular historic, prehistoric or archeological structure, deposit, site or other object of scientific or historic interest that is situated on land owned or controlled by the state to be a state monument or historic site and he may designate as a part of the monument or site as much land as is considered necessary for the proper access, care and management of the object or site to be protected. When an object or site is situated on land held in private ownership, it may be declared a state monument or historic site in the same manner, with the written consent of the owner. (§ 1 ch 130 SLA 1971)

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(b) If an historic, prehistoric or archeological property which has been found by the department, upon the recommendation of the Historic Sites Advisory Committee, to be important for state ownership is in danger of being sold or used so that its historic, prehistoric or archeological value will be destroyed or seriously impaired, or is otherwise in danger of destruction or serious impairment, the department may establish the use of the property in a manner necessary to preserve its historic, prehistoric or archeological character or value. If the owner of the property does not wish to follow the restrictions of the department, the department may acquire the property by eminent domain under AS 09.55.240 — 09.55.460. (§ 1 ch 130 SLA 1971)

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(b) Before public construction or public improvement of any nature is undertaken by the state, or by a governmental agency of the state or by a private person under contract with or licensed by the state or governmental agency of the state, the department may survey the affected area to determine if the area contains historic, prehistoric or archeological values.

(c) If the department determines that historic, prehistoric or archeological sites, locations or remains will be adversely affected by the public construction or improvement, the proposed public construction or improvement may not be commenced until the department has performed the necessary investigation, recording and salvage of the site, location or remains. All investigation, recording and salvage work shall be performed as expeditiously as possible so that no state construction project will be unduly impaired, impeded or delayed.

(d) If in the course of performing public construction or improvements, historic, prehistoric or archeological sites, locations, remains or objects are discovered, the department shall be notified and its concurrence shall be requested in continuing the construction or improvement. Upon receipt of this notice, the department shall survey the area to determine whether the area contains historic, prehistoric or archeological data which should be preserved in the public interest. The survey shall be conducted as expeditiously as possible. If, as a result of the survey, it is determined that (1) this data exists in the area, (2) the data has exceptional historic, prehistoric or archeological significance, and should be collected and preserved in the public interest, and (3) it is feasible to collect and preserve the data, the department shall perform the necessary work to collect and preserve the data. This work shall be performed as expeditiously as possible.

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

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

(g) Notwithstanding (a) — (f) of this section, all actions to stop any project must first be approved in writing by the commissioner of natural resources. (§ 1 ch 130 SLA 1971; am § 1 ch 112 SLA 1974)

Revisor's note (1971). — In ch. 130, SLA 1971, subsection (g) referred to "(a) and (f)." However, the floor amendment adding (g) read "(a) — (f)," and the text has been corrected here. (See 1971 House Journal, p. 1251).

Effect of amendment. — The 1974 amendment substituted "department" for "state archeologist" throughout the

section, deleted "in cooperation with the state archeologist" in the first sentence of subsection (c) and in the fourth sentence of subsection (d), substituted "its concurrence" for "his concurrence" in the first sentence of subsection (d) and in subsection (e), and deleted "of the archeologist" following "all actions" in subsection (g).

Sec. 41.35.080. Permits. The commissioner may issue a permit for the investigation, excavation, gathering or removal from the natural state, of any historic, prehistoric or archeological resources of the state. A permit may be issued only to persons or organizations qualified to make the investigations, excavations, gatherings or removals and only if the results of these authorized activities will be made available to the general public through institutions and museums interested in disseminating knowledge on the subjects involved. If the historic, prehistoric or archeological resource involved is one which is, or is located on a site which is, sacred, holy or of religious significance to a cultural group, the consent of that cultural group must be obtained before a permit may be issued under this section. (§ 1 ch 130 SLA 1971; am § 2 ch 112 SLA 1974)

Effect of amendment. — The 1974 amendment deleted "with the advice and concurrence of the state archeologist" following "commissioner" near the beginning of the first sentence.

Sec. 41.35.090. Notice required of private persons. Before any construction, alteration or improvement of any nature is undertaken on a privately owned, officially designated state monument or historic site by any person, he shall give the department three months notice of intention to construct on, alter or improve it. Before the expiration of the three-month notification period, the department shall either begin eminent domain proceedings under § 60(b) of this chapter or undertake or permit the recording and salvaging of any historic, prehistoric or archeological information considered necessary. (§ 1 ch 130 SLA 1971; am § 3 ch 112 SLA 1974)

Effect of amendment. — The 1974 amendment deleted "and the state archeologist" following "department" in the first sentence.

Sec. 41.35.100. Excavation and removal of historic, prehistoric or archeological remains on private land. Before any historic, prehistoric or archeological remains are excavated or removed from private land by the department, the written approval of the owner shall first be secured. When the value of the private land is diminished by the excavation or removal, the owner of the land shall be compensated for the loss at a monetary sum mutually agreed on by the department and

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Effect of amendment. — The 1974 archeologist" following "department" in amendment deleted "or the state the first sentence.

Sec. 41.35.110. Historic sites advisory committee. There is created in the Department of Natural Resources the Historic Sites Advisory Committee. (§ 1 ch 130 SLA 1971)

Sec. 41.35.120. Composition of committee. The committee consists of the following persons:

- (1) the director of the Alaska State Museum;
- (2) the state liaison officer appointed under the National Historic Preservation Act of 1966, Public Law 89-665 (80 Stat. 915);
- (3) three persons with professionally relevant backgrounds appointed from each of the following fields: history, architecture and archeology; and
- (4) two persons appointed to represent indigenous ethnic groups. (§ 1 ch 130 SLA 1971; am §§ 5, 6 ch 112 SLA 1974)

Effect of amendment. — The 1974 paragraph (3) inserted "each of" and amendment substituted "director of the Alaska State Museum" for "state archeologist" in paragraph (1), and in deleted anthropology, paleontology, geology and natural history from the list of fields.

Sec. 41.35.130. Appointment of members. Members of the committee are appointed by the governor and confirmed by the legislature meeting in joint session. The members of the committee shall serve at the pleasure of the governor. (§ 1 ch 130 SLA 1971)

Sec. 41.35.140. Term of membership. The term of office for a member of the committee is three years, except for those who are members by virtue of their positions with the state. They serve for as long as they remain in the position by virtue of which they are members of the committee. A member appointed to fill a vacancy serves for the unexpired term of the member he succeeds. Of those members listed under § 120(3) and (4) of this chapter, upon initial appointment, one shall serve for one year, two for two years, and two for three years. (§ 1 ch 130 SLA 1971)

Sec. 41.35.150. Compensation. The members of the committee serve without compensation but are entitled to per diem and travel expenses authorized by law for other boards and commissions. (§ 1 ch 130 SLA 1971)

Cross reference.— As to transportation and per diem expenses for members of boards, commissions, etc., see AS 39.20.180.

Sec. 41.35.160. Officers. At the first meeting of each year, the committee shall elect a chairman from among its members. (§ 1 ch 130 SLA 1971)

Sec. 41.35.170. Meetings and quorum. The committee shall meet at least twice a year. Additional meetings may be called by the chairman or by petition of at least five members. Five members of the committee constitutes a quorum. (§ 1 ch 130 SLA 1971)

Sec. 41.35.180. Duties of the committee. The Historic Sites Advisory Committee shall

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

(2) cooperate with the Department of Natural Resources in formulating and administering a statewide historic sites survey under the National Historic Preservation Act of 1966, Public Law 89-665 (80 Stat. 915);

(3) review those surveys and historic preservation plans that may be required, and approve properties for nomination to the National Register as provided for in the National Historic Preservation Act of 1966, Public Law 89-665 (80 Stat. 915);

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

(5) consult with local historical district commissions regarding the establishment of historical districts under AS 29.48.108 — 29.48.110 and the approval of project alterations under AS 45.98.040; recommend, if appropriate, the formulation of additional criteria for the designation of historical districts under AS 29.48.110(b); approve plans for and evaluate the suitability of specific structures for purposes of loan eligibility and continuance under the historical district revolving loan fund (AS 45.98); and consult with the Department of Commerce and Economic Development relative to the adoption of regulations for historical district loans under AS 45.98. (§ 1 ch 30 SLA 1971; am § 7 ch 112 SLA 1974; am § 4 ch 139 SLA 1977)

Effect of amendments. — The 1974 amendment deleted "and the state archeologist" following "Department of Natural Resources" in paragraph (2).

The 1977 amendment added paragraph (5).

Editor's note. — Section 1, ch. 139, SLA 1977, provides: "INTENT. It is the intent

of the legislature to foster an awareness of the need to preserve our historic past to protect those visible aspects of our invaluable heritage so that present and future generations may continue to be enriched by the originality and strength of Alaska's architectural and cultural beginnings."

Sec. 41.35.190. Powers of chairman. Subject to available appropriations the chairman may, with the concurrence of a majority of the committee, employ necessary personnel and may contract for the services of experts and other persons who may be needed. (§ 1 ch 130 SLA 1971)

Sec. 41.35.200. Unlawful acts. (a) It is unlawful for a person to appropriate, excavate, remove, injure, or destroy, without a permit from the commissioner, any historic, prehistoric or archeological resources of the state.

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

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

(d) An historic, prehistoric or archeological resource which is taken in violation of this section shall be seized by any person designated in § 220 of this chapter wherever found and at any time. Objects seized may be disposed of as the commissioner determines by deposit in the proper public depository. (§ 1 ch 130 SLA 1971; am § 8 ch 112 SLA 1974)

Effect of amendment. — The 1974 "possess, sell, buy or transport" near the amendment deleted "knowingly" preceding beginning of subsection (b).

Sec. 41.35.210. Penalties. A person who violates a provision of this chapter is guilty of a misdemeanor, and upon conviction is punishable by a fine of \$1,000, or by imprisonment for not more than six months, or by both. (§ 1 ch 130 SLA 1971)

Sec. 41.35.220. Enforcement authority. The following persons are peace officers of the state and shall enforce this chapter:

- (1) an employee of the department authorized by the commissioner;
- (2) a peace officer in the state;
- (3) any other person authorized by the commissioner. (§ 1 ch 130 SLA 1971)

Cross reference. — For definition of "peace officer," see AS 01.10.060(6).

Sec. 41.35.230. Definitions. In this chapter, unless the context otherwise requires,

- (1) "commissioner" means the commissioner of natural resources;
- (2) "committee" means the Historic Sites Advisory Committee;
- (3) "department" means the Department of Natural Resources;

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(4) "historic, prehistoric and archeological resources" includes deposits, structures, ruins, sites, buildings, graves, artifacts, fossils, or other objects of antiquity which provide information pertaining to the historical or prehistorical culture of people in the state as well as to the natural history of the state. (§ 1 ch 130 SLA 1971)

Sec. 41.35.240. Title of chapter. This chapter may be cited as the Alaska Historic Preservation Act. (§ 1 ch 130 SLA 1971)