

HB

296

2d CS FOR HOUSE BILL NO. 296 (RESOURCES)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES DAVIDSON, Lincoln, Grussendorf, Gruenberg, MacLean, Koponen, Ivan,  
Gonzales, G.Phillips, Parnell, Kubina, Donley, Mackie

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to human remains and funerary objects."

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

3 \* Section 1. AS 12.65 is amended by adding new sections to read:

4 ARTICLE 2. HUMAN REMAINS.

5 Sec. 12.65.150. REPORTS OF HUMAN REMAINS. (a) Except as provided in (b) of  
6 this section, a person who encounters human remains in or on land or water in the state shall

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

8 and

9 (2) report the presence and location of the remains to the nearest law enforcement  
10 agency as soon as possible considering the location of the discovery and the availability of  
11 communication alternatives.

12 (b) The requirements of (a) of this section do not apply to a person who encounters  
13 human remains while operating under a permit issued under AS 41.35.080.

14 (c) If the law enforcement agency determines that remains reported to it under (a) of this

1 section are unrelated to a prosecutable offense and may be human remains with historic or  
2 prehistoric significance, the agency shall notify the Department of Natural Resources.

3 (d) A person who knowingly fails to comply with (a) of this section is guilty of a  
4 violation punishable by a fine of \$50.

5 Sec. 12.65.160. UNLAWFUL ACTS. A person may not sell, buy, or barter human  
6 remains that were originally found in or on the land or water in the state. A person who violates  
7 this section is guilty of a class A misdemeanor.

8 Sec. 12.65.170. DEFINITION. In AS 12.65.150 - 12.65.170, "human remains" means  
9 a dead human body or part of a dead body in any stage of decomposition, excluding body parts  
10 that are normally shed during life, such as hair, nails, and isolated teeth.

11 \* Sec. 2. AS 41.35.040 is amended to read:

12 Sec. 41.35.040. ADMINISTRATION AND FINANCIAL SUPPORT OF MONUMENTS  
13 AND HISTORIC SITES. State-owned monuments, sites, and other historic, prehistoric, or  
14 archeological properties owned or purchased by the state are under the control of the department,  
15 and their maintenance shall be covered in the appropriations made to the department. Privately  
16 owned state monuments or historic sites are eligible to receive state support for their  
17 maintenance, restoration, and rehabilitation if they are kept accessible to the general public, they  
18 are in compliance with state laws pertaining to human remains and funerary objects, and  
19 application for support is made in conformity with regulations adopted by the commissioner.

20 \* Sec. 3. AS 41.35.060(a) is amended to read:

21 (a) The department, with the recommendation of the committee, may acquire real and  
22 personal properties that have statewide historic, prehistoric, or archeological significance by gift,  
23 purchase, devise, or bequest. If the department acquires disinterred human remains or  
24 funerary objects under this subsection, it shall comply with AS 41.35.410. The department  
25 shall preserve and administer property so acquired. The department may acquire property  
26 adjacent to the property having historic, prehistoric, or archeological significance when it is  
27 determined to be necessary for the proper use and administration of the significant property.

28 \* Sec. 4. AS 41.35.070 is amended by adding a new subsection to read:

29 (h) If the department discovers human remains or funerary objects during a survey under  
30 (d) of this section, the department shall comply with AS 12.65.150 and AS 41.35.410.

31 \* Sec. 5. AS 41.35.080 is amended to read:

1           Sec. 41.35.080. PERMITS. The commissioner may issue a permit for the investigation,  
2       excavation, gathering, or removal from the natural state [,] of any historic, prehistoric, or  
3       archeological resources of the state or human remains or funerary objects reported under  
4       AS 12.65.150 or AS 41.35.410. A permit may be issued only to persons or organizations  
5       qualified to make the investigations, excavations, gatherings, or removals and, except as  
6       otherwise provided in the permit issued under of this section, only if the results of these  
7       authorized activities will be made available to the general public through institutions and  
8       museums interested in disseminating knowledge on the subjects involved. If the historic,  
9       prehistoric, or archeological resource involved is one that [WHICH] is, or is located on a site  
10      that [WHICH] is, sacred, holy, or of religious significance to a cultural group, the consent of that  
11      cultural group must be obtained before a permit may be issued under this section.

12 \* Sec. 6. AS 41.35.090 is amended to read:

13           Sec. 41.35.090. NOTICE REQUIRED OF PRIVATE PERSONS. Before any  
14      construction, alteration, or improvement of any nature is undertaken on a privately owned,  
15      officially designated state monument or historic site by any person, the person shall give the  
16      department three months' [MONTHS] notice of intention to construct on, alter, or improve it.  
17      If the construction, alteration, or improvement involves known reasonably identifiable  
18      human remains or funerary objects, the person shall also give three months' notice of  
19      intention to construct, alter, or improve to the descendants or tribe of the decedent whose  
20      remains are involved. Before the expiration of the three-month notification period, the  
21      department shall either begin eminent domain proceedings under AS 41.35.060(b) or undertake  
22      or permit the recording and salvaging of any historic, prehistoric, or archeological information  
23      considered necessary.

24 \* Sec. 7. AS 41.35.230 is amended to read:

25           Sec. 41.35.230. DEFINITIONS. In this chapter [AS 41.35.010 - 41.35.240], unless the  
26      context otherwise requires,

27           (1) [REPEALED

28           (2)] "committee" means the Historic Sites Advisory Committee;

29           (2) "funerary objects" means items for which there is direct circumstantial  
30      evidence, expert opinion, or documentation that the items were directly associated with  
31      human remains or were intentionally placed with human remains either at the time of

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

3 (3) [REPEALED

4 (4) "historic, prehistoric and archeological resources" includes deposits,  
5 structures, ruins, sites, buildings, grave sites [GRAVES], artifacts, fossils, or other objects of  
6 antiquity that [WHICH] provide information pertaining to the historical or prehistorical culture  
7 of people in the state as well as to the natural history of the state, except that the term does not  
8 include human remains or funerary objects;

9 (4) "human remains" means a dead human body or part of a dead body in  
10 any stage of decomposition, excluding body parts shed during life, such as hair, nails, and  
11 isolated teeth;

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

16 (6) "reasonably identifiable" means identifiable, by a preponderance of the  
17 evidence, as to individual, familial, or tribal origin based on available archeological,  
18 historical, ethnological, or other direct circumstantial evidence or expert opinion;

19 (7) "tribe" means a group recognized as a tribe by the United States  
20 Secretary of Interior, or a Native village or regional corporation or other Native group  
21 defined in or established under 43 U.S.C. 1601 - 1641 (Alaska Native Claims Settlement  
22 Act).

23 \* Sec. 8. AS 41.35 is amended by adding new sections to read:

24 ARTICLE 3. DISCOVERY OF HUMAN REMAINS AND FUNERARY OBJECTS.

25 Sec. 41.35.410. HUMAN REMAINS AND FUNERARY OBJECTS. (a) When human  
26 remains are discovered by or reported to the department, the department shall notify the nearest  
27 law enforcement agency unless a report has already been made under AS 12.65.150. After law  
28 enforcement activities related to the remains have ceased, the department shall comply with (c)  
29 of this section.

30 (b) A person who discovers funerary objects shall promptly report the discovery to the  
31 department. Unless the department determines upon further investigation that the objects are

1 probably not funerary objects, the department shall comply with (c) of this section.

2 (c) If human remains or funerary objects described in (a) and (b) of this section are not  
3 disinterred, the department shall leave them in the place where they are interred, when possible.  
4 If the human remains or funerary objects are disinterred and the decedent's living descendants  
5 are reasonably identifiable, the department shall, by certified mail return receipt requested, notify  
6 the decedent's relative with the closest kinship ties that the remains and funerary objects are  
7 available for disposition. If the remains and funerary objects include Native human remains or  
8 funerary objects and the department is unable to ascertain the existence and address of living  
9 descendants of the descendant, the department shall determine with as much specificity as  
10 possible their tribe of origin and notify the governing body of the tribe of their discovery and  
11 location. If a specific tribe of origin is not reasonably identifiable, the department shall, by  
12 certified mail return receipt requested, give the notice of the discovery and its location to the  
13 governing body of the tribe whose members predominate in the vicinity of the discovery.

14 (d) At the request of a descendant or the governing body of a tribe notified under (c) of  
15 this section, the department shall provide for access to the remains or funerary objects so that the  
16 descendant or the tribe may dispose of them. A tribe may not be allowed to have access until  
17 the tribe's plan for disposition of the remains or objects has been submitted to the department.  
18 If, within 120 days after notification by the department by certified mail return receipt requested,  
19 neither a descendant nor a tribe seeks the right to dispose of the remains or funerary objects, the  
20 department shall treat them in the same manner as it treats other unclaimed human remains or  
21 historic, prehistoric, and archeological resources under this chapter, as applicable.

22 (e) A person may request a tribe or descendant to grant to the person an opportunity to  
23 study human remains or funerary objects for which the tribe or descendant is granted disposition  
24 rights under (c) of this section.

25 Sec. 41.35.420. DISPUTE RESOLUTION COMMITTEE. When needed, the governor  
26 shall establish a committee to advise the department concerning conflicting claims of tribes and  
27 descendants with respect to disposition rights for human remains and funerary objects. A  
28 committee consists of the state liaison officer appointed under 16 U.S.C. 470 - 470n (National  
29 Historic Preservation Act) and the following persons, who shall be appointed by the governor as  
30 the need arises:

31 (1) an archeologist with osteological expertise or a physical anthropologist; and

- 1                   (2) three descendants of the person whose remains or funerary objects are in
- 2           dispute or a person from each tribe that has a colorable claim to the human remains or funerary
- 3           objects that are the subject of the dispute, whichever is appropriate.

HOUSE BILL 296  
"RELATING TO HUMAN REMAINS AND FUNERARY OBJECTS"

<u>ISSUE</u>	<u>CURRENT LAW</u>	<u>HB 296</u>
<u>TITLE 12</u> <u>Discovery of Human Remains</u>	No direction on who to contact	Contact nearest law enforcement Violation with \$50 fine for not reporting. Class A misdemeanor to sell, buy or barter human remains.
<u>TITLE 41</u> <u>ALASKA HISTORIC PRESERVATION ACT</u> <u>State Lands</u>	State reserves title to all historical, prehistoric & archeological resources on state land. Preserved and administered by DNR. Study allowed by permit. Public construction stops until site is expeditiously salvaged. Law stays the same. Class A misdemeanor to excavate, destroy, deface gravesites.	Human remains and funerary objects are separated from "resource" definition. Treated differently because of cultural significance. Study allowed by request. Leave remains intact if possible. If not, try to reasonably define descendants or if can't, and remains include Native remains contact nearest governing body of the predominate tribe in the discovery area.
<u>Federal Lands</u>	Archaeological Resources Protection Act protects archaeological resources and sites which are on federal lands.	No change. Title 12 change in HB 296 requires law enforcement be notified of discovery.

Private Lands

Historical resources on private land belong to the land owner. State can obtain through eminent domain proceedings.

Human remains & funerary items are separated from the resource definition. Discovery must be reported and disposition procedure followed as on state lands.

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

FISCAL NOTE

NO. 4  
Bill Number: CSHB 296 (JUD)  
(H) Publish Date: 2/18/92

Revision Date: 01/16/92 Department Affected: Public Safety  
 Title: An Act relating to human remains and funerary objects. BRU: Alaska State Troopers  
 Sponsor: Representative Davidson Component: Detachments  
 Requestor: House Rules COMPONENT SERIAL NO. 

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EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)  
 No fiscal impact upon the Division of Alaska State Troopers is anticipated.

Prepared By: Gayle A. Horetski Phone: 465-4322  
 Division: Alaska State Troopers Date: 01/20/92  
 Approved by Commissioner: Gayle A. Horetski for Richard L. Burton  
 Agency: Department of Public Safety Date: 01/20/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

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STATE OF ALASKA  
 1992 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Department Affected: Natural Resources  
 Title: Re: Human Remains and Funerary BRU: \_\_\_\_\_  
objects Component: \_\_\_\_\_  
 Sponsor: Rep. Davidson  
 Requestor: House Finance Committee COMPONENT SERIAL NO. 

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Rep. Mike Navarre, Co-Chair *Mike Navarre* Phone: 465-3706  
Rep. Eileen MacLean, Co-Chair *Eileen MacLean* Phone: 465-3722  
 Division: House Finance Committee Date: Feb. 18, 1992

Approved by Commissioner: \_\_\_\_\_  
 Agency: \_\_\_\_\_ Date: \_\_\_\_\_

*Committee Copy*