

SB

147

I would like to testify against H.B. 153 and S.B. 147.
I am a Life-long Resident of Alaska, a member of the Nationality
known as "Indians" by the U.S., and as a member of the Indigenous Populations
in the world today.

It's really a great feeling to be able to identify with the Indigenous Populations
in the World Community both Nationally and Internationally!"

I realize that I must be careful.

Let me tell you one of the reasons why.

The other night on the program "60 minutes"
a student from the United States talked about how it felt
to go to Moscow University. This is what she said.

"We had to remember that when you talk to Totalitarian, Oppressive Governments
you must ~~be~~ CHOOSE your words carefully."

Bearing this in mind, I believe that ALL Native People in Alaska
MUST stay AWAY from the word "Sovereignty".

I must say this because Anti-Native Factions in this "Great Land"
have used the Media to paint a dark, mysterious, ugly picture of people
who favor isolationism, separatism, egotism, primitivism, and all the worst things
that can be recalled in the human mind whenever the word "sovereignty" is used.

I have to say this openly, and honestly because these are some of my fears
in the world today.

NO, the State of Alaska might not be a Totalitarian Government.

NO, the State of Alaska might not be an Oppressive Government.

Someday, History will make it's own Judgement.

It's TRUE, someday ALL OF US will face God alone
with no one to support us and no alibi's for us.

That is precisely why I must testify that H.B. 153 and S.B. 147 must be STOPPED!
If these bills go far enough, they must be vetoed by Gov. Cowper. Why???

If these Arti-Facts Bills are not stopped.

Then, we have a Govt. of Laws and not a Govt. of PEOPLE.

Because, there are PEOPLE trying to stop these Bills.

There is a difference between a Govt. of Laws and a Govt. of PEOPLE!

If these Bills are not stopped.

Then, we have a Govt. of very selective Policies and NOT of Equity.

The so-called "problem" of Arti-facts is a case of Jurisdiction
which the State of Alaska has already declared in so many words that---
it "Disclaims all rights to Native Land or OTHER Property FOREVER
in Sec. 4 of the Statehood Act.

If I ask people to recall these facts, I am asking openly and honestly
and not maliciously.

I was taught Traditionally to respect ALL members of Mankind as Human Beings
whether or not I am respected as a human being, we will see--won't we/???



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P.O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474

DISTRICT N

MEMBER: Senate Finance Committee, Resources Committee, and Community & Regional Affairs Committee

March 30, 1987

TO: Senator Arliss Sturgulewski, Chair
Senate Community and Regional Affairs

FROM: Senator Fred Zharoff 

RE: SB 147 and Attached information on
artifacts.

The attached is for your information. Please
consider the suggestions in Lloyd Miller's
memorandum,

Thank you,

DISTRICT N



KODIAK AREA NATIVE ASSOCIATION

402 Center Ave. - Kodiak, Alaska 99615 - Phone (907) 486-5725

March 25, 1987

March 25, 1987

The Honorable Fred Zharoff
Alaska State Legislature
P O Box V
Juneau, AK 99811

Dear Senator Fred:

Please find enclosed a memorandum from KANA's attorney, Lloyd Miller, discussing H.R. 153 and S. 147. We would ask you to consider the suggestions made in the memo. Such legislation will be very pertinent in the Kodiak area considering the archaeological activity that is taking place here. Protection of artifacts is always a concern and legislation that helps in that regard would be most welcome. However, village tribal laws and the authority of village tribal councils should not be ignored when developing such a law.

Thank you for considering this request. We all look forward to your return home after a successful legislative session.

Sincerely,

KODIAK AREA NATIVE ASSOCIATION

Gordon L. Pullar
President

GLP:gc
Enclosure
cc: KANA Cultural Committee

122/1
LAW OFFICES
SONOSKY, CHAMBERS, SACHSE & MILLER

SUITE 700
900 WEST FIFTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 258-6377
TELECOPIER (907) 272-8332

MARVIN J. SONOSKY
HARRY R. SACHSE
REID PEYTON CHAMBERS
WILLIAM R. PERRY
LLOYD BENTON MILLER*
DONALD J. SIMON
DOUGLAS B. L. ENDRESON**

KEVIN A. GRIFFIN
MARY V. BARNEY
LOUISE LYNCH

OF COUNSEL
LOFTUS E. BECKER, JR.
ROGER W. DUBROCK

WASHINGTON, D. C. OFFICE
1050 31ST STREET, N. W.
WASHINGTON, D. C. 20007
(202) 342-9131

March 18, 1987

*ALASKA AND DISTRICT OF COLUMBIA BARS
**WISCONSIN BAR
ALL OTHERS DISTRICT OF COLUMBIA BAR

MEMORANDUM NO. 13A-87

TO: Alaska General Counsel Clients

FROM: Lloyd B. Miller
Sonosky, Chambers, Sachse & Miller

RE: Proposed state legislation concerning preservation of
cultural and historic property (H.R. 153 and S. 147)
(Our File No. 1404.21)

Identical bills were recently introduced in both the House and the Senate to increase the protections available under state law for preserving Alaska Native cultural and historic property. The House State Affairs Committee reported out a substitute bill which makes only one change from the original House bill. (Copies of Senate bill and the substitute House bill are attached.) The bills would allow the establishment of trusts by Alaska Native custom and tradition for the protection of ceremonial, cultural, and religious property on behalf of traditional Native groups. This would be a change from existing state law, which under the Statute of Frauds requires that such trusts be established by a written document. (Alaska Stat. 09.25.010.)

Other changes the bills would make in current state law include: (1) allowing a court to recognize the grant or assignment of a cultural trust by established Alaska Native custom or tradition, (2) requiring a permit before cultural artifacts on state lands may be excavated, (3) requiring the permission of the owner of the land on which an artifact is located before excavation may occur (unless the excavator is the artifact owner), (4) making unlawful the destruction of burial sites, (5) adopting federal law standards to regulate the sale of artifacts, (6) allowing certain officials to seize artifacts taken in violation of the Act, and to deposit the artifacts in a public depository, (7) creating criminal penalties for the violation of the provisions of the Act, (8) creating a civil penalty which could amount to three times the monetary gain

Memorandum No. 13A-87
March 16, 1987
Page 2

realized from the violation of the Act, and (9) including ceremonial objects and cultural resources under the Alaska Historic Preservation Act (Alaska Stat. 41.35.010 et seq.).

If enacted, the bills would add substantially to the protections currently available under state or federal law. A recent federal court decision involving Chilkat Indian artifacts demonstrates that such amendments are needed if Native artifacts are to be adequately protected. We suggest that the language of the bills be amended to expressly protect trusts created under tribal laws adopted by traditional or IRA councils. As currently drafted, the bills only refer to trusts established on behalf of "a clan, house, band, or other traditional group of Alaska Natives as owners in common."

One disturbing aspect of the bills is the apparent assumption that the state or a private property owner enjoys full ownership of cultural resources located on state or private land. Such an assumption is troublesome, and ignores the obvious Native interest in such cultural resources regardless of the identity of the land owner. To at least partially address such interests, the Native American Rights Fund has suggested that the Commissioner be required to identify and cooperate with the desires of the appropriate tribe before a permit for excavation of the cultural resources may be issued under Section (3)(a). Further, NARF suggests that the bills should authorize the designated official to deposit objects seized under the Act with the interested Native tribe or other Native entity. Finally, NARF suggests that the bills mandate consultation with the affected tribe or other Native body concerning disposition of the cultural resource. We agree that NARF's suggestions would substantially improve and strengthen the bills.

The Committee substitute to H.R. 153 has been sent to the House Judiciary Committee. The Senate Committee on Community and Regional Affairs will hold hearings on S. 147 within three weeks. Please let us know if you would like us to prepare any testimony or written comments on your behalf concerning the bills.

Respectfully submitted,

SONOSKY, CHAMBERS, SACHSE & MILLER

By: Lloyd B. Miller
Jill A. De La Hunt

LBM:JAD:jg
Enclosure

SB 147 -
Protection of Cultural / Historic
Property

attached to bill on fraud.
maybe people -
Common people haven't wanted bill.
Senate Duncan may have consulted
upstate leaders. S.B.A. act etc -
Leaders can do what they want.

Al Judson



Official Business

Alaska State Legislature

MAR 9 1987

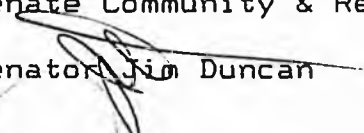
Senate

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

M E M O R A N D U M

DATE: March 9, 1987

TO: Senator Arliss Sturgulewski
Chairman
Senate Community & Regional Affairs Committee

FROM:  Senator Jim Duncan

RE: SB 147, Protection of Cultural/Historic Property

I respectfully request that a hearing for Senate Bill No. 147 be scheduled at the earliest convenience.

This legislation is aimed at strengthening the existing law. First, the bill involves the protection of a wide range of historic, cultural, artistic, and scientific artifacts of, sometimes, unique importance to Alaska.

Second, the bill would, also, permit the courts to recognize that traditional native customs can be valid sources of trust obligations, despite the fact that, in many cases, no written records are available. Under the current law, any trust, regarding property, must be in writing before state courts can recognize it. This is the case of some current court litigation.

Please find the enclosed explanation of the bill for your information.

Thank you for your consideration for SB 147.

EXPLANATION OF PROPOSED BILL

It has become increasingly apparent that many of Alaska's historic and cultural treasures are being lost, through neglect, sale to collectors from elsewhere, or theft. A task force has been working to develop legislation to halt this slow loss. The group is formulating a comprehensive bill that would offer protections to a wide range of historic, cultural, artistic, and scientific objects of unique importance to Alaska, ranging from prehistoric fossil remains to ceremonial objects from Native cultures to historic aircraft. This kind of effort will be unique - no other state has done it - and involves proposals that are legally and factually complex. Many of the broader ideas need further development before they can be offered in the form of a bill. But in the meantime some proposals for improvements in existing law are straightforward and can be offered now, without waiting for the comprehensive package of proposals. This bill should therefore be seen as a first step in a larger effort to protect Alaska's heritage.

Sections 1 and 2 of the bill are amendments to current statutes having to do with enforcement of trusts. Under current law, any trust regarding property must be in writing before state courts can recognize and enforce it (See AS 09.25.010 and AS 34.40.070). That rule leaves an important gap regarding trusts or similar arrangements which are traditional in certain Alaskan Native cultures but which have not been reduced to writing. For example, in the Tlingit culture certain ceremonial objects are owned by an entire clan or house group, with one person acting as caretaker of the object on behalf of the group. Conflicts have arisen on numerous occasions over whether a caretaker has the right to sell an object without the entire group's concurrence. Members of the group who object to a sale or to inappropriate treatment of the object by the caretaker may be left without an adequate remedy if they cannot go to the courts to enforce the terms of the unwritten cultural rules. This bill would permit the courts to recognize that traditional Native customs can be valid sources of trust obligations, despite the fact that they arise in a culture that did not historically use written instruments.

Sections 1 and 2 would still require a person seeking to enforce a trust to prove its existence and terms, and they are limited to traditional and customary trusts for protecting and preserving ceremonial, cultural, or religious property on behalf of a traditional group of Alaskan Natives. It would not create a presumption that particular objects are communally owned or the subject of a trust, nor would it permit the courts to dictate the contents of the trust. As with current law, the terms of a trust would be those set out by its creators. The bill would not by itself resolve disputes over whether objects are owned individually or by a group, but it would empower the courts to decide

such cases if the participants chose to bring them to court. And whether the object was determined to be individually owned or communally owned, nothing in the bill would prevent the true owner from selling it.

Sections 3, 4, and 5 are amendments to the Alaska Historic Preservation act, AS 41.35.010-.240. Some of the changes are merely clarifying, e.g., the change at AS 41.35.200(a) to make clear that resources "of the state" means "belonging to the state," not merely located within the state. The list of protected resources has been broadened to include cultural resources, since it is not clear in the present statute that cultural artifacts are included with other historic or archaeological resources. Likewise, references to gravesites have been changed to burial sites to make clear that all sites where human remains are found are protected, not just those where persons were intentionally interred; hence sites of accidental death, such as the ancient homesite remains recently found near Barrow, would be protected from looting.

In section 3, at AS 41.35.200(b), the protections against looting or theft of important artifacts has been extended to removals from private property; the present statute limits protection to state property. This expansion is intended to deal with the problem of unlawful excavations from Native corporation and other private lands.

Section 4 revises the penalty provision at AS 41.35.210 to classify violations as class A misdemeanors, and by adding civil penalty provisions. A person violating the chapter would be liable for a civil penalty of up to three times the pecuniary gain from the offense. This feature is designed to create further economic disincentives to the person who regularly appropriates archaeological, historic, or cultural resources for the purpose of resale.

These proposed revisions are a start on the larger effort still needed for a comprehensive protection plan for Alaska's heritage. The larger effort will continue, but the changes suggested here can be implemented now as a good and needed start.