

HB

153

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE ULMER

NAME: MARY BAUER

TITLE:

ADDRESS: POB 172

CITY: SUTTON

ZIP: 99674

PHONE: 745-6840

BILL NO: HB 153 ✓

SUBJECT: PROTECTION OF CULTURAL/HISTORIC PROPERTY

MESSAGE: I WOULD LIKE THE ANSWERS TO THE FOLLOWING QUESTIONS: REGARDING
PERMITS FOR ARCHEOLOGICAL DIGGING ON TRIBAL LANDS, SHOULDN'T
THE INVOLVED TRIBES BE CONSULTED? THE PERMITS WOULD BE
ISSUED BY WHICH COMMISSIONER?

POMID: 14102315

DATE: 04/03/87

TIME: 10:23:15

LIONAME: MAT-SU LIO

COPIES: REPRESENTATIVES

BARNES
COTTEN
GRUENBERG
NAVARRE
SUND
TAYLOR

file

FISCAL NOTE

REQUEST:

Revision Date: January 19, 1988
 Title: "An Act relating to preservation of cultural property..."
 Sponsor: House State Affairs
 Requestor: House Judiciary

Agency Affected: Department of Law
 BRU: Prosecution, Legal Services

Components: Prosecution - All;
Legal Services - Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: January 19, 1988
 Approved by Commissioner: Richard I. Pegues / FOR /
Grace Berg Schaible, Atty. Gen. Date: January 19, 1988
 Agency: Department of Law

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 153 (State Affairs)

This bill amends AS 09.25, AS 34.40 and AS 41.35 by recognizing that a trust has been established by Alaska Native custom, or tradition, for the protection and preservation of ceremonial, cultural, or religious property, excluding land, on behalf of all members of a clan, house, band, or other traditional group of Alaska Natives as owners in common. The bill also empowers the state courts to enforce such trusts, and it extends the protection of the Alaska Historic Preservation Act to privately-owned land. Lastly, the bill raises the penalty for violating the Act to a class A misdemeanor and provides for a substantial civil penalty.

The bill establishes and clarifies the court of jurisdiction for disputes involving the ownership of Alaska Native artifacts. Its passage would eliminate much of the confusion, and costly litigation, that occurs in these disputes, such as when artifacts were removed from the Whale House at Klukwan. The bill will therefore not have a fiscal impact on the Department of Law, and, to the extent that litigation will be reduced, it will also help to conserve the state's decreasing legal resources.

HOUSE COMMITTEE REPORT

(7)

Date referred: 2/27/87

FURTHER REFERRALS: Judiciary

DATE: 3-13-87

The State Affairs Committee has considered HB 153

"An Act relating to preservation of cultural and historic property; and providing for an effective date."

RECOMMENDS:

- replace with CS HB 153 the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

SIGNING OTHER RECOMMENDATIONS:

[Signature]
Chairman's signature



Official Business

Alaska State Legislature

House

P.O. BOX V
State Capitol
Juneau, Alaska 99811

STATE AFFAIRS COMMITTEE

HOUSE BILL 153

FILE CONTENTS

1. HB 153: An Act relating to preservation of cultural and historic property; and providing for an effective date
2. Letter from Melba Wallace of Aukquon Traditional Council to Representative Grussendorf, dated March 9, 1987
3. Proposed CS HB 153 (SA)
4. Sectional analysis of HB 153

FISCAL NOTES

- A. Department of Law, Prosecution/Legal Services/Operations: -0-
- B. Department of Natural Resources, Park Management: -0-

March 9, 1987

2

The Honorable Len Grussendorf
House of Representatives
P. O. Box V
Capitol, Room 206
Juneau, Alaska 99811

Dear Sir:

I am writing to you pertaining to a House Bill Number 153, in the Fifteenth Legislature - First Session, 1987, for an Act entitled: "An Act relating to preservation of cultural and historic property; and providing for an effective date".

House Bill 153, that is presently before the House for amendments by the State of Alaska is not a proper forum for the State legislature to consider for enactment because it does not have jurisdiction to pass such legislation and usurp the tribal governments by regulating or recognizing any existing trusts nor can they authorize to enforce such law.

This Bill infringes upon tribal governments to make and enforce it's own laws to determine under it's tribal law who has the tribal right to control such objects as ceremonial, cultural, or religious property, nor does the State have jurisdiction to determine "...on behalf of all members of a clan, house, band, or other traditional group of Alaska natives as owners in common".

First of all, to say that all natives are "owners in common", is an act of confiscation from the Clan, and Clan houses, "no government while exercising it's laws can deprive anyone of its property or rights without due process of law", this means the State cannot give the tribal rights to others or to appropriate them to it's own purposes, without rendering, or assuming an obligation to render just compensation for them"; for that "...would not be an exercise of guardianships, but an act of confiscation".

In a supreme court decision: "...there is a distinction between tribal property and property owned in common by a group of Indians appears most clearly in connection with the claims repeatedly put forward by descendants of tribal members who are not themselves tribal members and who, under a theory of tenancy in common, would be entitled to share in the common property but, if the property is indeed tribal, have no valid claim thereon.

Furthermore, in order for Alaska Native Villages to be a tribe, it must meet the criteria set out in 25 U.S.C. Part 54, and be indigenous to a known tribal territory, and autonomous.

Also, the First Amendment to the Constitution regarding "separation of Church and State" is a fundamental right which governments cannot interfere. The American Indian Religious Freedom Act is an integral part of their culture, tradition and heritage, and includes tribal burial sites, tomb, monument, gravestone, or other structure or objects at a burial site, historic or prehistoric sites and cultural resources".

The determination of disposition of who may "not possess, sell, buy, trade, or transport within the state, a historic, prehistoric, archaeological, or cultural resources taken, acquired, sold, or possessed" is under the tribal sovereignty with the power of regulating their internal and social relations, making their own substantive law in internal matters, and enforcing that law in their own forums.

In addition, my tribe is not to be construed with a State Corporation entitled Lake Tribe Council, Inc., who do not represent us or speak for us.

Very truly yours,

Mrs. Felba J. Wallace

Juneau Traditional Council
Constituting the Lake Tribe of Indians

cc: The Honorable the Governor
of Alaska, Steve Cowper.
The Honorable Albert P. Adams.
The Honorable Cliff Davidson.
The Honorable Peter Goll.
The Honorable Lyman Hoffman.
The Honorable Niilo Koponen.
The Honorable Fran Ulmer. ✓
Juneau Empire.
Tundra Times.

Mrs. Felba J. Wallace
6258 Timberly Street
Juneau, Alaska 99801

Original sponsors: Grussendorf, Goll,
Ulmer, et al.

1 IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE
2 CS FOR HOUSE BILL NO. 153 (State Affairs)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to preservation of cultural and
7 historic property; and providing for an effective
8 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 has been established by Alaska Native custom and
16 tradition for protection and preservation of ceremonial, cultural, or
17 religious property, other than land, on behalf of all members of a
18 clan, house, band, or other traditional group of Alaska Natives as
19 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 for
23 protection and preservation of ceremonial, cultural, or religious
24 property, other than land, on behalf of all members of a clan, house,
25 band, or other traditional group of Alaska Natives as owners in com-
26 mon, upon a showing, by a preponderance of the evidence, of a grant or
27 assignment according to established Alaska Native custom and tradi-
28 tion.

29 * Sec. 3. AS 41.35.200 is repealed and reenacted to read:

1 Sec. 41.35.200. UNLAWFUL ACTS. (a) A person may not appropri-
2 ate, excavate, remove, injure, or destroy a historic, prehistoric,
3 archaeological, or cultural resource to which the state has reserved
4 title, unless the person has a permit for that purpose issued by the
5 commissioner.

6 (b) A person may not appropriate, excavate, remove, injure, or
7 destroy a historic, prehistoric, archaeological, or cultural resource
8 located on privately-owned land, unless the person

9 (1) is the owner of the resource or has the permission of
10 its owner to do so; and

11 (2) has the permission of the landowner to enter the land
12 for that purpose.

13 (c) A person may not possess, sell, buy, trade, or transport
14 within the state, or offer to sell, buy, trade, or transport within
15 the state, a historic, prehistoric, archaeological, or cultural re-
16 source taken, acquired, sold, or possessed in violation of this chap-
17 ter, 16 U.S.C. 433, or 16 U.S.C. 470aa - 47011.

18 (d) A person may not unlawfully destroy, mutilate, deface,
19 injure, remove, or excavate a burial site, tomb, monument, gravestone,
20 or other structure or object at a burial site, even though the site
21 appears to be abandoned, lost, or neglected.

22 (e) A person designated in AS 41.35.220 shall seize a historic,
23 prehistoric, archaeological, or cultural resource to which the state
24 has reserved title and that has been taken in violation of this chap-
25 ter, wherever and whenever the person finds the resource. Seized
26 objects may be disposed of as the commissioner determines by deposit
27 in the proper public depository.

28 * Sec. 4. AS 41.35.210 is repealed and reenacted to read:

29 Sec. 41.35.210. PENALTIES. (a) A person who violates a

1 provision of this chapter is guilty of a class A misdemeanor.

2 (b) In addition to criminal penalties, a person who violates a
3 provision of this chapter is liable for a civil penalty not to exceed
4 \$25,000 or three times the pecuniary gain resulting from the viola-
5 tion, whichever is greater.

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

7 (4) "historic, prehistoric, [AND] archaeological, or cul-
8 tural resource [RESOURCES]" includes deposits, structures, ruins,
9 sites, buildings, graves, artifacts, fossils, ceremonial objects, or
10 other objects of antiquity that [WHICH] provide information pertaining
11 to the historical or prehistorical culture of people in the state as
12 well as to the natural history of the state.

13 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).
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STATE OF ALASKA THE LEGISLATURE

4
POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 13, 1987

SUBJECT: Sectional analysis of HB 153
TO: Representative Ben Grussendorf
FROM: Edward H. Hein *E.H.*
Legislative Counsel

Section 1 adds a new subsection to the statute of frauds statute, AS 09.25.010. The statute of frauds requires that certain agreements and conveyances be in writing in order to be enforceable. The new subsection (c) provides an exception for trusts established by Alaska Native custom and tradition for the protection and preservation of cultural and historic property.

Sec. 2 adds a new subsection to AS 34.40.070. That statute requires that a grant or assignment of a trust in property is void unless it is in writing. The new subsection (b) provides an exception for Alaska Native trusts as in Section 1 of the bill.

Sec. 3 rewrites AS 41.35.200. That statute, which is part of the Alaska Historical Preservation Act, makes certain acts unlawful, such as excavating a historic, prehistoric, or archaeological resource without a permit. Sec. 3 expands coverage under this statute to include "cultural" resources; distinguishes between resources "to which the state has reserved title" (see AS 41.35.020) and resources located on private land; requires that resources on private land can be removed only by the owner of the resource or with the owner's permission and only if the landowner gives permission to enter the land for that purpose. The statute also is expanded to prohibit the trading (bartering) of resources acquired illegally. References to "gravesite" are changed to "burial site".

Sec. 4 increases the criminal penalty and adds a civil penalty for a violation of AS 41.35. The existing penalty is a

Remove
Requirement
of writing
FOR WRITING
would not
create new
trusts or
right of
ownership
still have to
go into court
to prove
ownership

prevent removing historic from
public, Fed private lands

new penalty scheme

Mixed civil + criminal penalties

{ maximum fine of (\$1,000) and (six months in jail) The new penalty would be a maximum fine of \$5,000 and one year in prison. In addition, a violator would be liable for a maximum (civil) penalty of "three times the pecuniary gain resulting from the violation." > \$,000 to \$5,000 Fine

Sec. 5 amends the definition of "historic, prehistoric, and archaeological resources" to include cultural resources and, in particular, ceremonial objects.

Sec. 6 provides an immediate effective date.

EHH:mkr
m9/139

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

A

REQUEST: _____

Bill Version: HB 153
Publish Date: _____

Revision Date: _____
Title: "An Act relating to preservation of cultural and historic property..."
Sponsor: Rep. Grussendorf
Requestor: House State Affairs

Agency Affected: Department of Law
BRU: Prosecution
Legal Services
Components: Prosecution - All
Legal Services - Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)
Please see attached analysis.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director
Division: Administrative Services

Phone: 465-3672
Date: March 6, 1987

Approved by Commissioner: Richard I. Pegues/for
Agency: Department of Law

Date: March 6, 1987

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 153

HOUSE BILL 153

This bill amends AS 09.25, AS 34.40 and AS 41.35 by recognizing that a trust has been established by Alaska Native custom, or tradition, for the protection and preservation of ceremonial, cultural, or religious property on behalf of all members of a clan, house, band or other traditional group of Aaska Natives as owners in common. The bill also empowers the state courts to enforce such trusts, and it extends the protection of the Alaska Historic Preservation Act to privately-owned land. Lastly, the bill raises the penalty for violating the Act to a class A misdemeanor.

The bill establishes and clarifies the court of jurisdiction for disputes involving the ownership of Alaska Native artifacts. Its passage would eliminate much of the confusion, and costly litigation, that occurs in these disputes, such as when artifacts were removed from the Whale House at Klukwan. The bill will therefore not have a fiscal impact on the Department of Law, and, to the extent that litigation will be reduced, it will also help to conserve the state's decreasing legal resources.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

3

REQUEST: _____

Bill Version: HB 153
Publish Date: _____

Revision Date: 3/10/87

Agency Affected: Natural Resources
BRU: Park Management

Title: Preservation of Cultural &
Historic Property

Sponsor: Krusendorf, et al
Requestor: House State Affairs

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	0	0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Carol Wilson Phone: 465-2400
Division: Commissioner's Office Date: 3/10/87

Approved by Commissioner: *Sennei Boston* Date: _____
Agency: Natural Resources

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)
 - Senate Secretary