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STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 14, 1986

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

The Honorable Max F. Gruenberg, Jr.
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: HB 526, relating to Alaskan artifacts

Dear Representative Gruenberg:

Earlier this year House Bill 526, relating to protection of important Alaskan artifacts, was introduced at Governor Sheffield's request. HB 526 is intended to deal with the problem of the increasing removal of important Alaskan artifacts, particularly objects of Native culture, by unfair or unscrupulous means. Because the mechanics of the bill might not be obvious on its face, a great deal of misunderstanding of the bill's effect has been created. Therefore, we have been asked to prepare an analysis of the bill, including its purposes and mechanics.

That analysis is attached. Please feel free to contact this office if you have further questions or comments.

Sincerely yours,

HAROLD M. BROWN
ATTORNEY GENERAL

By: 

Douglas K. Mertz
Assistant Attorney General

DKM:dlm

Attachments

ANALYSIS OF HB 526, RELATING TO
PRESERVATION OF IMPORTANT ARTIFACTS
OF ALASKAN CULTURE

Prepared by the Alaska Department of Law

House Bill 526, relating to preservation of important artifacts of Alaskan culture, has two major purposes: To prevent the loss of cultural treasures that have unique value to the people of Alaska, by removal under questionable circumstances; and to enable Native Alaskans who own certain artifacts communally to assert that ownership against persons claiming individual ownership.

The bill grew out of a series of incidents in which important historical or artistic pieces have been removed from Alaska by persons who might not have had proper title. There appears to be a regular trade in excavating and selling artifacts from ancient cultures, taken from public or private land without permission. In other incidents unscrupulous dealers have removed and sold important Native artifacts after telling the owners that they were merely being "borrowed" to be copied. On still other occasions individuals have tried to sell valuable Native artifacts despite contrary claims to ownership by groups or clans of Natives. (The history of attempts to acquire Southeast Alaskan artifacts, both legitimately and illegitimately, is recounted by Douglas Cole, in his Captured Heritage: The Scramble for Northwest Coast Artifacts [University of Washington Press, Seattle, 1985]. Many of the same collecting tactics continue in use today.)

House Bill 526 will not solve all of the problems of conflicting legal claims and unethical collecting practices. Probably no single piece of legislation could do so. But HB 526 would give valuable tools to those resisting the most egregious practices and would make it more difficult for the most valuable artifacts to be removed by persons without a right to them.

The bill contains two main mechanisms. The first, at Sections 1 and 2, makes technical amendments to the code of civil procedure and to state property law, to enable the courts to recognize traditional communal ownership of ceremonial, cultural, or religious property as a form of trust. Under current law, trusts and transfers of trust property must be in writing. In the traditional custom of certain Alaskan Native groups, some property is held by an entire clan or other social group. Custody of the object may be given to an individual, but only for the benefit of the entire group, and the object may be sold, if at all, only with consent and for the benefit of the entire group. This custom approximates the concept of a trust in Anglo-American law, yet the Native tradition is rarely reduced to writing. Sections 1 and 2 would permit the courts to receive evidence that such property is subject to an unwritten trust, and therefore, in appropriate cases, a court could prevent an individual from selling property that is subject to a trust for the benefit of a group of Natives.

It should be noted, however, that these sections would not create any new rights to an artifact; they merely enable

persons claiming that a trust for a Native group exists to offer proof that it exists. The burden would still be on the proponents of communal ownership to prove that fact.

In secs. 5 through 7, HB 526 offers a second means of protecting the most valuable class of Alaskan artifacts. It sets up a mechanism by which a person who intends to sell an artifact falling within a narrowly defined class must alert persons with a conflicting claim of ownership, and provides an opportunity for resolving conflicting claims.

These requirements would apply only to a narrow class of objects, and only when their owner has decided to sell them or transport them for sale. The class is limited to objects with cultural, artistic, or historical value, which were created or used in Alaska, which are over 40 years old, and which have a market value over \$25,000. It would not include objects of art without a unique Alaskan connection, nor would it include collections which together are worth over \$25,000 but whose individual pieces are worth less. These limitations were chosen for three reasons: to limit application of the law to only the most important valuable artifacts; to keep the number of affected objects small so that any burden on commerce is minimized; and to keep the program small enough that it can be administered by present staff.

In summary, the requirements imposed by the bill are as follows: when a person intends to sell an object fitting the criteria above (an "Alaskan heritage artifact"), he must provide

certain information to the director of the State Museums at least 30 days before the sale. That information must include a description of the article and its history, including date and place of origin and all available documentation of present ownership. (There is no requirement that the owner do original research on the article's history or ownership; instead, he must supply what information is already available.) The owner must also list all persons known to him to have asserted a conflicting claim of ownership, and must show that he has posted and published, in the community nearest or most closely associated with the object, a notice of intent to sell. The purpose of requiring this information is (a) to give the director of museums a basis for concluding whether or not the object is actually owned by the person intending to sell it, and (b) to alert other persons who claim ownership to the impending sale so that they may take steps to protect their interests before the sale occurs. The person intending to sell the object is not required to divulge the precise location of the object (other than the community in which it is located), nor the proposed selling price, nor the price for which he purchased it.

After that information is given to the director of museums, the director has 30 days within which to analyze the information and choose one of three courses. (The short, 30-day period was chosen consciously so as to put the burden on the state to act quickly and not delay proposed sales any longer than necessary.) The three choices for the director are (1) allow the

proposed sale to proceed; (2) request the attorney general to bring an interpleader action in which ownership between competing claimants would be decided; or (3) if he finds that the object is of "substantial importance to Alaskan heritage and will otherwise be lost to the people of Alaska," acquire it for the state for its fair market value. (Naturally, this last course would be subject to availability of acquisition funds.) In short, if there is a real controversy over ownership referred to the courts for resolution before a sale occurs; if the object has special value to Alaska and would otherwise be lost, the state may purchase it for fair market value. But, in the routine case where ownership is not in dispute, the sale would simply be allowed to proceed.

It should be noted that in no case would the owner of an artifact be denied his full fair market sale price. Nor would anything in this bill permit persons to question title of artifacts already sold or placed in collections before the effective date of the law.

Finally, HB 526 contains provisions to clarify and strengthen the Alaska Historic Preservation Act, AS 41.35. Section 7 clarifies that the Act applies to cultural resources belonging to the state, eliminating the current ambiguity in the statute. It also extends the current prohibition against unauthorized excavation and removal of artifacts on state land to

unauthorized acts on private land. And sec. 8 changes the penalty provisions in AS 41.35.210 so that severity of the penalty is keyed to the value of the objects illegally removed or sold.

We do not expect that HB 526 will solve all of the problems of unethical collection and removal of important Alaskan artifacts, but it is a first step in dealing with a problem of critical importance.

#

1 (2) as detailed a history of the artifact as is reasonably
2 possible, including date and place of origin, and all available docu-
3 mentation of its present ownership;

4 (3) a statement by the owner, signed under oath, that that
5 person is the true owner of the artifact and has the sole right to
6 alienate title;

7 (4) a list of all persons known to assert now, or known to
8 have asserted in the past, a conflicting claim regarding ownership or
9 the right to alienate the artifact; and

10 (5) proof of posting in a public place in the community
11 nearest or most closely associated with the artifact, and of publica-
12 tion in at least one newspaper of general circulation in the same
13 community, a notice of intent to sell which clearly identifies the
14 artifact and its location.

15 (b) Within 30 days after filing of the information required by
16 this section, the director of the Alaska State Museum shall

17 (1) bring an action through the attorney general to deter-
18 mine ownership of the artifact;

19 (2) bring an action through the attorney general to acquire
20 title to the artifact through eminent domain, under AS 41.35.060(c),
21 if the artifact is found to be of substantial importance to Alaskan
22 heritage and will otherwise be lost to the people of Alaska; or

23 (3) inform the person intending to sell the artifact that
24 the state will not take action under (1) or (2) of this subsection.

25 * Sec. 7. AS 41.35.200 is amended to read:

26 Sec. 41.35.200. UNLAWFUL ACTS. (a) A person may not appropri-
27 ate, excavate, remove, injure, or destroy, without a permit from the
28 commissioner, any historic, prehistoric, [OR] archeological, or cul-
29 tural resources belonging to [OF] the state.

Introduced: 1/19/86
Referred: Health, Education &
Social Services and Judiciary

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 HOUSE BILL NO. 526

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to preservation of important arti-
7 facts of Alaskan culture; and providing for an effec-
8 tive date."

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

10 * Section 1. AS 09.25.010 is amended by adding a new subsection to
11 read:

12 (c) Notwithstanding other provisions in this section, the exis-
13 tence of a trust may be recognized and enforced by a court in the
14 absence of a writing, upon a showing, by a preponderance of the evi-
15 dence, that a trust or caretaking arrangement has been established by
16 Alaska Native custom and tradition for protection and conservation of
17 ceremonial, cultural, or religious property on behalf of all members
18 of a clan, house, band, or other traditional group of Alaska Natives
19 as owners in common.

20 * Sec. 2. AS 34.40.070 is amended by adding a new subsection to read:

21 (b) Notwithstanding (a) of this section, a court may recognize
22 and enforce a valid, unwritten grant or assignment of a trust or
23 caretaking arrangement for protection and conservation of ceremonial,
24 cultural, or religious property on behalf of all members of a clan,
25 house, band, or other traditional group of Alaska Natives, as owners
26 in common, upon a showing, by a preponderance of the evidence, of a
27 grant or assignment according to established Alaska Native custom and
28 tradition.

29 * Sec. 3. AS 41.35.010 is amended by adding a new subsection to read:

1 (b) The legislature finds that many of Alaska's historical and
2 cultural artifacts, including ceremonial and religious objects impor-
3 tant to Alaska's Native peoples, have been removed and sold, often by
4 persons without a rightful claim to them. All Alaskans share a deep
5 loss because of the removal of important parts of our cultural and
6 historical heritage. It has become necessary for the state to take a
7 strong role in preventing further loss of the Alaskan heritage and to
8 stop unfair and unethical methods of collecting artifacts.

9 * Sec. 4. AS 41.35.020 is amended by adding a new subsection to read:

10 (c) The director of the Alaska State Museum may arrange to
11 preserve, protect, and display objects of historic, prehistoric,
12 archeological, or cultural value owned by private persons. For this
13 purpose the museum may enter into agreements for loan and display of
14 objects, including reimbursement of the owner's costs associated with
15 the loan. A loan agreement may contain a provision guaranteeing the
16 owner access to the object loaned and for periodic return of the
17 object to the owner for private use, including ceremonial use.

18 * Sec. 5. AS 41.35.060 is amended by adding a new subsection to read:

19 (c) If the director of the Alaska State Museum finds that an
20 Alaskan heritage artifact for which notice of sale is required under
21 AS 41.35.095 is in danger of being sold or used so that its value to
22 the people of Alaska will be destroyed or seriously impaired, the
23 director may purchase the artifact or acquire it by eminent domain.

24 * Sec. 6. AS 41.35 is amended by adding a new section to read:

25 Sec. 41.35.095. SALE OF ALASKAN HERITAGE ARTIFACTS. (a) A
26 person who intends to sell an Alaskan heritage artifact shall provide
27 the following information to the director of the Alaska State Museum
28 at least 30 days before the sale:

29 (1) a description of the artifact, including a photograph;

1 (2) as detailed a history of the artifact as is reasonably
2 possible, including date and place of origin, and all available docu-
3 mentation of its present ownership;

4 (3) a statement by the owner, signed under oath, that that
5 person is the true owner of the artifact and has the sole right to
6 alienate title;

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9 the right to alienate the artifact; and

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14 artifact and its location.

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16 this section, the director of the Alaska State Museum shall

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20 title to the artifact through eminent domain, under AS 41.35.060(c),
21 if the artifact is found to be of substantial importance to Alaska
22 heritage and will otherwise be lost to the people of Alaska; or

23 (3) inform the person intending to sell the artifact that
24 the state will not take action under (1) or (2) of this subsection.

25 * Sec. 7. AS 41.35.200 is amended to read:

26 Sec. 41.35.200. UNLAWFUL ACTS. (a) A person may not appropri-
27 ate, excavate, remove, injure, or destroy, without a permit from the
28 commissioner, any historic, prehistoric, [OR] archeological, or cul-
29 tural resources belonging to [OF] the state.

1 (b) A person may not appropriate, excavate, remove, injure, or
2 destroy, without permission of the landowner, any historic, prehistor-
3 ic, archeological, or cultural resource located on privately owned
4 land, unless the person is the owner of the resource or has the per-
5 mission of the owner.

6 (c) [(b)] A person may not possess, sell, buy, or transport
7 within the state, or offer to sell, buy, or transport within the
8 state, historic, prehistoric, [OR] archeological, or cultural re-
9 sources taken, [OR] acquired, sold, or possessed in violation of this
10 chapter [SECTION] or 16 U.S.C. 433.

11 (d) A person may not sell, buy, or transport within the state in
12 connection with a sale or purchase, an Alaskan heritage artifact
13 unless the seller has complied with AS 41.35.095.

14 (e) [(c)] A person may not unlawfully destroy, mutilate, de-
15 face, injure, remove, or excavate a grave site or a tomb, monument,
16 gravestone, or other structure or object at a grave site, even though
17 the grave site appears to be abandoned, lost, or neglected.

18 (f) [(d)] A state-owned [AN] historic, prehistoric, [OR]
19 archeological, or cultural resource which is taken in violation of
20 this chapter [SECTION] shall be seized by any person designated in
21 AS 41.35.220 wherever found and at any time. Objects seized may be
22 disposed of as the commissioner determines by deposit in the proper
23 public depository.

24 * Sec. 8. AS 41.35.210 is repealed and reenacted to read:

25 Sec. 41.35.210. PENALTIES. A person who violates a provision of
26 this chapter is guilty of

27 (1) a class A misdemeanor for a violation involving an
28 artifact or object with a market value under \$25,000, or a violation
29 that does not involve an artifact or object;

1 (2) a class C felony for violations involving an artifact
2 or object with a market value of \$25,000 to \$100,000; and

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4 or object with a market value of more than \$100,000.

5 * Sec. 9. AS 41.35.230(4) is amended to read:

6 (4) "historic, prehistoric, [AND] archeological, and cul-
7 tural resources" includes deposits, structures, ruins, sites, build-
8 ings, graves, artifacts, fossils, ceremonial objects, or other objects
9 of antiquity which provide information pertaining to the historical or
10 prehistorical culture of the people in the state as well as to the
11 natural history of the state, and includes an Alaskan heritage arti-
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13 * Sec. 10. AS 41.35.230 is amended by adding a new paragraph to read:

14 (5) "Alaskan heritage artifact" means an object with cul-
15 tural, artistic, or historical value, created or used in Alaska, which
16 is over 40 years old and has a market value of more than \$25,000.

17 * Sec. 11. This Act takes effect immediately in accordance with AS 01.-
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OK

UNIVERSITY OF ALASKA, FAIRBANKS
Fairbanks, Alaska 99701

February 11, 1986

FEB 14 1986

Honorable John Ringstad
State Capitol
Pouch V (MS 3100)
Juneau, AK 99811

Dear John:

I want to call to your attention a bill which has been introduced in the House by the Rules Committee by request of the Governor. The bill, HB526, drafted in the Department of Law, by Mr. Doug Mertz, was filed on January 19. It is for an Act entitled: "An act relating to preservation of important artifacts of Alaskan culture; and providing for an effective date."

This bill, while I am sure is well intended, raises some horrific specters, both for the Native cultures as well as non-Native peoples. While the intent is to stop the out-flow of cultural materials from the State of Alaska, it attempts to accomplish this goal through such means as identifying "an Alaskan heritage artifact is any object with cultural, artistic, or historic value created or used in Alaska which is over 50 years old and has a market value of over \$25,000 dollars." As you can readily see, such loose language would permit, the interpretation of the bill to include houses, ships, paintings, aircraft, etc. The bill also permits the Director of the Alaska State Museum, in his/her discretion to enter into agreements with Native peoples for "loan and display of objects, including reimbursement of costs to the owner associated with the loan." This is not a wise posture, i.e. to pay someone to lend something to the State.

The bill also sets up a new permitting system, which probably is not even needed, given current permitting status within the department of history and archeology (DNR). It also permits the Director of the Alaska State Museum to "bring an action through the Attorney General to determine ownership of "artifacts" and "bring an action through the Attorney General to acquire title to the artifact through eminent domain," "if the artifact is found to be of substantial importance to Alaskan heritage and would otherwise be lost to the people of Alaska....." This is probably unconstitutional, and certainly a frightening possibility of permitting state government to reach into a person's home and remove things. This simply seems to me to be an exceedingly poor method of attempting to accomplish a goal.

UNIVERSITY OF ALASKA

February 11, 1986

Page 2

There are other, more silly things stated such as an illusion to a "commissioner" which presumably is the Commissioner of Education, but some believe it refers to the Commissioner of DNR. Either way, it is plain silly the way it is stated.

Also, there is the statement that "a person may not....transport within the State.....Alaskan heritage artifacts without an artifact sale permit...." I am not sure what the author has in mind here, but this means that--even as defined--I could not move an artifact from the University of Alaska Museum to lower campus of University of Alaska-Fairbanks without getting a permit. I believe you can see the gist of my concerns.

I ask you please to review HB526, and to take appropriate steps to either abolish it in the present form or to vastly amend it so that it can accomplish what is probably a worthy intent without being unconstitutional or without encroaching upon individual's rights.

If you have further questions, please do not hesitate to call or write me.

Sincerely,

Basil C Hedrick
by H. Davis

Basil C. Hedrick, Director
University of Alaska Museum
907 Yukon Drive
Fairbanks, AK 99775-1200

FEB 14 1986

sjc

*Letter
zero 7 note*

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17 ceremonial, cultural, or religious property on behalf of all members
18 of a clan, house, band, or other traditional group of Alaska Natives
19 as owners in common.

20 * Sec. 2. AS 34.40.070 is amended by adding a new subsection to read:

21 (b) Notwithstanding (a) of this section, a court may recognize
22 and enforce a valid, unwritten grant or assignment of a trust or
23 caretaking arrangement for protection and conservation of ceremonial,
24 cultural, or religious property on behalf of all members of a clan,
25 house, band, or other traditional group of Alaska Natives, as owners
26 in common, upon a showing, by a preponderance of the evidence, of a
27 grant or assignment according to established Alaska Native custom and
28 tradition.

29 * Sec. 3. AS 41.35.010 is amended by adding a new subsection to read:

COMMITTEE COPY

1 (b) The legislature finds that many of Alaska's historical and
2 cultural artifacts, including ceremonial and religious objects impor-
3 tant to Alaska's Native peoples, have been removed and sold, often by
4 persons without a rightful claim to them. All Alaskans share a deep
5 loss because of the removal of important parts of our cultural and
6 historical heritage. It has become necessary for the state to take a
7 strong role in preventing further loss of the Alaskan heritage and to
8 stop unfair and unethical methods of collecting artifacts.

9 * Sec. 4. AS 41.35.020 is amended by adding a new subsection to read:

10 (c) The director of the Alaska State Museum may arrange to
11 preserve, protect, and display objects of historic, prehistoric,
12 archeological, or cultural value owned by private persons. For this
13 purpose the museum may enter into agreements for loan and display of
14 objects, including reimbursement of the owner's costs associated with
15 the loan. A loan agreement may contain a provision guaranteeing the
16 owner access to the object loaned and for periodic return of the
17 object to the owner for private use, including ceremonial use.

18 * Sec. 5. AS 41.35.060 is amended by adding a new subsection to read:

19 (c) If the director of the Alaska State Museum finds that an
20 Alaskan heritage artifact for which notice of sale is required under
21 AS 41.35.095 is in danger of being sold or used so that its value to
22 the people of Alaska will be destroyed or seriously impaired, the
23 director may purchase the artifact or acquire it by eminent domain.

24 * Sec. 6. AS 41.35 is amended by adding a new section to read:

25 Sec. 41.35.095. SALE OF ALASKAN HERITAGE ARTIFACTS. (a) A
26 person who intends to sell a Alaskan heritage artifact shall provide
27 the following information to the director of the Alaska State Museum
28 at least 30 days before the sale:

29 (1) a description of the artifact, including a photograph;

1 (2) as detailed a history of the artifact as is reasonably
2 possible, including date and place of origin, and all available docu-
3 mentation of its present ownership;

4 (3) a statement by the owner, signed under oath, that that
5 person is the true owner of the artifact and has the sole right to
6 alienate title;

7 (4) a list of all persons known to assert now, or known to
8 have asserted in the past, a conflicting claim regarding ownership or
9 the right to alienate the artifact; and

10 (5) proof of posting in a public place in the community
11 nearest or most closely associated with the artifact, and of publica-
12 tion in at least one newspaper of general circulation in the same
13 community, a notice of intent to sell which clearly identifies the
14 artifact and its location.

15 (b) Within 30 days after filing of the information required by
16 this section, the director of the Alaska State Museum shall

17 (1) bring an action through the attorney general to deter-
18 mine ownership of the artifact;

19 (2) bring an action through the attorney general to acquire
20 title to the artifact through eminent domain, under AS 41.35.060(c),
21 if the artifact is found to be of substantial importance to Alaskan
22 heritage and will otherwise be lost to the people of Alaska; or

23 (3) inform the person intending to sell the artifact that
24 the state will not take action under (1) or (2) of this subsection.

25 * Sec. 7. AS 41.35.200 is amended to read:

26 Sec. 41.35.200. UNLAWFUL ACTS. (a) A person may not appropri-
27 ate, excavate, remove, injure, or destroy, without a permit from the
28 commissioner, any historic, prehistoric, [OR] archeological, or cul-
29 tural resources belonging to [OF] the state.

1 (b) A person may not appropriate, excavate, remove, injure, or
2 destroy, without permission of the landowner, any historic, prehistor-
3 ic, archeological, or cultural resource located on privately owned
4 land, unless the person is the owner of the resource or has the per-
5 mission of the owner.

6 (c) [(b)] A person may not possess, sell, buy, or transport
7 within the state, or offer to sell, buy, or transport within the
8 state, historic, prehistoric, [OR] archeological, or cultural re-
9 sources taken, [OR] acquired, sold, or possessed in violation of this
10 chapter [SECTION] or 16 U.S.C. 433.

11 (d) A person may not sell, buy, or transport within the state in
12 connection with a sale or purchase, an Alaskan heritage artifact
13 unless the seller has complied with AS 41.35.095.

14 (e) [(c)] A person may not unlawfully destroy, mutilate, de-
15 face, injure, remove, or excavate a grave site or a tomb, monument,
16 gravestone, or other structure or object at a grave site, even though
17 the grave site appears to be abandoned, lost, or neglected.

18 (f) [(d)] A state-owned [AN] historic, prehistoric, [OR]
19 archeological, or cultural resource which is taken in violation of
20 this chapter [SECTION] shall be seized by any person designated in
21 AS 41.35.220 wherever found and at any time. Objects seized may be
22 disposed of as the commissioner determines by deposit in the proper
23 public depository.

24 * Sec. 8. AS 41.35.210 is repealed and reenacted to read:

25 Sec. 41.35.210. PENALTIES. A person who violates a provision of
26 this chapter is guilty of

27 (1) a class A misdemeanor for a violation involving an
28 artifact or object with a market value under \$25,000, or a violation
29 that does not involve an artifact or object;

1 (2) a class C felony for violations involving an artifact
2 or object with a market value of \$25,000 to \$100,000; and

3 (3) a class B felony for violations involving an artifact
4 or object with a market value of more than \$100,000.

5 * Sec. 9. AS 41.35.230(4) is amended to read:

6 (4) "historic, prehistoric, [AND] archeological, and cul-
7 tural resources" includes deposits, structures, ruins, sites, build-
8 ings, graves, artifacts, fossils, ceremonial objects, or other objects
9 of antiquity which provide information pertaining to the historical or
10 prehistorical culture of the people in the state as well as to the
11 natural history of the state, and includes an Alaskan heritage arti-
12 fact.

13 * Sec. 10. AS 41.35.230 is amended by adding a new paragraph to read:

14 (5) "Alaskan heritage artifact" means an object with cul-
15 tural, artistic, or historical value, created or used in Alaska, which
16 is over 40 years old and has a market value of more than \$25,000.

17 * Sec. 11. This Act takes effect immediately in accordance with AS 01.-
18 10.070(c).

BILL SHEFFIELD
GOVERNOR



14B526

[Handwritten signature]
1/29

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 29, 1986

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to preservation of important Alaskan cultural artifacts.

This bill is intended to strengthen statutory protections against loss of important historical, archeological, and cultural artifacts. It is largely in response to continuing losses of Native artifacts to private collectors. Many of the threatened artifacts are of vital cultural or religious significance to Alaskan Natives. We are also increasingly aware of unethical practices of some collectors in their searches for Native artworks. Current statutory authority is inadequate to protect these resources. This bill is intended to help remedy that inadequacy.

Sections 1 and 2 of the bill are intended to enable state courts to recognize the validity of trusts created by Native custom and tradition. Many sought-after Native artifacts are owned communally by clans or other Native groups, and are entrusted to a person charged with their care and protection. This has been the cause of several legal disputes over the right of individuals to sell the artifacts. The bill would allow the courts to apply the law of trusts to such situations, in effect recognizing for purposes of state law these traditional unwritten Native trusts.

Sections 5, 6, and 7 of the bill contain the major amendments to the Alaska Historic Preservation Act, AS 41.35. Section 6 requires that possessors of major works of Alaskan cultural heritage notify the Alaska State Museum before their sale, and provide background information concerning the origin and ownership of those works. The museum must

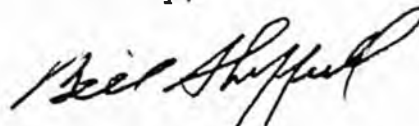
then take one of three courses of action. If it finds that a dispute over ownership exists, it may institute a court action to clarify who has the legal right to sell. If the Museum finds that an article proposed for sale is of substantial importance to Alaska, the article will otherwise be lost, and museum purchase cannot be negotiated, it may acquire the article itself, through eminent domain, for fair market value. (Section 5 of the bill authorizes the museum to acquire such articles in certain situations, by purchasing them or acquiring them through eminent domain, even if the statutorily required notice is not given.) Or, if neither of those two options is chosen, it must inform the seller that the state will take no action regarding the sale.

Section 7 would extend the Act's prohibition against removal of artifacts to those found on private land. (Current protections extend only to state land.) This is an attempt to deal with unauthorized excavations of archeological and grave sites on private land, e.g., Native corporation land.

The remainder of the bill makes related amendments to AS 41.35. The amendments in secs. 3 and 4 are generally to enhance protection and preservation of historical and cultural Alaskan artifacts. Section 8 amends AS 41.35.210 to conform the penalty section to the new Criminal Code and to substantially increase penalties for violations relating to historic, prehistoric, archeological, and cultural resources. The harsher penalties should provide incentive for compliance with the laws that are meant to protect irreplaceable Alaska resources. The amendments in secs. 9 and 10 are to definitions, and reflect the other amendments made in the bill.

The bill is intended to create a structure for protecting Alaskan artifacts, which is useful with any level of funding for the State Museum acquisition fund. According to the director of the State Museum, administration of the new provisions would not require increased appropriations. It is also clear, however, that the ability of the state to retain Alaskan heritage treasures by purchase depends on the funding level for acquisitions which the legislature considers appropriate.

Sincerely,



Bill Sheffield
Governor

cc 1/29

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST HB 526

Bill/Resolution No. : _____ -86

Title : ...preservation of important artifacts of Alaskan Culture...

Sponsor : Governor

Requestor : Governor

Date of Request : 1-14-86

FISCAL DETAIL

Agency Affected : Education

BRU : Division of Museums

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND STRUCTURES						
GRANT CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

This bill has no fiscal impact.

Prepared by : Steve Hole *[Signature]* Phone : 465-2800

Division : Commissioner's Office Date : 1-14-86

Approved by Commissioner : Harold Reynolds, Jr. Date : 1-14-86

Agency : Education

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

ALASKA STATE LEGISLATURE

14th.. Legislature .. SE 70NDSession

HOUSE BILL..... NO. ..526..

By THE RULES COMMITTEE BY.....
REQUEST OF THE GOVERNOR

"An Act relating to preservation
of important artifacts of
Alaskan culture; and providing
for an effective date."

preservation of artifacts

Introduced in the House ... 1/29.., 19.86

HISTORY IN THE HOUSE

19 86

Jan 29

Read first time and referred
to Committee on

HESS AND JUDICIARY

Reported back with
recommendation that

Read second time and

Read third time and

PASS Effective Date
Yeas Yeas
Nays Nays
Absent Absent
Excused Excused

Reconsideration

PASS Effective Date
Yeas Yeas
Nays Nays
Absent Absent
Excused Excused
Reported correctly engrossed
Signed by Speaker
Sent to Senate

CHIEF CLERK OF THE HOUSE

HISTORY IN THE SENATE

19

Read first time and referred
to Committee on

Reported back with
recommendation that

Read second time and

Read third time and

PASS Effective Date
Yeas Yeas
Nays Nays
Absent Absent
Excused Excused

Reconsideration

PASS Effective Date
Yeas Yeas
Nays Nays
Absent Absent
Excused Excused
Reported correctly engrossed
Signed by President
Returned to House

SECRETARY OF THE SENATE

HISTORY IN THE HOUSE

19

Received from Senate

Concurred in Senate amendment
thus adopting:
VOTE

Failed to concur in Senate amend-
ment; asked Senate to recede:
VOTE

Senate receded from amendment
VOTE

Senate failed to recede from
amendment
VOTE

CC appointed by House

CC appointed by Senate

CC adopted by House
VOTE

CC adopted by Senate
VOTE

To enrolling
Reported correctly enrolled
Sent to Governor

..... by Governor

Filed with Lt. Governor

Chapter No.