

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4672 HJUD HB 153 - HB 160

288

RESOLUTION 87 - 03
JUNEAU TLINGIT-HAIDA
COMMUNITY COUNCIL
MARCH 26, 1987

RE: 1987 STATE ARTIFACTS LEGISLATION

WHEREAS; CS HB 153 and SB 147, the 1987 Artifacts Preservation Bill has been introduced in the State Legislature; and

WHEREAS, the bill is designed to amend existing law; and

WHEREAS, the bill, in part, allows for unwritten evidence (or trusts) to be submitted in court, if a case where there is a question of ownership is brought to state court; and

WHEREAS, these unwritten trusts would be recognized in accordance with Alaska Native custom and tradition; and

WHEREAS, the current law only allows for written trusts to be recognized in courts; and

WHEREAS, the bill also revises penalties for violations of the Artifact Preservation Law; and

THEREFORE BE IT RESOLVED by the Juneau THCC to go on record as endorsing CS HB 153 and SB 147, the 1987 Artifacts Preservation Bill.

Cryil George, Chairman

Secretary

ADAPTED
3-26-87

Klukwan artifacts caught in legal, cultural web

The following article, first of a two-part story, is excerpted from the Dec. 21 Seattle Times.
By Dean Katz

For more than 100 years, the Whale House artifacts told a story to the Tlingit Indians of the Alaskan village of Klukwan.

They were an important part of death ceremonies, expressing respect for those who died.

They conveyed the tribe's spiritual myths and cultural legends to new generations, since there is no written Tlingit language to record history.

Over the years, many a village pollutch was held amidst the majestic, carved wooden wall screen and set of four totemic house posts.

But today, the Whale House artifacts can tell no story, at least not to the 150 people of Klukwan. If they are talking it up to the walls and whatever spirits may exist inside a Seattle art storage warehouse. They have been locked up there for two years while in Alaska a legal controversy swirls around ownership of the prized pieces.

In museum, anthropological and art dealer circles, the artifacts are generally acknowledged to be the finest extant pieces of Northwest Coast Indian art. They would be the centerpiece of any museum or art collector's Native American collection.

"They are the *creme de la creme* of Northwest Coast art," said Edmund Carpenter, a New York anthropologist who helped a wealthy friend, Adelaide deManil, sign a contract to purchase the pieces two years ago for \$2 million.

That would have been far and away the most ever paid for such a collection of Northwest Coast Indian art. But the deal never went through because the Klukwan tribal council protested removal of the artifacts in violation of a village ordinance.

For three-quarters of a century art procurers have tried to beg, buy or through means of stealth separate the Whale House artifacts from Klukwan. On several

occasions the attempts were met with angry confrontations or mysterious incidents of injury or death.

Late in December it appeared as though Michael Johnson, a former Seattle art dealer who has been involved in efforts to pry the pieces loose from the village for more than a decade, might finally be the one to succeed in putting the artifacts for sale on the open market.

They are the *creme de la creme* of Northwest Coast art.

—Edmund Carpenter

But an 11th hour legal maneuver by the village of Klukwan probably has insured that the controversy will remain tied up in the courts, which could keep the artifacts in the Seattle warehouse for months, if not years.

The most dramatic chapter in the saga of the Whale House artifacts began in April 1984. Under cover of darkness, and while most of Klukwan's residents were in the nearby town of Haines playing bingo, a half-dozen men unlocked the door to the Whale House and quickly loaded the artifacts into waiting pickup trucks.

From there they drove the 20 or so miles south to Haines, where the pieces were preloaded for Johnson, who was waiting at a motel. After secretling the wooden carvings in a garage, Johnson and the man who removed the pieces celebrated by hoisting a few beers. A few days later the artifacts were loaded aboard an Alaska state ferry bound for Seattle.

When Klukwan's village council discovered the pieces missing, Alaska state troopers were notified. They tracked them to Artech, an art warehouse in Seattle, and seized them under a court order while criminal investigators sought to determine whether they had been stolen.

Meanwhile, the village filed a civil suit in federal court, claiming the pieces didn't belong to those who

had taken them. Last fall, the court dismissed the civil case, saying it lacked jurisdiction. The federal judge hearing the case said if the village wanted to appeal, it would have to post a \$20,000 bond.

The Klukwan Heritage Foundation, the non-profit arm of the village corporation, promptly voted to approve a \$20,000 loan in order to post the bond.

Just who owns the Whale House artifacts is the \$2 million question.

A group of 13 individuals—known as the Whale House Group—claims ownership. But others in the village say the artifacts belong to other members of a larger clan group, the Ganaxtedi, or perhaps the entire village.

The right answer is buried in centuries of tribal history, customs, family associations and unwritten Indian law governing ownership and transfer of property rights. But the question of ownership may ultimately be resolved in a modern-day White Man's court of law—the Ninth U.S. Circuit Court of Appeals.

Art procurers have tried to beg, borrow or through means of stealth separate the Whale House artifacts from Klukwan.

The controversy has pitted those who want to sell the pieces, and Johnson, one of the country's most tenacious art dealers, against an equally tenacious team of lawyers working for Alaska Legal Services Corp., which represents the village of Klukwan.

In an odd twist, the dispute also has pitted the state of Alaska against the village, even though the state doesn't want the artifacts to leave Alaska and even though many state officials object to the manner in which they were removed.

As a matter of legal principle,

the state doesn't believe the village council had the authority to pass an ordinance prohibiting removal of the artifacts, nor does it believe the village can determine the question of ownership.

The state's position is that if the village had such authority, it would represent sovereign powers that the state doesn't want to give to Indian villages. In practical terms, that has meant the state has sided with Johnson and those who want to sell the artifacts.

The Whale House controversy has ramifications far beyond the Northwest. It raises ethical issues about the method by which cultural artifacts are acquired. It also raises the question: is it better for irreplaceable objects such as these to be moved to the climate-controlled security of a faraway museum or to allow them to remain in damp, fire-proof quarters where they might deteriorate, but at least are among the people who created them?

For his part, Johnson, who now lives in Arizona, refuses to discuss the matter, as does his attorney, Donna Willard, of Anchorage.

It was in the early 1970s, while on a buying trip in Alaska, that Johnson and his wife, Sharon, first saw and became enamored of the Whale House artifacts. For more than a decade they used money, sweet talk, the courts and various other means to try to remove from Klukwan its most important cultural assets.

In a 1984 interview, Johnson said he was simply an "agent" for the people who removed the Whale House artifacts. But he acknowledged he was involved in previous attempts to buy the Whale House artifacts outright.

Throughout the years Johnson and his wife, sometimes operating under the corporate umbrella of Northwest Historical Corp., offered tantalizing sums of money—sometimes in the hundreds of thousands of dollars—to various elderly Tlingits, each of whom asserted a claim to the pieces.

It is a complex but fascinating tangle of financial and emotional intrigue.

Art dealer tracked artifacts more than a decade

The following article, second of a two-part story, is excerpted from the Dec. 21 Seattle Times.

By Dean Katz

For more than 10 years, former Seattle art dealer Michael Johnson has used money, sweet talk, the courts and various other means to try to remove from Klukwan its most important cultural assets—the Whale House artifacts.

Throughout the years Johnson and his wife Sharon, sometimes operating under the corporate umbrella of Northwest Historical Corp., offered tantalizing sums of money to various elderly Tlingits, each of whom asserted a claim to the pieces.

On July 28, 1975, Johnson wrote to Victor Hotch as the "keeper of the Whale House and chief of Klukwan," offering to buy the pieces from "the people who have a say in this matter."

A week later Johnson wrote to Martha Willard, another villager, asserting she was "the true and rightful person to claim the Whale House." He offered her \$500,000 for the Whale House pieces and promised he would "make no more offers to Mildred Sparks," another elderly woman who claimed ownership.

But Willard refused to budge. In April 1976, Johnson sent Willard a check for \$55,000, hoping that might weaken her resolve that the artifacts should stay in Klukwan.

The same day he wrote the check, Johnson dashed off a letter to the village chief, Hotch, expressing his fury at Willard. "She had better cooperate. If she does not, she will be left out entirely," he said.

Willard never cashed the check. Two weeks later Sharon Johnson signed an agreement with a woman living in Arizona, Estelle DeHaven Johnson (no relation). According to

Johnson offered

tantalizing sums to various

Tlingit elders

the contract, she was now "the primary claimant to the ownership of the artifacts" by virtue of her ancestral relationships. The agreement indicated that Martha Willard's claim had been reduced to "minor" standing.

Perhaps emboldened by a successful attempt the month before by a Canadian art dealer to remove other highly-prized artifacts (now possessed by the Seattle Art Museum) from Klukwan, the Johnsons advanced Estelle DeHaven Johnson funds to hire a truck to go up to Klukwan and take out the Whale House pieces.

Tipped off, villagers felled trees across the road leading into the village and a garbage truck was parked sideways to block access. The village council quickly passed an ordinance saying no one could remove the artifacts.

The barricades later were removed although not before an explosion and fire of questionable origin destroyed the garbage truck and injured two Klukwan residents.

After that incident Victor Hotch, the village chief, signed a statement saying he no longer wanted to have any dealings with the Johnsons or anything to do with the removal of the Whale House artifacts.

But still the Johnsons weren't deterred. A second contract was signed with Estelle DeHaven Johnson. She would go to court to assert her claim to the artifacts,

and the Johnsons would provide her attorneys and pay her legal bills.

In December 1976, Michael Johnson's attorneys filed suit in federal court. Meanwhile, the groundwork was laid for yet another attempt to get at the artifacts.

In April 1977, Sharon Johnson wrote Estelle DeHaven Johnson asking her to acknowledge an advance payment for expenses she would incur in "delivering the artifacts to Seattle." She was asked to sign the letter, confirming that any actions she took were of her "own free will and not at the insistence of, or in conspiracy with," Johnson's company.

Less than three weeks later, Estelle DeHaven Johnson, several relatives and friends parked a van with Washington license plates outside the Whale House. They were about to load the wall screen and house posts into the truck when someone set off the village fire alarm. Within minutes the group was surrounded by angry citizens, who forced them to leave empty-handed.

"Johnson's not going to have any trouble selling it."

-- New York collector

Eventually the federal court dismissed Estelle DeHaven Johnson's lawsuit. The Johnsons began exploring other avenues, including the possibility of hiring armed guards to protect another attempt by Estelle DeHaven Johnson to remove the artifacts. Johnson contacted the office of then-Gov. Jay Hammond asking him to intervene but made no headway.

According to a 1984 article, a death-bed wish of Mildred Sparks, the third elderly woman, proved to be the stimulus for the next act in the Klukwan drama. Sparks reportedly told her family in the Spring of 1984 that her last desire was to see the Whale House artifacts removed from Klukwan. They were hers, she said, and she knew once she died, it would be difficult ever to get them out.

Sparks' grandson, Bill Thomas, called Johnson who signed an agreement May 1, 1984 to take the artifacts on consignment.

He would get a 10 percent commission plus all his legal and other expenses. Estelle DeHaven Johnson agreed to accept \$50,000. Martha Willard, the lone holdout, was to receive nothing. Johnson said in 1984 that he eventually had determined her ownership claim was invalid.

Edmund Carpenter, the New York collector who helped arrange the ill-fated \$2 million purchase in 1984, said he recently received a letter from Johnson indicating that the pieces soon could be available again for purchase.

"Johnson's not going to have any trouble selling it," said Carpenter. "The Seattle Art Museum has long been interested. There are other institutions in this country that would grab it...in Detroit, Cleveland, Dallas...There are buyers in Japan and Germany."

Pam McClusky, associate curator at the Seattle Art Museum, said she didn't know of any offer by Johnson to sell the pieces to the museum. Many museums would want them, McClusky said, but remaining uncertainty about ownership should be clearly resolved before the pieces are sold.

Book Review

Captured Heritage tells of theft of Native artifacts

Captured Heritage: The scramble for Northwest Coast Artifacts by Douglas Cole, University of Washington Press, Seattle. 1985 \$17.50

by Wally Olson
For the Tundra Times

In December 1930, Franz Boas returned to Fort Rupert, British Columbia. At a dinner, the host chief explained to him: "This bowl in the shape of a bear is for you, and you, and so on; for each group a bowl." The speech was the same one he had heard often before. "But the bowls are no longer there. They are in the museums in New York and Berlin." (p.xiii)

Have you ever wondered how those massive collections of Alaskan artifacts ended up in museums around the world? Well, this book tells part of the story. It is the story of the taking of Northwest Coast artifacts by the collectors who plied the area in the late 1800's and early 1900's. It is also the story of how these things were sold, stolen, and traded to far away places.

The early collectors were seeking samples of Native art and culture for their ethnological and anthropological exhibits. Some collected anything that was available without ever recording the cultural context. Others, such as Boas and Emmons tried to understand the ceremonies, rituals and legends which gave a greater meaning to each object. In more recent times, Northwest Coast art has been

sought for its intrinsic artistic value. The prices have skyrocketed also. Collections which were purchased for one or two thousand dollars, might now sell for more than a million.

The book is exceptionally well documented. Anyone interested in learning more about the transactions can find references to the many letters and magazine articles of the time.

There are 310 pages of text and 50 pages of footnotes. Cole traces the "scramble for Northwest Coast artifacts" through history. He not

but they know what they are doing.

Then there were those who knowingly plundered graves, villages homes, taking whatever they could carry. They, and the museums who supported their stealing had no excuse for what they did. By reading **Captured Heritage** one can learn who stole what, and where those items are today.

All of this brings up an important issue. While visiting museums and universities in Europe last year, I learned that there was a movement to have museums return

these treasures. Of course the many house posts and large canoes could not be shipped easily. But the museums could send slides of these items.

The Smithsonian Institute did something like this when it sent part of Edward Nelson's collection to Alaska under the title of **Inua**. If they can do it, there is no reason why other museums cannot be persuaded to do likewise. There is no way that large groups of Alaskans can travel to New York, Chicago, Philadelphia, Berlin, Bremen and Madrid. On the other hand, exhibits from these places can be sent to Alaskan museums.

If I recall correctly, the Smithsonian's traveling exhibit was prompted by our legislative delegation. If federal money is flowing to these museums which now hold Alaskan collections, perhaps they too might be persuaded to let Native Alaskans see what was taken in the past—especially if they know that what they have was actually stolen from graves and village sites.

People interested in Alaskan Native history, and Southeastern Alaskan culture will find **Captured Heritage** a well-written, readable, scholarly study of the history of collections on the Northwest Coast. Hopefully, it may prompt some action that will allow the descendants of Native artists, an opportunity to at least see what had been their heritage.

"Have you ever wondered how those massive collections of Alaskan artifacts end up in museums around the world?"

only tells how many things were obtained, he follows them to their current resting places in museums around the world.

There is not much that can be said today about those who openly bought and sold these precious items. Perhaps the Natives who sold them never fully realized that they were losing invaluable treasures that could never be replaced. Maybe they were convinced that museums would preserve them for future generations. Today, however, there are still those Natives who sell their heirlooms,

their collections to the people from whom they had been taken. I doubt if any museums will even consider their demands I suggested another approach which may be more realistic; maybe those museums may be willing to lend parts of their collections to museums where the people may at least see something of their heritage.

For example, considering the Northwest coast and Southeastern Alaska, some exhibits could be sent to the museums at Juneau, Sitka and Ketchikan so that the Tlingit-Haida people might see

3-11-86

Anthropologist urges action on unauthorized collecting of artifacts

The Associated Press

FAIRBANKS — An Anchorage anthropology professor said last week something must be done about what he called the massive and growing problem of unauthorized collecting of valuable relics and artifacts in Alaska.

"It involves truly impressive amounts of money, income for depressed areas that sometimes have little else going for them, issues involving the rights and responsibilities of contemporary Alaska Natives, and many another can of worms," William Workman of the University of Alaska-Anchorage told his colleagues Friday at the 13th annual conference of the Alaska Anthropological Association.

He called for stronger legislation and an extensive public-education campaign to make artifact collecting by both the average person and "affluent white art collectors" socially unacceptable behavior.

Academics from across Canada and the United States gathered at the Travelers Inn in downtown Fairbanks for the conference. Papers were to be

It involves truly impressive amounts of money, income for depressed areas that sometimes have little else going for them.

— Professor William Workman

presented on Russian-America history, Alaska archaeological discoveries, subsistence, cross-cultural education, Native languages, Alaska art and history and other topics.

"The history of Alaska does not begin with 1867, as it does as far as Europeans are concerned," said Lydia Black, professor of anthropology at the University of Alaska-Fairbanks.

"As far as the Native population is concerned, it begins 10,000 years ago," she said. "Alaska was also part of the Russian empire for 100 years, which left an impression on Alaska."

STATE OF ALASKA THE LEGISLATURE

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May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H. JUD.	4-13-87	1:30 p.m.
H. JUD.	4-3-87	1:30 p.m.

5-0549L
Hein
4/6/87

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

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 153 (Judiciary)

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, a court
13 may recognize the existence of and enforce a trust in the absence of a
14 writing upon a showing, by a preponderance of the evidence, that a
15 trust has been established by Alaska Native custom and tradition. The
16 trust must have been established for the protection and preservation
17 of ceremonial, cultural, or religious property and on behalf of all
18 members of a clan, house, band, or other traditional group of Alaska
19 Natives as owners in common. The court may recognize the existence of
20 and enforce a trust for real property under this subsection only for
21 ceremonial, cultural, or religious structures or improvements, and
22 land historically occupied by the structures or improvements.

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

24 (b) Notwithstanding (a) of this section, a court may recognize
25 and enforce an unwritten grant or assignment of a trust upon a show-
26 ing, by a preponderance of the evidence, that the grant or assignment
27 was made according to established Alaska Native custom and tradition.
28 The trust must have been established for the protection and preserva-
29 tion of ceremonial, cultural, or religious property and on behalf of

1 all members of a clan, house, band, or other traditional group of
2 Alaska Natives as owners in common. The court may recognize the exist-
3 tence of and enforce an assignment or grant of a trust for real
4 property under this subsection only for ceremonial, cultural, or
5 religious structures or improvements, and land historically occupied
6 by the structures or improvements.

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

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

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

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

18 (2) has the permission of the landowner to enter the land
19 for that purpose.

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

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

29 (e) A person designated in AS 41.35.220 shall seize a historic,

1 prehistoric, archaeological, or cultural resource to which the state
2 has reserved title and that has been taken in violation of this chap-
3 ter, wherever and whenever the person finds the resource. Seized
4 objects may be disposed of as the commissioner determines by deposit
5 in the proper public depository.

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

7 Sec. 41.35.210. PENALTIES. (a) A person who violates a pro-
8 vision of this chapter is guilty of a class A misdemeanor.

9 (b) In addition to criminal penalties, a person who violates a
10 provision of this chapter is liable for a civil penalty not to exceed
11 \$25,000 or three times the pecuniary gain resulting from the viola-
12 tion, whichever is greater.

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

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

20 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).
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CS Requested
w/ Amends
4-4-87

Amendment # _____

Bill # CSHB 153 (St Affairs)

Offered By: Kootznoowoo Heritage Foundation

Page 1, Line 17 DELETE ", other than land,"

Page 1, Line 19 ADD a new sentence to read "The existence of a trust for real property may be established under this subsection only for ceremonial, cultural, or religious structures or improvements and any land historically occupied by the structure or improvement."

Page 1, Line 24 DELETE ", other than land,"

Page 1, Line 28 ADD a new sentence to read "The existence of a trust for real property may be established under this subsection only for ceremonial, cultural, or religious structures or improvements and any land historically occupied by the structure or improvement."

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.

DRAFT

5

DATE: 1/27/87

BOOKPROOFED: _____

APPROVED: _____

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

IN THE _____

_____ BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA
FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

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

(c) Notwithstanding other provisions in this section, the existence of a trust may be recognized and enforced by a court in the absence of a writing, upon a showing, by a preponderance of the evidence, that a trust has been established by Alaska Native custom and tradition for protection and preservation of ceremonial, cultural, or religious property on behalf of all members of a clan, house, band, or other traditional group of Alaska Natives as owners in common.

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

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

* Sec. 3. AS 41.35.200 is amended to read:

Sec. 41.35.200. UNLAWFUL ACTS. (a) A person may not appropriate, excavate, remove, injure, or destroy, without a permit from the

DRAFT

DATE: _____

BOOKPROOFED: _____

APPROVED: _____

1 commissioner, any historic, prehistoric, [OR] archaeological, or cul-
2 tural resources belonging to .OF] the state.

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

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

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

17 (e) [(d)] A state-owned [AN] historic, prehistoric, [OR] archae-
18 ological, or cultural resource which is taken in violation of this
19 chapter [SECTION] shall be seized by any person designated in AS 41.-
20 35.220 wherever found and at any time. Objects seized may be disposed
21 of as the commissioner determines by deposit in the proper public
22 depository.

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

24 Sec. 41.35.210. PENALTIES. (a) A person who violates a pro-
25 vision of this chapter is guilty of a class A misdemeanor.

26 (b) In addition to criminal penalties, a person who violates a
27 provision of this chapter is liable for a civil penalty not to exceed
28 three times the pecuniary gain resulting from the violation.

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

DRAFT

DATE: _____

BOOKPROOFED: _____

APPROVED: _____

1 (4) "historic, prehistoric, [AND] archaeological, and cul-
 2 tural resources" includes deposits, structures, ruins, sites, build-
 3 ings, graves, artifacts, fossils, ceremonial objects, or other objects
 4 of antiquity which provide information pertaining to the historical or
 5 prehistorical culture of the people in the state as well as to the
 6 natural history of the state.

7 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).
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NETWORK

Vol. 1, No. 1

February, 1987

The Future of the Alaskan Museums

We are hearing a lot about tourism as an economic mainstay these days. Alaska is touted as a place where visitors can participate in the "living culture" of vibrant Native groups. Alaskan art and artifacts are prized the world over and people come here to see these rare items.

We also hear a lot about our own residents' pride in their culture and history and how citizens' groups across the state banded together as never before to celebrate first the hundredth anniversary of the Alaska Purchase and then the 25th Anniversary of Statehood. Many of these projects were fueled with state dollars and local volunteer efforts. Everyone got a lot of mileage out of relatively few dollars.

Now the most cost-effective grant program the state supports, and the only one left to protect our state's heritage, is slated for elimination. The Department of Education has proposed to discontinue the Alaska State Museum's Grants-in-Aid for 1988.

All institutional members of Museums Alaska have benefited from this small program during the past years. It has provided not just money, because the small sums granted Alaska museums will not determine if a museum lives or dies, but is a program which stimulates local volunteer effort, and local government support. This money is not used for administrative costs--it directly funds new exhibits, school education programs, local history books, museum security, and other tangible, worthy projects for residents and visitors alike.

Unlike schools or libraries, museums have never relied heavily on state support. To eliminate this program now is to eliminate a very minute but important sector of support for local museums. The total amount of money disbursed to over 50 museums in Alaska averaged about \$100,000 in the past few years--approximately \$2,000 per institution! Not a large amount, but very important to the organizations charged with preserving the heritage of

SOME ARTIFACTS LEGISLATION NOW READY FOR INTRODUCTION THIS SESSION

Pages 5 and 6 of this newsletter contain the draft and explanation of proposed artifacts legislation which will be introduced this legislative session. This legislation is designed to handle some of the problems which were discussed at the MA annual meeting luncheon in Homer, by Dr. Tom Lonner, director of Alaska State Museum, and Judy Bittner, Div. of Parks and Outdoor Recreation.

Your thoughts and ideas on this legislation may be directed to either of the above or to Debbie Blume in the Governor's Office.

Due to current economics, the Alaska Heritage Endowment Fund legislative proposal is presently "on hold."

Plans Underway for Museums Institute

During October, 1987, Meetings

Although the February Museums Institute held at the Alaska State Museum will not be held in 1987, plans are underway for a strong museums workshop in the fall of 1987.

Museums Alaska, Alaska State Museum, and the University of Alaska/Fairbanks Museum will combine efforts to present a workshop in museum display techniques at the annual meeting of Museums Alaska and the Alaska Historical Society in Fairbanks.

Further information on the workshop will be featured in the June and September newsletters. Those willing to assist with workshop planning or instruction are urged to contact Terry Dickey at the UA Museum as soon as possible.

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As the state coffers diminish, more public services will be cut back. Administrators will reduce services to constituents, realizing that if the people feel these services are important, they will fight to keep them. How important is Grants-In-Aid to your museum? Important enough to write a few letters? I urge you to do so or we may lose the program forever.

There is another article in this newsletter addressing this same issue. The Friends of the Alaska State Museum also feel that Grants-In-Aid are important. Between our two groups, we will be able to garner the support necessary to keep the grants alive. But only if you, as individuals, and your board and staff members, write now. The Friends letter offers explicit instructions on who to contact and how. We need your support. s/Roxana Adams, MUSEUMS ALASKA president

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

DRAFT

DATE: _____

BOOKPROOFED: _____

APPROVED: _____

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1) No protection of native burial grounds that are now in state owned lands. 2) Does the artifacts on state owned land now belong to the state and not the natives? 3) In disputes of the trustee and the clan - could the court decide that the state would take over being trustee?



NETWORK

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1986 MUSEUMS ALASKA RESOLUTIONS SUPPORT STATE MUSEUM GRANTS, FIELD SERVICES

At Homer 86, the annual meeting of Museums Alaska, three key resolutions were passed by the membership.

One resolution authorizes the president of Museums Alaska to respond to local museum concerns on a case-by-case basis to assist, promote, or otherwise strengthen a museum's well being. When emergency situations requiring immediate support from Museums Alaska arise, contact Roxana Adams, MA president.

A second resolution supports the funding of the matching federal Historic Preservation grants-in-aid program administered by the State Preservation Office in the Division of Parks and Outdoor Recreation, Department of Natural Resources.

The third resolution addresses field services from the Alaska State Museum, including grants-in-aid, technical information, and training. Museums Alaska has indicated its desire to work with the Alaska State Museum to plan for the effective use of decreasing funds for statewide services and to support efforts to increase these funds.

By now, all museums should have received Dr. Tom Lonner's January 24 communication concerning the effects of budget cuts on the programs of the Alaska State Museum. The loss of many key staff members who have assisted in statewide services has serious impact on ASM and upon the many museums who relied upon them for advice and assistance. The deletion from the Governor's budget request of funding for the grants-in-aid program is keenly felt throughout Alaska.

Just how serious these losses are is well understood by museum people and their support groups. The article in this issue by Friends of Alaska State Museum provides some sound suggestions on approaching this problem.

Museums Alaska Seeks Members' Input on Survival Techniques During Periods of Economic Uncertainty, Budget Crunches

Museums Alaska needs your help with some information! This information will assist us in supporting adequate museum funding immediately and will enable us to inform you in the summer issue just what the situation is across the state, so please sit down at your keyboard or typewriter today and let us know your situation and how you are handling it.

What personnel, services, and programs have you had to cut and what have you been able to retain at full or in part?

What sort of funding cuts have you had--from state and local government level, from the private sector, and/or from revenue-raising activities?

How are you making up for revenue shortfalls?

Are you increasing your use of volunteers to keep things going? How are you doing this?

How are you increasing your volunteer recruitment activities?

How will various economic factors affect your summer tourism offerings and activities?

Have revenue shortfalls hurt in obtaining potentially-available acquisitions?

How are economic factors affecting your year-around programs for local residents and school children?

Please help by providing these facts and figures, with specifics, as soon as possible. Don't worry about format--just get the facts to us right away. This information should be sent to Roxana Adams, MA President, 629 Dock Street, Ketchikan, AK 99901. Thank you!

Friends of Alaska State Museum Provide Leadership to Keep Grants

The Friends of the Alaska State Museum are mounting a statewide legislative information campaign in an attempt to restore museum grants-in-aid program funding to the Department of Education operating budget and also to protect funding which may be endangered in the next round of budget cuts.

The Friends of ASM are urging concerned people to contact their own legislators, as well as legislators on key committees, and express their support for the museum grants-in-aid program and for the other services the Alaska State Museum provides to sister museums and schools throughout the state.

For those people who are interested in assisting in this legislative information campaign, the Friends of ASM offer the following strategies and suggestions:

Original letters are the most effective and efficient form of legislative contact, because legislators weigh them most heavily when assessing the degree of public support for a certain program or project. Form letters and public opinion messages (POM's) do not have the same impact.

Keep letters concise: state your interest, your suggestion, and the ways in which you hope the legislator will assist you. For instance: When writing concerning the grants-in-aid program, state that, then the reasons the program is important to you or your group, and then the way in which the legislator may assist you (in this case, by restoring the funding for the program to the Department of Education operating budget).

For coordination purposes, it would be helpful if a copy of your letter were sent to Roxana Adams, President, Museums Alaska, 629 Dock Street, Ketchikan, AK 99901.

Telephone calls are effective, but most legislators are difficult to reach, due to their schedule and so telephoning can become an expensive and frustrating experience.

In-Person contact is also effective: take advantage of legislative receptions, fly-ins, and legislative visits to the district during the session to make your concerns known. Keep telephone and in-person contacts brief and to-the-point; legislators have very little free time during the legislative session. The following key legislators, as well as your own district legislators, can all be reached at the same address: Alaska State Legislature, PO Box V, Juneau, AK 99811.

Senator Don Bennett, Co-Chairman,
Senate Finance Committee

Senator John Binkley, Co-Chairman,
Senate Finance Committee

Senator Jim Duncan, Senate Finance
Committee

Senator Paul Fischer, Chairman,
Senate Health, Education and Social
Services (HESS) Committee

Senator Joe Josephson,
Vice-Chairman, Senate HESS Committee

Senator Rick Halford, Senate HESS
Committee

Representative Al Adams, Chairman,
House Finance Committee

Representative Pat Pourchot,
Vice-Chairman, House Finance Committee

Representative Ron Larson, House
Finance Committee

Representative Niilo Koponen,
Co-Chairman, House HESS Committee

Representative Johnny Ellis,
Co-Chairman, House HESS Committee

Representative Bill Hudson, House
HESS Committee

---FRIENDS OF ALASKA STATE MUSEUM,
Hali Denton, Corresponding Secretary---

Museums Alaska NETWORK Publishes to Aid in Statewide Museum Communications

At a time when cuts in travel and telephone budgets tend to limit communications, Museums Alaska is starting what we hope will be a needed and regular newsletter. Temporarily called the MUSEUMS ALASKA NETWORK, the newsletter will come out in February, June and September this year. This first issue is being mailed to Museums Alaska members, other museums, historical societies and agencies, as well as to members of the legislature.

Pulling together a new publication always has its anxious moments, but the support of the membership in this undertaking has been really great! Folks have responded well at being asked to provide copy and other assistance. We hope future issues include even more from the members, networking their ideas.

Temporarily, at least, we've named the newsletter the MUSEUMS ALASKA NETWORK, but we would welcome better suggestions for a name from you.

Thanks to Roxana, Tom, Jolie, Betsy, Friends of Alaska State MUSEUM, and Terry for their contributions. And for your contributions to the future issues, please submit copy by May 31 and August 31. For the present, please send your copy or ideas for the name or articles to Pat Oakes, PO Box 9, Central, AK 99730.

What's Happening Around Alaska

Irma O'Brien recently retired from her position as half-time coordinator of the Samuel K. Fox Museum in Dillingham. She had held that position since 1978. Irma has been an active participant in Museums Alaska and brought professionalism to her position and the organization as both a teacher and an experienced museum worker. DeLen Doutrick has assumed the Museum Coordinator position. DeLen's background is in health administration, health education, and program management. She is eager to gain the expertise to follow through on the on-going projects of the Samuel Fox Museum.

Alice Hoveman, the State Museum's conservator, has accepted a position at the Redding Museum in Redding, California. Alice has provided conservation advice, training, and treatment to many of the local museums in Alaska during her nearly eight years in Juneau. She will be greatly missed by her colleagues throughout the state. After March 5, Alice can be contacted at the Redding Museum and Art Center, 1911 Rio Drive, Redding, CA 96099.

The Carrie M. McLain Memorial Museum in Nome has scheduled a reopening celebration on February 1, sponsored by the Kegoayah Kozga Association and the City of Nome. The museum experienced financial difficulties in 1986, and, under the governance of the City of Nome, was forced to lay off its director, Mary McBurney, and to close temporarily. Dorothy Jean Ray has been working under contract at the museum, completing the huge task of gutting the museum and developing all new exhibits, complete with new cases. When her work is completed, Ray will turn the renovated museum's operations back to the city, with her recommendations to provide professional staffing and care for the collection.

It's not too soon to start planning activities for International Museum Day (May 18) at local museums. In Juneau, a committee with representatives from local museums will soon meet to plan a city-wide celebration. The House of Wickersham, operated by the Alaska Division of Parks, the Juneau-Douglas City Museum, the Gastineau Historical Society, and the Alaska State Museum hope to join forces with local businesses and historic structure owners to bring the cause of museums to public attention in an entertaining way. They hope it won't rain in Juneau on May 18!

The Ketchikan Museum Department, which operates the Tongass Historical Museum and Totem Heritage Center under the direction of Roxana Adams, offers a full schedule of workshops and seminars

the good news

DIVISION OF TOURISM GRANTS FOR FY '88 KEPT AT SAME FUNDING LEVEL IN BUDGET PROCESS

A report from the grants office of the Division of Tourism indicates that they expect their tourism grant funding will be at about the same level as last year. This will be good news to museums who utilize Div. of Tourism grants for brochures, publications and other qualifying tourism-related services.

ASM Field Services Working To Assist With Fall Institute

Dear Friends:

Thank you for responding to our questionnaire regarding the possibility of a Museums Institute. We received thirty-six replies: the overwhelming majority of respondents requested that the program content focus upon Exhibits Planning, Exhibits Design/Installation and the management of Exhibits. The results of the survey were shared with the Professional Development committee of Museums Alaska.

At this point in time, we are trying to organize, date, place, and content in order to maximize our resources. It is becoming very evident every day that we will be fortunate to present one training opportunity per year. With that in mind, we are presently planning the Institute in conjunction with the Museums Alaska annual meeting slated for Fairbanks late in October 1987. Many members have indicated that a three-day workshop would be more effective in meeting the needs of the participants.

Please feel free to contact Jolie Sasseeville at the Alaska State Museum or Roxana Adams, Terry Dickey or Pat Oakes with ideas and/or comments. Sincerely, B. Lange Hulbert, Director, Sheldon Jackson Museum

WHAT'S ON YOUR SUMMER SCHEDULE?

Please drop the NETWORK a line about your special events--programs and exhibits--planned for the summer season so that we may run an article on them for the summer issue. Address to Pat Oakes, Box 9, Central, Ak 99730. Thank!

Homer Worksession Recommends Annual Achievement Award

The recommendation that an annual award be established by Museums Alaska for outstanding achievement in the museum profession was made in a Board worksession at the Homer meeting in October and will be presented to the full Board for approval.

The award would be a ticket to the Western Museums conference meeting. The worksession members recommended that a simpler method of soliciting nominations than previously suggested should be designed.

throughout the winter season. A Regalia Making workshop began January 19 and will be followed by a Silver Engraving Workshop in February. The Museum will honor Women in History Month in March with a brown-bag lunch series of noon programs focusing on Women in Ketchikan.

J. Sasseeville

BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA
FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

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

(c) Notwithstanding other provisions in this section, the existence of a trust may be recognized and enforced by a court in the absence of a writing, upon a showing, by a preponderance of the evidence, that a trust has been established by Alaska Native custom and tradition for protection and preservation of ceremonial, cultural, or religious property on behalf of all members of a clan, house, band, or other traditional group of Alaska Natives as owners in common.

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

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

* Sec. 3. AS 41.35.200 is amended to read:

Sec. 41.35.200. UNLAWFUL ACTS. (a) A person may not appropriate, excavate, remove, injure, or destroy, without a permit from the commissioner, any historic, prehistoric, [OR] archaeological, or cultural resources belonging to [OF] the state.

(b) A person may not appropriate, excavate, remove, injure, or destroy, without permission of the landowner, any historic, prehistoric, archaeological, or cultural resource located on privately owned land, unless the person is the owner of the resource or has the permission of its owner.

(c) [(b)] A person may not possess, sell, buy, or transport within the state, or offer to sell, buy, or transport within the state, historic, prehistoric, [OR] archaeological, or cultural resources taken, [OR] acquired, sold, or possessed in violation of this chapter [SECTION] or 16 U.S.C. 433.

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

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

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

Sec. 41.35.210. PENALTIES. (a) A person who violates a provision of this chapter is guilty of a class A misdemeanor.

(b) In addition to criminal penalties, a person who violates a provision of this chapter is liable for a civil penalty not to exceed three times the pecuniary gain resulting from the violation.

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

(4) "historic, prehistoric, [AND] archaeological, and cultural resources" includes deposits, structures, ruins, sites, buildings, graves, artifacts, fossils, ceremonial objects, or other objects of antiquity which provide information pertaining to the historical or prehistorical culture of the people in the state as well as to the natural history of the state.

* Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

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). This 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 homelike 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.



I N - V O I C E

January 8, 1987

TO: *Member/Contact*
Institution Name
Address

Membership Category Membership

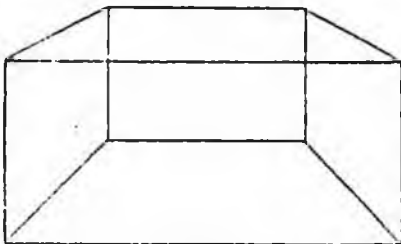
1987 Annual dues

Dues

Membership Dues Schedule

Individual member	\$25
Institutional member	
a. Operating budget <u>under</u> \$100,000.	\$25
b. Operating budget <u>over</u> \$100,000	\$100
Affiliate member (non-voting)	\$25
Patron.	\$500

Please remit to: Betsy Pitzman, Treasurer
c/o Pratt Museum
3779 Bartlett Street
Homer, Alaska 99603



MUSEUMS ALASKA

Board of Directors

Roxana Adams, President

Judy Bittner, Vice President

Pat Oakes, Secretary

Betsy Pitzman, Treasurer

Terry Dickey

Elizabeth Mayok

Elva Scott

Pat Okurt

Joe Leahy

Publication Office: PO Box 9,
Central, AK 99730

The Statewide
Museum Association

The Honorable John Sund
State House of Representatives
Pouch V
Juneau, Alaska 99811

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 Schauble, 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.

DATE

TO: Rep. T. [REDACTED]

FR: Frank O. Williams, 601 Monastery, Sitka

SENT BY SITKA, ALASKA LEGISLATIVE INFORMATION OFFICE.

NUMBER OF PAGES INCLUDING THIS ONE: 2

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Testimony Submitted to
Judiciary Committee / Teleconference 4/3/87.



**Law Offices of
Sitka Community Association**

Indian Tribe
Box 1450
Sitka, Alaska 99835
(907) 747-3207

HOUSE BILL No. 153

Proposed Sec. 3 (current Sec 3 would become Sec. 4. etc)

Whenever available, tribal forums, such as tribal courts, shall have exclusive jurisdiction to hear disputes arising under this Act. Alaskan State courts shall give full faith and credit to the final judgments of tribal courts in matters arising under this Act to the same extent that such recognition is given to judgments of sister state courts.

Frank O. Williams Jr
ANB EXEC COMM.

Huna Totem Corp.
Chairman

DATE

TO: ~~REP JOHN SUNG~~

FR: Mr. Patrick Paul, Sr. 705 SIRSTAD
SITKA

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Testimony Read AT Teleconference
Hearing on 4/3/87.

COPY

Mark Jacobs, Jr.
 P.O. Box 625
 Sitka, Alaska 99835
 Phone: (907) 747-8168
 March 25, 1987

Mr. Richard Stitt
 Grand President
 Alaska Native Brotherhood
 9462 Brady Place
 Juneau, Alaska 99901

Dear Dick:

At our Regular meeting of Sitka ANB Camp #1, March 23, 1987, we discussed H.E. #153 and the S.E. #147 the Alaska Historic Preservations Act. While protection of Native artifacts, historic and cemeteries is very important; we disagree, that the State of Alaska should have jurisdiction in tribal dispute. We also disagree that any tribal and clan properties should be termed as common ownership.

Our tribal laws are still very much intact, it is exercised through our Potlatches and pay off rituals. It is the Tlinget system of tribal property succession. The State of Alaska and it's courts has absolutely no jurisdiction. Not even as a third party interest in determining who should inherit tribal crest, regalia and artifacts.

Tribal leaders that has no concept of the Traditional Indian Laws should not be the individuals to approve the passage of such laws that can be used for infringement or suppression of our tribal sovereignty. Potlatches and pay off rituals are indeed one of the most important manifestations of exercising tribal and clans sovereignty.

It is sad to realize ~~was~~ that the Bureau of Indian Affairs past history is to utilize State Laws of succession to transfer tribal property. Many tribal houses were deeded to the wrong persons, and sometimes abused by selling the tribal clan houses to non-natives.

The Tlinget customs are very rigid, and at times very sensitive which requires some very strict protocol. As most Tlingets know, the proper marriage among Tlingets is Eagle marries from the Raven side and vice versa. The chief usually occupies the clan house, the next in line to succeed him as chief is usually his brother or the oldest of his sister's sons. Or even another member of his side of the family that is named after a departed who is believed to be reincarnated. Provided, that person next in line has taken care of his deceased uncle's burial grave stone memorial party. Potlatch and pay off of the opposite tribes and clan member. With very special treatment of the widow, who is paid off and is showered with gifts. (It ~~is~~ used to be that the

2 of 3

widow had a right to say; your payment is not enough) In order not to devalue the tribal crests and regalia her demands are usually met. The honorable thing is the nephew or younger is to marry his uncle's widow. Sometime taken in, which anthropologists call a second wife.

Now! For the Nitty Gritty; when a head of clan house departs and next in line of succession initiates tribal customs to satisfy any tribal liens, members of his clan are expected to pitch in to keep their caste system honorable. As happens many times, the burden falls on a very few, or even one person. This causes the new chief to have exclusive claim to all possessions. Recently, when some of these old and valuable items command a price of news worthiness, here comes other members claiming a share of rights to any monetary potential. The fact is, according to Tribal Law the person that acquired these rights in conformity with laws of succession can tell his clan members they have no say so in any disposition of the said valuables.

In the olden days, when a chief has carried the burden himself and feels his subordinates are not worthy of inheriting the valuables, the disposition is his sole decision; he may order such items destroyed or disposed with his remains. Today he may sell to collectors or museums.

Anthropologists have interpreted the destruction of such valuables as a show-off of wealth. What has actually happened is; he prevented such crests, to which he has held much allegiance, to fall into the hands of his own clan members that will be a disgrace in the future.

There is a great deal that I can expound on, but I hope these short comments are enough for you to realize that the proposed State Law in H.B. #153 is not compatible with our old customs that cannot be superseded by State of Alaska's statutes. We have very old laws, rigid, honored and exercised. Still intact. I sincerely ask that the Grand Officers will uphold our Elders in the free enjoyment of their customs and the undying faith in such.

Sincerely,

Mark Jacobs, Jr.
On Behalf of Sitka Camp #1 and
Elders

*Not compatible
with our custom*

cc: Central Council T&H
ANB Sitka Camp #1
2 file copies

OFFICE OF THE GOVERNOR

OFFICE OF MANAGEMENT AND BUDGET

DIVISION OF POLICY

P.O. BOX AD
JUNEAU, ALASKA 99811
PHONE: (907) 465-3568

March 19, 1987

Dear Local Camp President:

Please find enclosed a copy of a bill which was introduced to amend an existing law. A companion bill was introduced in the Senate (SB 147). The statute is the Alaska Historic Preservation Act: Title 41, Chapter 35.

At a recent meeting of the ANB Grand Camp Executive Committee, the two bills were discussed at length and a motion was made, and passed, to endorse the passage of the bills. A provision was added to make sure copies were sent to each local camp for any comments on the bill. Comments should be received within a ten day time period and should be directed to the Grand President or to me.

Here are some key points on the bill:

HB 153 and SB 147, the 1987 Artifacts Preservation Bill, is the first step toward fine tuning the State law that protects Alaska's historic, prehistoric, and archaeological resources. The historical documents, cultural heritage, artistic and scientific artifacts embodied in these resources are the subject of protection from loss, desecration, and destruction so that these resources may be passed on to future generations. A task force has been working for the past year to develop the legislation, which is considered 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 the 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.

It is necessary to point out that many of Alaska's historical and cultural treasures are being lost through theft, neglect, and, in some cases, the sale of artifacts by person's with no authority to do so. It is the intention of this legislation to enable the courts to make a ruling of ownership, when it is possible through evidence, and ONLY when a dispute reaches the courts. On the other hand, it is NOT the intention of this legislation to have the State of Alaska go into a local dispute, arbitrarily, and make a ruling.

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 of 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, of 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 of 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 or \$25,000 fine, whichever is greater 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.

Please be advised that a briefing on the bill was given to representatives of Tlingit-Haida, Sealaska, Sealaska Heritage and the ANB Grand Camp. Sealaska's attorney and Kootznawoo, Inc. have provided input in some minor changes in the bill. ANB Camp #2 has voted unanimously in favor of endorsing the bill, as have the SEACAP and RURALCAP Board of Directors.

Local Camp President

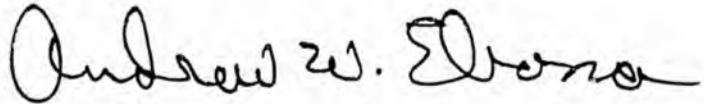
- 4 -

March 19, 1987

If you would like to comment on the bill, please feel free to contact President Richard Still at 586-1432 or me at 465-3568 by March 30, 1987. Also, the House Judiciary Committee is scheduling a teleconference on April 3.

Thank you very much for your time.

Respectfully,

A handwritten signature in cursive script that reads "Andrew W. Ebona".

Andrew W. Ebona
Policy Analyst

AWE/dmc/87D-282

Enclosures

ENDORSEMENTS

1. ALASKA NATIVE BROTHERHOOD GRAND CAMP - EXECUTIVE COMMITTEE
2. RURAL ALASKA COMMUNITY ACTION PROGRAM (RURALCAP) - BOARD OF DIRECTORS
3. SOUTHEAST ALASKA COMMUNITY ACTION PROGRAM (SEACAP) - BOARD OF DIRECTORS
4. ALASKA NATIVE BROTHERHOOD - JUNEAU CAMP #2
5. JUNEAU TLINGIT - HAIDA COMMUNITY COUNCIL

ASSISTANCE GIVEN IN DRAFTING LANGUAGE

1. SEALASKA CORP.
2. KOOTZNOOWOO, INC. (VILLAGE OF ANGOON)

BRIEFING GIVEN TO:

1. PRESIDENT - ALASKA NATIVE BROTHERHOOD
2. PRESIDENT - TLINGIT - HAIDA CENTRAL COUNCIL
3. PRESIDENT - SEALASKA HERITAGE FOUNDATION

RESOLUTION 87 - 03
JUNEAU TLINGIT-HAIDA
COMMUNITY COUNCIL
MARCH 26, 1987

RE: 1987 STATE ARTIFACTS LEGISLATION

WHEREAS; CS HB 153 and SB 147, the 1987 Artifacts Preservation Bill has been introduced in the State Legislature; and

WHEREAS, the bill is designed to amend existing law; and

WHEREAS, the bill, in part, allows for unwritten evidence (or trusts) to be submitted in court, if a case where there is a question of ownership is brought to state court; and

WHEREAS, these unwritten trusts would be recognized in accordance with Alaska Native custom and tradition; and

WHEREAS, the current law only allows for written trusts to be recognized in courts; and

WHEREAS, the bill also revises penalties for violations of the Artifact Preservation Law; and

THEREFORE BE IT RESOLVED by the Juneau THCC to go on record as endorsing CS HB 153 and SB 147, the 1987 Artifacts Preservation Bill.

Cryil George, Chairman

Secretary

ADOPTED
3-26-87

Klukwan artifacts caught in legal, cultural web

The following article, first of a two-part story, is excerpted from the Dec. 21 Seattle Times.

By Dean Katz

For more than 100 years, the Whale House artifacts told a story to the Tlingit Indians of the Alaskan village of Klukwan.

They were an important part of death ceremonies, expressing respect for those who died.

They conveyed the tribe's spiritual myths and cultural legends to new generations, since there is no written Tlingit language to record history.

Over the years, many a village potlatch was held amidst the majestic, carved wooden wall screen and set of four totemic house posts.

But today, the Whale House artifacts can tell no story, at least not to the 150 people of Klukwan. If they are talking it is to the walls and whatever spirits may exist inside a Seattle art storage warehouse. They have been locked up there for two years while in Alaska a legal controversy swirls around ownership of the prized pieces.

In museum, anthropological and art dealer circles, the artifacts are generally acknowledged to be the finest extant pieces of Northwest Coast Indian art. They would be the centerpiece of any museum or art collector's Native American collection.

"They are the *cremo dola cremo* of Northwest Coast art," said Edmund Carpenter, a New York anthropologist who helped a wealthy friend, Adelaide deManil, sign a contract to purchase the pieces two years ago for \$2 million.

That would have been far and away the most ever paid for such a collection of Northwest Coast Indian art. But the deal never went through because the Klukwan tribal council protested removal of the artifacts in violation of a village ordinance.

For three-quarters of a century art procurers have tried to beg, buy or through means of stealth separate the Whale House artifacts from Klukwan. On several

occasions the attempts were met with angry confrontations or mysterious incidents of injury or death.

Late in December it appeared as though Michael Johnson, a former Seattle art dealer who has been involved in efforts to pry the pieces loose from the village for more than a decade, might finally be the one to succeed in putting the artifacts for sale on the open market.

They are the *creme de la creme* of Northwest Coast art.

—Edmund Carpenter

But an 11th hour legal maneuver by the village of Klukwan probably has insured that the controversy will remain tied up in the courts, which could keep the artifacts in the Seattle warehouse for months, if not years.

The most dramatic chapter in the saga of the Whale House artifacts began in April 1984. Under cover of darkness, and while most of Klukwan's residents were in the nearby town of Haines playing bingo, a half-dozen men unlocked the door to the Whale House and quickly loaded the artifacts into waiting pickup trucks.

From there they drove the 20 or so miles south to Haines, where the pieces were previewed for Johnson, who was waiting at a motel. After secretizing the wooden carvings in a garage, Johnson and the man who removed the pieces celebrated by hoisting a few beers. A few days later the artifacts were loaded aboard an Alaska state ferry bound for Seattle.

When Klukwan's village council discovered the pieces missing, Alaska state troopers were notified. They tracked them to Artech, an art warehouse in Seattle, and seized them under a court order while criminal investigators sought to determine whether they had been stolen.

Meanwhile, the village filed a civil suit in federal court, claiming the pieces didn't belong to those who

had taken them. Last fall, the court dismissed the civil case, saying it lacked jurisdiction. The federal judge hearing the case said if the village wanted to appeal, it would have to post a \$20,000 bond.

The Klukwan Heritage Foundation, the non-profit arm of the village corporation, promptly voted to approve a \$20,000 loan in order to post the bond.

Just who owns the Whale House artifacts is the \$2 million question.

A group of 13 individuals—known as the Whale House Group—claims ownership. But others in the village say the artifacts belong to other members of a larger clan group, the Ganaxtadi, or perhaps the entire village.

The right answer is buried in centuries of tribal history, customs, family associations and unwritten Indian law governing ownership and transfer of property rights. But the question of ownership may ultimately be resolved in a modern-day White Man's court of law — the Ninth U.S. Circuit Court of Appeals.

Art procurers have tried to beg, borrow or through means of stealth separate the Whale House artifacts from Klukwan.

The controversy has pitted those who want to sell the pieces, and Johnson, one of the country's most tenacious art dealers, against an equally tenacious team of lawyers working for Alaska Legal Services Corp., which represents the village of Klukwan.

In an odd twist, the dispute also has pitted the state of Alaska against the village, even though the state doesn't want the artifacts to leave Alaska and even though many state officials object to the manner in which they were removed.

As a matter of legal principle,

the state doesn't believe the village council had the authority to pass an ordinance prohibiting removal of the artifacts, nor does it believe the village can determine the question of ownership.

The state's position is that if the village had such authority, it would represent sovereign powers that the state doesn't want to give to Indian villages. In practical terms, that has meant the state has sided with Johnson and those who want to sell the artifacts.

The Whale House controversy has ramifications far beyond the Northwest. It raises ethical issues about the method by which cultural artifacts are acquired. It also raises the question: is it better for irreplaceable objects such as these to be moved to the climate-controlled security of a faraway museum or to allow them to remain in damp, fire-prone quarters where they might deteriorate, but at least are among the people who created them?

For his part, Johnson, who now lives in Arizona, refuses to discuss the matter, as does his attorney, Donna Willard, of Anchorage.

It was in the early 1970s, while on a buying trip in Alaska, that Johnson and his wife, Sharon, first saw and became enamored of the Whale House artifacts. For more than a decade they used money, sweet talk, the courts and various other means to try to remove from Klukwan its most important cultural assets.

In a 1984 interview, Johnson said he was simply an "agent" for the people who removed the Whale House artifacts. But he acknowledged he was involved in previous attempts to buy the Whale House artifacts outright.

Throughout the years Johnson and his wife, sometimes operating under the corporate umbrella of Northwest Historical Corp., offered tantalizing sums of money—sometimes in the hundreds of thousands of dollars—to various elderly Tlingits, each of whom asserted a claim to the pieces.

It is a complex but fascinating tangle of financial and emotional intrigue.

Art dealer tracked artifacts more than a decade

The following article, second of a two-part story, is excerpted from the Dec. 21 Seattle Times.
By Dean Katz

For more than 10 years, former Seattle art dealer Michael Johnson has used money, sweet talk, the courts and various other means to try to remove from Klukwan its most important cultural assets—the Whale House artifacts.

Throughout the years Johnson and his wife Sharon, sometimes operating under the corporate umbrella of Northwest Historical Corp., offered tantalizing sums of money to various elderly Tlingits, each of whom asserted a claim to the pieces.

On July 28, 1975, Johnson wrote to Victor Hotch as the "keeper of the Whale House and chief of Klukwan," offering to buy the pieces from "the people who have a say in this matter."

A week later Johnson wrote to Martha Willard, another villager, asserting she was "the true and rightful person to claim the Whale House." He offered her \$500,000 for the Whale House pieces and promised he would "make no more offers to Mildred Sparks," another elderly woman who claimed ownership.

But Willard refused to budge. In April 1976, Johnson sent Willard a check for \$55,000, hoping that might weaken her resolve that the artifacts should stay in Klukwan.

The same day he wrote the check, Johnson dashed off a letter to the village chief, Hotch, expressing his fury at Willard. "She had better cooperate. If she does not, she will be left out entirely," he said.

Willard never cashed the check.

Two weeks later Sharon Johnson signed an agreement with a woman living in Arizona, Estelle DeHaven Johnson (no relation). According to

Johnson offered
tantalizing sums to various
Tlingit elders

the contract, she was now "the primary claimant to the ownership of the artifacts" by virtue of her ancestral relationships. The agreement indicated that Martha Willard's claim had been reduced to "minor" standing.

Perhaps emboldened by a successful attempt the month before by a Canadian art dealer to remove other highly-prized artifacts (now possessed by the Seattle Art Museum) from Klukwan, the Johnsons advanced Estelle DeHaven Johnson funds to hire a truck to go up to Klukwan and take out the Whale House pieces.

Tipped off, villagers felled trees across the road leading into the village and a garbage truck was parked sideways to block access. The village council quickly passed an ordinance saying no one could remove the artifacts.

The barricades later were removed although not before an explosion and fire of questionable origin destroyed the garbage truck and injured two Klukwan residents.

After that incident Victor Hotch, the village chief, signed a statement saying he no longer wanted to have any dealings with the Johnsons or anything to do with the removal of the Whale House artifacts.

But still the Johnsons weren't deterred. A second contract was signed with Estelle DeHaven Johnson. She would go to court to assert her claim to the artifacts,

and the Johnsons would provide her attorneys and pay her legal bills.

In December 1976, Michael Johnson's attorneys filed suit in federal court. Meanwhile, the groundwork was laid for yet another attempt to get at the artifacts.

In April 1977, Sharon Johnson wrote Estelle DeHaven Johnson asking her to acknowledge an advance payment for expenses she would incur in "delivering the artifacts to Seattle." She was asked to sign the letter, confirming that any actions she took were of her "own free will and not at the insistence of, or in conspiracy with," Johnson's company.

Less than three weeks later, Estelle DeHaven Johnson, several relatives and friends parked a van with Washington license plates outside the Whale House. They were about to load the wall screen and house posts into the truck when someone set off the village fire alarm. Within minutes the group was surrounded by angry citizens, who forced them to leave empty-handed.

"Johnson's not going to
have any trouble selling it."

-- New York collector

Eventually the federal court dismissed Estelle DeHaven Johnson's lawsuit. The Johnsons began exploring other avenues, including the possibility of hiring armed guards to protect another attempt by Estelle DeHaven Johnson to remove the artifacts. Johnson contacted the office of then-Gov. Jay Hammond asking him to intervene but made no headway.

According to a 1984 article, a death-bed wish of Mildred Sparks, the third elderly woman, proved to be the stimulus for the next act in the Klukwan drama. Sparks reportedly told her family in the Spring of 1984 that her last desire was to soothe the Whale House artifacts removed from Klukwan. They were hers, she said, and she knew once she died, it would be difficult ever to get them out.

Sparks' grandson, Bill Thomas, called Johnson who signed an agreement May 1, 1984 to take the artifacts on consignment.

He would get a 10 percent commission plus all his legal and other expenses. Estelle DeHaven Johnson agreed to accept \$50,000. Martha Willard, the lone holdout, was to receive nothing. Johnson said in 1984 that he eventually had determined her ownership claim was invalid.

Edmund Carpenter, the New York collector who helped arrange the ill-fated \$2 million purchase in 1984, said he recently received a letter from Johnson indicating that the pieces soon could be available again for purchase.

"Johnson's not going to have any trouble selling it," said Carpenter. "The Seattle Art Museum has long been interested. There are other institutions in this country that would grab it...in Detroit, Cleveland, Dallas...There are buyers in Japan and Germany."

Pam McClusky, associate curator at the Seattle Art Museum, said she didn't know of any offer by Johnson to sell the pieces to the museum. Many museums would want them, McClusky said, but remaining uncertainty about ownership should be clearly resolved before the pieces are sold.

Book Review

Captured Heritage tells of theft of Native artifacts

Captured Heritage: The scramble for Northwest Coast Artifacts by Douglas Cole, University of Washington Press, Seattle. 1985 \$17.50

by Wally Olson
For the Tundra Times

In December 1930, Franz Boas returned to Fort Rupert, British Columbia. At a dinner, the host chief explained to him: "This bowl in the shape of a bear is for you, and you, and so on; for each group a bowl." The speech was the same one he had heard often before. "But the howls are no longer there. They are in the museums in New York and Berlin." (p.xiii)

Have you ever wondered how those massive collections of Alaskan artifacts ended up in museums around the world? Well, this book tells part of the story. It is the story of the taking of Northwest Coast artifacts by the collectors who plied the area in the late 1800's and early 1900's. It is also the story of how these things were sold, stolen, and traded to far away places.

The early collectors were seeking samples of Native art and culture for their ethnological and anthropological exhibits. Some collected anything that was available without ever recording the cultural context. Others, such as Boas and Emmons tried to understand the ceremonies, rituals and legends which gave a greater meaning to each object. In more recent times, Northwest Coast art has been

sought for its intrinsic artistic value. The prices have skyrocketed also. Collections which were purchased for one or two thousand dollars, might now sell for more than a million.

The book is exceptionally well documented. Anyone interested in learning more about the transactions can find references to the many letters and magazine articles of the time.

There are 310 pages of text and 50 pages of footnotes. Cole traces the "scramble for Northwest Coast artifacts" through history. He not

but they know what they are doing.

Then there were those who knowingly plundered graves, villages homes, taking whatever they could carry. They, and the museums who supported their stealing had no excuse for what they did. By reading **Captured Heritage** one can learn who stole what, and where those items are today.

All of this brings up an important issue. While visiting museums and universities in Europe last year, I learned that there was a movement to have museums return

these treasures. Of course the many house posts and large canoes could not be shipped easily. But the museums could send slides of these items.

The Smithsonian Institute did something like this when it sent part of Edward Nelson's collection to Alaska under the title of **Inua**. If they can do it, there is no reason why other museums cannot be persuaded to do likewise. There is no way that large groups of Alaskans can travel to New York, Chicago, Philadelphia, Berlin, Bremen and Madrid. On the other hand, exhibits from these places can be sent to Alaskan museums.

If I recall correctly, the Smithsonian's traveling exhibit was prompted by our legislative delegation. If federal money is flowing to these museums which now hold Alaskan collections, perhaps they too might be persuaded to let Native Alaskans see what was taken in the past—especially if they know that what they have was actually stolen from graves and village sites.

People interested in Alaskan Native history, and Southeastern Alaskan culture will find **Captured Heritage** a well-written, readable, scholarly study of the history of collections on the Northwest Coast. Hopefully, it may prompt some action that will allow the descendants of Native artists, an opportunity to at least see what had been their heritage.

"Have you ever wondered how those massive collections of Alaskan artifacts end up in museums around the world?"

only tells how many things were obtained, he follows them to their current resting places in museums around the world.

There is not much that can be said today about those who openly bought and sold these precious items. Perhaps the Native who sold them never fully realized that they were losing invaluable treasures that could never be replaced. Maybe they were convinced that museums would preserve them for future generations. Today, however, there are still those Natives who sell their heirlooms,

their collections to the people from whom they had been taken. I doubt if any museums will even consider their demands I suggested another approach which may be more realistic; maybe those museums may be willing to lend parts of their collections to museums where the people may at least see something of their heritage.

For example, considering the Northwest coast and Southeastern Alaska, some exhibits could be sent to the museums at Juneau, Sitka and Ketchikan so that the Tlingit-Haida people might see

3-11-86

Anthropologist urges action on unauthorized collecting of artifacts

The Associated Press

FAIRBANKS — An Anchorage anthropology professor said last week something must be done about what he called the massive and growing problem of unauthorized collecting of valuable relics and artifacts in Alaska.

"It involves truly impressive amounts of money, income for depressed areas that sometimes have little else going for them, issues involving the rights and responsibilities of contemporary Alaska Natives, and many another can of worms," William Workman of the University of Alaska-Anchorage told his colleagues Friday at the 13th annual conference of the Alaska Anthropological Association.

He called for stronger legislation and an extensive public-education campaign to make artifact collecting by both the average person and "affluent white art collectors" socially unacceptable behavior.

Academics from across Canada and the United States gathered at the Travelers Inn in downtown Fairbanks for the conference. Papers were to be

It involves truly impressive amounts of money, income for depressed areas that sometimes have little else going for them.

— Professor William Workman

presented on Russian-America history, Alaska archaeological discoveries, subsistence, cross-cultural education, Native languages, Alaska art and history and other topics.

"The history of Alaska does not begin with 1867, as it does as far as Europeans are concerned," said Lydia Black, professor of anthropology at the University of Alaska-Fairbanks.

"As far as the Native population is concerned, it begins 10,000 years ago," she said. "Alaska was also part of the Russian empire for 100 years, which left an impression on Alaska."

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 7, 1987

STEVE COWPER, 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

P.O. BOX K-STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

The Honorable John Sund
Chair
Judiciary Committee
P.O. Box V
Juneau, AK 99811

Re: CSHB 153 (State Affairs) (preservation
of cultural and historic property)

Dear Representative Sund:

The testimony on CSHB 153 on April 3rd raised some significant questions. On behalf of the interagency working group which put together the original ideas behind the bill, I would like to offer some comments.

One speaker from Sitka read to the committee a letter from Mark Jacobs, Jr., criticizing the bill's first two sections for infringing on Native law. I believe Mr. Jacobs misread the way the bill would actually work. The bill would merely allow state courts to enforce existing property trusts which were created through traditional Native ways. The state court would be enforcing the Native customary law, not substituting its own judgment as to what disposition should be made of particular property. These enforcement powers would be called upon only when the Native community itself does not resolve a dispute internally. By deferring to property arrangements rooted in Native custom, the bill would recognize that custom as a valid source of rules of conduct; the state would not in any way be infringing upon or changing Native traditional law. Mr. Jacobs also protested what he thought was an assumption in the bill that Native cultural property was held communally. In fact, the bill does not make such an assumption. If a person can show the court that communal ownership was intended and a trust was created, the court will enforce that view; if another person can prove to the court that ownership is not communal under the Native tradition, the court will find that no trust exists and will refuse to interfere.

The Honorable John Sund

April 7, 1987
Page 2

Whatever the local Native customary rules are, as applied to that property, will control in state court.

Likewise, Mrs. Melba Wallace's concerns - that the bill would usurp Native rights to make their own laws - are unfounded. The bill would not allow the state or a state judge to substitute his judgment for the intentions of the original owners of the property. It would merely allow the courts to enforce those intentions if they constituted a trust.

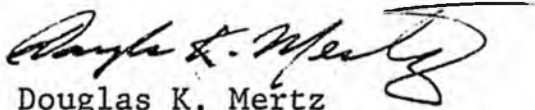
Finally, a question was raised about the state's jurisdiction in matters involving Natives. Our analysis is quite simple: with few exceptions, the state has jurisdiction to apply its laws throughout the state, including over citizens who are Natives. In those areas which may constitute "Indian country" such as reservations, state judicial jurisdiction over matters arising in those areas was confirmed by the federal law known as "P.L. 280" (28 U.S.C. §1360). Thus the state has clear jurisdiction.

I hope this clarifies these points. Let me know if there is any more information I can provide.

Sincerely yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By:


Douglas K. Mertz
Assistant Attorney General

DKM/dlm

LAW OFFICES OF
ALASKA LEGAL SERVICES CORPORATION

POST OFFICE BOX 248
BETHEL, ALASKA 99559
TELEPHONE 543-2238

April 24, 1987

House Judiciary Committee
P.O. Box V
State Capitol
Juneau, Alaska 99811

Re: H.B. 153, An Act relating to
preservation of cultural and
historic property.

Dear Madam/Sir,

I would like to begin with my enthusiastic support for the goals this legislation seeks to achieve. During the course of the past year I have had occasion to work for the preservation and protection of some cultural and historic resources. Unfortunately it's been my experience that the Alaska Historic Preservation Act (AHPA), A.S. sections 41.35.010 et seq., as it is currently written does not sufficiently protect such resources. The amendments to the AHPA proposed in H.B. 153 remedy some of the problems with the Act. The following suggested amendments address some of the other problems with the Act.

Primarily, my concern is the lack of protection for historic and cultural resources that occurs when the State of Alaska undertakes or licenses actions on state controlled or administered land. A.S. sections 41.35.070(b), (c) and (d) are the sections of the AHPA that deal with this issue. Those sections 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 archaeological values (emphasis added).

(c) If the department determines that historic, prehistoric or archaeological 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 improvements. 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.

The above quoted sections of the AHPA mandate some protection for historical and cultural resources. Protection is mandated only after such site has been identified, and after a determination by the Department of Natural Resources that such identified sites will be adversely affected by the state undertaking. Unfortunately, preconstruction identification of historic and cultural resources within the environment to be affected by a state undertaking seems to be discretionary ("the department may survey the affected area"). Thus preconstruction identification of cultural and historic resources is unlikely to occur in many instances, leaving such sites vulnerable to damage.

The protection provided by the AHPA to an historic or cultural resource not identified before a state undertaking begins is minimal. If the resource goes unidentified entirely, and it lies in the path of construction, the resource will be destroyed. If the resource is identified during construction, the protection offered is minimal. When a resource is discovered after construction begins, the Department of Natural Resources must determine that the resource is "exceptional" and it is "feasible" to collect and preserve the data. Only then will the department be

allowed to collect and preserve the data, A.S. section 41.35.070(d).

Therefore it is necessary to amend A.S. 41.35.070(b) to make preconstruction identification more likely. The state official in charge of an undertaking should be required to call on the Department of Natural Resources for identification of any historic or cultural site within the environment to be affected by a proposed undertaking. The department already has a system in place (authorized by A.S. section 41.35.180(2)) whereby previously identified historical and cultural resources are located on maps, and indexed. The department should be required to use whatever other investigatory tools it has at its disposal to discover sites not previously identified. The department should be required to consult with all local governments and cultural groups in the area (including IRA and traditional councils of Native villages and village or regional Native corporations) for help in identifying historical and cultural resources.

A.S. section 41.35.070(b) should be amended to read;

- (b) Before public construction or public improvement of any nature is undertaken by the state or by a government agency of the state or by a private person under contract with or licensed by the state, [THE DEPARTMENT MAY SURVEY THE AFFECTED AREA TO DETERMINE IF THE AREA CONTAINS] the state official in charge of the undertaking shall ask the department, and affected local government and cultural groups, including IRA and traditional councils and village and regional Native corporations, to identify historic, prehistoric or archaeological [VALUES] resources within the environment to be affected by the undertaking.

A.S. Section 41.35.070(c) should also be amended to insure that the expertise of the Historic Sites Advisory Committee (authorized by A.S. section 41.35.110) is brought to bear on the critical determination of whether a proposed state undertaking will adversely affect a historical or cultural resource.

As that section reads now "the department" makes the determination as to whether a resource deserves protection. To avoid any possible conflict of interest within the department, and to avoid any uninformed decision making, the department should be required to consult with, and consider the views of, the Historic Sites Advisory Committee. The National Historic Preservation Act, 16 U.S.C. section 470f, requires the head of any federal agency proposing an undertaking to consult with the Advisory Council on Historic Preservation to determine the effect of such undertaking on

an identified historic or cultural resource. The State of Alaska should employ a similar scheme to insure the protection and preservation of its historic and cultural resources.

A.S. section 41.35.070(c) also needs to be amended to allow the department to recommend that significant resources should be preserved as monuments or historic sites rather than merely salvaged. As the statute reads now, even in the case of an extraordinarily significant site construction may proceed through the site after the " necessary investigation, recording and salvage of the site". The historical and cultural significance of the site may at times only be preserved if the site is left intact and dedicated as a monument or historic site. The department should have the power to protect those sites that merit the status of a monument or historic site. A.S. section 41.35.030 allows the governor upon recommendation to declare sites to be a state monument or historic site. A.S. section 41.35.070(c) should be amended to clarify that sites may be dedicated as monuments or historic sites when a state undertaking is involved. Therefore A.S. section 41.35.070(c) should be amended to read,

(c) The department, in consultation with the State Historic Preservation Officer, shall determine if the proposed state undertaking will adversely effect an identified historic, prehistoric or archaeological site. If the department determines that historic, prehistoric or archeological sites, locations or remains will be adversley affected by the public construction or improvement, the proposed public construction or improvement may not be commenced until the department has perfomed the necessary investigation, recording and salvage of the site, location or remains, or recommends designation of the resource as a state monument or historic site. 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.

A.S. section 41.35.070(d) deals with resources discovered after a state undertaking has commenced. This section should also be amended to require the department to consult with the Historic Sites Advisory Committee when determining if a resource should be preserved and protected. Under this section only "exceptional" resources discovered after state sponsored construction has begun are protected. The section as currently written can be interpreted to allow for the destruction of any resource less than extrordinary.

Even less than exceptional resources should be preserved if it is feasible to do so. Therefore, the statute should be amended to allow for the protection of "significant" rather than only "exceptional" resources.

Section (d) also restricts the department to merely the collection and preservation of the data of a historical or cultural resource discovered after construction has begun. The statute should be amended to make it clear that the department has the power to recommend that the site should be designated a monument or an historic site. It must be noted that under the statute the department may only recommends that a site be designated a monument or historic site if they find it feasible to do so. The governor makes the final decision as to the departments recommendation, (see A.S. section 41.35.030).

Thus A.S. section 41.35.070(d) should be amended to read,

(d) If in the course of performing public construction or improvements, historic, prehistoric or archeological site, locations, remains or objects are discovered, the department shall be notified and its concurrence shall be requested in continuing the construction or improvements. 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] The department in consultation with the Historic Sites Advisory Committee determines that (1) this data exists in the area (2) the data has [EXCEPTIONAL] significant historic, prehistoric or archeological significance, and should be collected and preserved or recommended for designation as a state monument or historic site in the public interest, and (3) it is feasible to collect and preserve the data or designate the resource as a monument or historic site, the department shall perform the necessary work to collect and preserve the data, or recommend that the site be designated as a monument or historic site. This work shall be performed as expeditiously as possible.

A.S. 41.35.070(e) allows to governor to override a decision by the department to protect an historic or cultural resource made under A.S. section 41.35.070(b) and (c). Subsection (e) should be amended to allow the

governor this power when the department acts under the authority of A.S. section 41.35.070(d). This will insure that the governor has the final decision on occasions where a choice must be made between financial resources and historical and cultural resources. Granting this power to the governor should placate concerns some might have that protection of important historic and cultural resources will be unnecessarily costly, or delay important public projects. Therefore A.S. 41.35.070(e) should be amended to read,

(e) If the concurrence of the department required under (b) [AND](c) and (d) 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 the governor considers best in overruling or sustaining the department.

Finally, A.S. section 41.35.030 requires the consent of cultural groups before the issuing of a permit which would affect a resource of sacred, holy or religious significance to that group. This section needs to be amended to require the consent of cultural groups when resources of cultural significance may be affected. Therefore Section 41.25.080 should be amended to read,

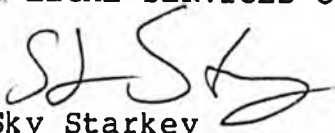
The commission may issue a permit for the investigation, excavation, gathering or removal from the natural state, of any historic, prehistoric or archeological resources of the state. A permit may be used only to persons or organizations qualified to make the investigations, excavations, gatherings or 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 archaeological resource involved is one which is, or is located on a site which is of cultural, sacred, holy or of religious significance to a cultural groups, the consent of the cultural group must be obtained before a permit may be issued under this section.

I thank you for your consideration of these suggested amendments to the Alaska Historic Preservation Act and to H.B. 153. If you need more information, or I can be of some

help please feel free to call me. My number is 543-2237 or
2238.

Sincerely,

ALASKA LEGAL SERVICES CORPORATION


John Sky Starkey

March 9, 1987

The Honorable Ben 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 accuses, "...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. Melba J. Wallace

Lakoon 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. Melba J. Wallace
2458 Timberly Street
Juneau, Alaska 99801

April 3, 1987

I believe that HB 153 should be stopped. Basically, this is as much as I understand about this bill. The Artifacts Bill (153) puts Alaska Native Artifacts under State Law in Trust. This Bill is attached as amendments to the Law concerning Fraud. It puts Alaska Native Artifacts under State Trust---that is, Alaska Native Artifacts that are being Disputed or come into Dispute.

A Trust Relationship has not been sufficiently built up to promote a Bill like this. That is, a Trust Relationship between the State of Alaska and Traditional Councils, I.R.A. Councils and Native peoples concered. There are no Petitions, Resolutions, or letters or Concensus Movements among Alaska Native People to do such a thing.

There are questions that need to be answered. The First Question is: How does this Bill relate to the Commerce Clause of the U.S. Constitution? The Commerce Clause and Supreme Court Cases?? The Commerce Clause is Article I Sec. 8 of the U.S. Constitution where it states that Congress has the power to regulate Commerce with the Indian Tribes. Alaska Native People have been designated as Indian Tribes. The Supreme Court has said that Laws on Indian Affairs and regulation of the ownership and distribution of Property of Indians is with the U.S.

CASES-----Sisseton & Wapeton Bands vs. U.S. (1928)
Stephens vs. Cherokee Nation (1899)
U.S. vs. Wright (1931)
U.S. vs. Kagama (1886)

Second-----How does the State Disclaimer Clause relate to this bill? Sec. 4 of the Statehood Act states---that the State of Alaska FOREVER disclaims to any lands or other property which may be held by Alaska Native People. Then it goes on to state or is held in trust for said Natives.

That is more or less what the disclaimer says.

Third-----In order to get the Approval of I.R.A. Councils in Alaska the I.R.A. Act of 1934 and 1936 must be consulted. The Act itself states that; the Tribe or Tribal Council has the following rights and powers.....to employ Legal Counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of Interior; in order to PREVENT the sale, disposition, lease, or encumbrance of Tribal Lands, or other TRIBAL ASSETS without the consent of the TRIBE. This is more or less what the act states.

These then are only 3 major questions concerning this bill this is the end of page one and on the next page I have a few more questions.

If there is to be---and Artifacts Law in the State
why should it be attached as Amendments to another Law??

IF----a Trust Responsibility is going to be built up
between the State of Alaska, the I.R.A. Councils, the Traditional
Councils, and Alaska NATIVE People as a whole, SHOULDN'T
I.R.A. Councils, Traditional Councils and the Rights of Alaska
Native People be RECOGNIZED ----first?????????

THIS IS THE 120 th year that Alaska Native People have been
a part of the U.S. Still, there is no clear Title to lands
that our people have struggled for. Still, the efforts of
I.R.A. AND Traditional Councils efforts for better communities
have not been recognized..HISTORICALLY....21 IRA Councils worked
with City Councils and built up communities in Alaska. Yet,
I.R.A. Councils and the efforts of Native People go unrecognized.

Finally, there has never been a ^{M O D E R} [REDACTED] effort by the
Native Populations to promote this Bill.

IT SHOULD BE STOPPED.

[REDACTED]

Signed

Al Judson

Al Judson
Gen.Del.

[REDACTED]

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. *add new sentence.*

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. *new sentences.*

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

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).

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:

- [X] replace with CS HB 153 [X] the same title
[] attached amendment(s) [] a new title
[X] 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
[X] zero fiscal note [] same as previous zero fiscal note published
[X] zero with analysis

SIGNING TO PASS:

Handwritten signatures: W.A. Boush, Curt Brummett, Miss Davis, Terry Martin, Mark Wilson

SIGNING OTHER RECOMMENDATIONS:

Blank lines for signing other recommendations

Handwritten signature of Frank Wilson, Chairman's signature

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

No. 1

REQUEST: _____

Bill Version: CSHB 153(SA)
Publish Date: HOUSE 3/16/87-

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						
---------	--	--	--	--	--	--

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.

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/FORT*
Grace Beeg Schaible, Atty. Gen.
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

No. 2
CSHB 153(SA)
3/16/87

For Bill/Resolution No. CSHB 153(SA)

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 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.

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

REQUEST: _____

Bill Version: CSHB 153(SA)
Publish Date: HOUSE 3/16/87

Revision Date: 3/10/87

Title: Preservation of Cultural &

Historic Property

Sponsor: Stussendorf, et al

Requestor: House State Affairs

Agency Affected: Natural Resources
BRU: Park Management

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						
---------	--	--	--	--	--	--

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

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: *Samuel Boston* Date: _____
Agency: Natural Resources

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

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

Bill Version: HB 153

REQUEST: _____

Publish Date: _____

Revision Date: _____

Agency Affected: Department of Law

Title: "An Act relating to preservation of cultural and historic property..."

BRU: Prosecution
Legal Services

Sponsor: Rep. Grussendorf

Components: Prosecution - All

Requestor: House State Affairs

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						
---------	--	--	--	--	--	--

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.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director

Phone: 465-3672

Division: Administrative Services

Date: March 6, 1987

Approved by Commissioner: Richard I. Pegues / FOR

Date: March 6, 1987

Approved by Commissioner: Grace Berg Schaible, Atty. Gen.

Agency: Department of Law

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 Aalska 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

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: Wittsendorf, et al

Components : _____

Requestor: House State Affairs

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						
---------	--	--	--	--	--	--

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

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 *Lennei Boston* Date: _____
Agency: Natural Resources

Distribution (by preparer):

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

HB

160

HB 160
Commission on the Permanent Fund, and Providing for Public
Testimony

Intent

The intent of the bill is to establish a commission for the gathering of public input on the subject of how the Permanent Fund should be used.

Rationale

The public should be consulted for the following reasons:

- 1) The Fund was originally set up by public referendum -- the vote was 2 to 1 in support of the Fund.
- 2) The Fund has evolved into a program where the sole beneficiaries of the Fund are the people of the state.
- 3) There is now considerable debate over how the earnings of the Permanent Fund should be used, and some of the proposals would radically change the way Fund earnings are distributed to the public.

Sectional Analysis

Section 1: FINDINGS. Briefly describes the history of the Fund and the rationale behind the establishment of the Commission on the Future of the Permanent Fund. The duties of the Commission are described.

Section 2: COMMISSION ESTABLISHED. Describes the 9 members of the Commission.

Section 3: DUTIES OF THE COMMISSION.

- Conduct hearings in each judicial district of the state.
- Gather testimony from the public concerning the use that should be made of the income and principal of the Permanent Fund.
- Use the telecommunications network to provide for maximum statewide testimony.
- Report to the governor and legislature by February 1, 1989
 - summarizing the public testimony, and
 - making recommendations about the use of the Fund's income and principal.

Section 4 & 5: Repeal date (2/2/89) and effective date (immediately).



Official Business

Alaska State Legislature

House

P.O. BOX V
State Capitol
Juneau, Alaska 99 11

TO: Al Adams, Chair
House Finance Committee

FROM: Fran Ulmer, Chair
House State Affairs Committee

DATE: April 8, 1987

RE: HB 160 Fiscal Note: Out-of-State Travel

HB 160 was passed out of committee on April 8, 1987, with the recommendation that out-of-state travel be eliminated from the fiscal note. It was the Committee's feeling that expertise regarding the investment policy of the principal and use of the earnings of the Permanent Fund already existed in Alaska, thus outside travel to obtain additional information was unnecessary.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST _____

Bill Version: HB 160
Publish Date: _____

Revision Date: _____
Title: An Act Establishing the Commission
on the Future of the Permanent Fund
Sponsor: Reps. Boucher and Davidson
Requestor: Rep. Boucher

Agency Affected: Revenue
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES	-	95.6	47.8	-	-	-
TRAVEL	-	61.9	32.5	-	-	-
CONTRACTUAL	-	63.3	41.7	-	-	-
SUPPLIES	-	1.0	.5	-	-	-
EQUIPMENT	-	3.5	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	225.4	122.5	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	225.4	122.5	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	225.4	122.5	-	-	-

POSITIONS:

FULL-TIME	-	2	2	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: Attach a separate page if necessary

See attachment.

Prepared By: James B. Rhode Phone: 465-2300
Division: Commissioner's Office Date: April 2, 1987
Approved by Commissioner: Hugh Malone Date: April 2, 1987
Agency: Department of Revenue

Distribution (by Agency preparing fiscal note):

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

Continuation of Fiscal Note/Bill Analysis

House Bill 160

Future of Permanent Fund Commission

FY 88 - (12 months)

1. Positions

1 PX Permanent full-time Executive Secretary II, Range 14A, including salary and benefits at \$3,100.77/month for 12 months	37.2
1 PX Permanent full-time Special Assistant I, Range 21A, including salary and benefits at \$4,871.95/month for 12 months	58.4
TOTAL PERSONAL SERVICES	95.6

2. Travel

In-state travel	45.7
Out-of-state travel (This assumes that half the Commission members and staff will choose to meet with the managers of similar funds, e.g. University of California Endowment, the Rockefeller Foundation and the Harvard Endowment.)	16.5
TOTAL TRAVEL	61.9

3. Contractual Services

Printing	10.0
Teleconferencing	50.0
Transcription of hearing	1.9
Advertising	1.4
Space (Utilize DOR space, conference room)	0.0
TOTAL CONTRACTUAL SERVICES	63.3

4. Supplies 1.0

5. Equipment

1 Wang V250, to utilize DOR VS 90 in Anchorage for Word Processing, with necessary software	<u>3.5</u>
--	------------

TOTAL FY88 225.4

FY 89

1. Positions

Same as FY 88, but for six months only. 47.8

2. Travel

In-state - half the meetings. 22.9

Out-of-state - New York/Boston 9.6

TOTAL TRAVEL 32.5

3. Contractual Services

Printing (includes final report) 15.0

Telecommunications (1/2) 25.0

Transcription of hearings (1/2) 1.0

Advertising (1/2) .7

Space 0.0

TOTAL CONTRACTUAL SERVICES 41.7

4. Supplies

.5

5. Equipment

0.0

TOTAL FY89 122.5

STATE OF ALASKA THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H. JUD.	5-14-87	1:30 P.M.
H. JUD.	4-28-87	1:30 P.M.

HOUSE COMMITTEE REPORT

(7)

Date referred: 4/10/87

FURTHER REFERRALS: Finance

DATE: 5-14-87

The Judiciary Committee has considered HB 160

"An Act establishing the Commission on the Future of the Permanent fund; providing for public testimony on the use that should be made of the income and principal of the permanent fund; and providing for an effective date."

RECOMMENDS:

- replace with CS HB 160 (Jed) 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:

SIGNING OTHER RECOMMENDATIONS:

Annexa M. Palmer

Public testimony

Committee

See Govt No Rec

Public Hearing NO REC

[Signature]
Chairman's signature

Original sponsors: Boucher, Davidson
and Koponen

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 160 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing the Commission on the Future of
7 the Permanent Fund; providing for public testimony on
8 the investment policy for the principal and the use
9 that should be made of the income of the permanent
10 fund; and providing for an effective date."

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

12 * Section 1. FINDINGS. The legislature finds that it is in the best
13 interest of the state for a commission to be established to gather public
14 testimony concerning the investment policy for the principal and the use
15 that should be made of the income from the permanent fund. The commission
16 shall also report its findings and make recommendations to the governor and
17 the legislature on the investment policy for the principal and the use that
18 should be made of the income of the permanent fund.

19 * Sec. 2. COMMISSION ESTABLISHED. (a) There is established in the
20 Department of Revenue the Commission on the Future of the Permanent Fund
21 consisting of the chairman of the board of directors of the Alaska Perma-
22 nent Fund Corporation, the commissioner of revenue, two members of the
23 Senate appointed by the president of the Senate, two members of the House
24 of Representatives appointed by the speaker of the House, and five ap-
25 pointees of the governor as follows:

26 (1) one former elected state official who has been involved with
27 the permanent fund;

28 (2) one executive from an oil company doing business in the
29 state;

1 (3) one person representing Native interests;

2 (4) one person from the private sector involved in business or
3 finance; and

4 (5) one person representing the public.

5 (b) The commission shall elect a chairman from among its members.

6 (c) Members of the commission serve without compensation but members
7 appointed by the governor are entitled to per diem and travel expenses as
8 authorized by law for boards and commissions under AS 33.10.180 and legis-
9 lator members are entitled to per diem and travel expenses under AS 24.-
10 10.165.

11 * Sec. 3. DUTIES OF THE COMMISSION. (a) The Commission on the Future
12 of the Permanent Fund shall conduct hearings in each judicial district of
13 the state to gather testimony from the public concerning the investment
14 policy for the principal and the use that should be made of the income of
15 the permanent fund. The commission shall use the telecommunication network
16 to provide the opportunity for remote statewide public testimony.

17 (b) By February 1, 1988, the commission shall submit a report to the
18 governor and the legislature summarizing the public testimony and contain-
19 ing its recommendations about the investment policy for the principal and
20 the use that should be made of the income of the permanent fund. The
21 commission may also comment on changes in the management of the fund that
22 may be needed as a result of its recommendations.

23 * Sec. 4. This Act is repealed February 2, 1988.

24 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

WORK DRAFT

WORK DRAFT

WORK DRAFT

5-0694B
Cook
4/6/87

Original sponsors: Boucher and Davidson

1 IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 160 (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 establishing the Commission on the Future of
7 the Permanent Fund; providing for public testimony on
8 the investment policy for the principal and the use
9 that should be made of the income of the permanent
10 fund; and providing for an effective date."

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

12 * Section 1. FINDINGS. (a) The legislature finds that the Alaska
13 permanent fund, approved by the people of Alaska through an amendment to
14 the state constitution, has evolved from a mechanism for reserving money
15 from current spending to a trust fund, to benefit the people of the state.

16 (b) The fund has enjoyed public support for the following reasons:

17 (1) the income of the fund has proven reliable due to strict
18 investment guidelines, adherence to the prudent-man rule, and good manage-
19 ment;

20 (2) legislative appropriations to the fund have exceeded the
21 amounts required to be deposited in the fund; and

22 (3) ~~since 1983 all attempts to appropriate income from the fund~~
23 ~~for purposes other than paying dividends have been successfully resisted.~~

24 (c) The Alaska permanent fund has become a major factor in the
25 state's financial planning for the following reasons:

26 (1) the income of the fund is now second to oil revenue and will
27 soon exceed that revenue; and

28 (2) there are now legislative proposals designed to divert fund
29 income from dividend distribution and inflation proofing to other

1 governmental purposes.

2 (d) Therefore, the legislature finds that it is in the best interest
3 of the state for a commission to be established to gather public testimony
4 concerning the investment policy for the principal and the use that should
5 be made of the income from the permanent fund. The commission shall also
6 report its findings and make recommendations to the governor and the
7 legislature on the investment policy for the principal and the use that
8 should be made of the income of the permanent fund.

9 * Sec. 2. COMMISSION ESTABLISHED. (a) There is established in the
10 Department of Revenue the Commission on the Future of the Permanent Fund
11 consisting of the chairman of the board of directors of the Alaska Perma-
12 nent Fund Corporation, the commissioner of revenue, ~~2~~³ members of the Senate
13 appointed by the president of the Senate, ~~2~~³ members of the House of Repre-
14 sentatives appointed by the speaker of the House, and five appointees of
15 the governor as follows:

16 (1) one former elected state official who has been involved with
17 the permanent fund;

18 (2) one executive from an oil company doing business in the
19 state;

20 (3) one person representing Native interests;

21 (4) one person from the private sector involved in business or
22 finance; and

23 (5) one person representing public interest causes.

24 (b) The commission shall elect a chairman from among its members.

25 (c) Members of the commission serve without compensation but members
26 appointed by the governor are entitled to per diem and travel expenses as
27 authorized by law for boards and commissions under AS 39.20.180 and legis-
28 lator members are entitled to per diem and travel expenses under AS 24.-
29 10.105.

1 * Sec. 3. DUTIES OF THE COMMISSION. (a) The Commission on the Future
2 of the Permanent Fund shall conduct hearings in each judicial district of
3 the state to gather testimony from the public concerning the investment
4 policy for the principal and the use that should be made of the income of
5 the permanent fund. The commission shall use the telecommunication network
6 to provide the opportunity for maximum statewide public testimony.

7 (b) By February 1, 1989, the commission shall submit a report to the
8 governor and the legislature summarizing the public testimony and contain-
9 ing its recommendations about the investment policy for the principal and
10 the use that should be made of the income of the permanent fund. The
11 commission may also comment on changes in the management of the fund that
12 may be needed as a result of its recommendations.

13 * Sec. 4. This Act is repealed February 2, 1989.

14 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).
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Original sponsors: Boucher and Davidson

1 IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE
2 CS FOR HOUSE BILL NO. 160 (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 establishing the Commission on the Future of
7 the Permanent Fund; providing for public testimony on
8 the investment policy for the principal and the use
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16 (b) The fund has enjoyed public support for the following reasons:

17 (1) the income of the fund has proven reliable due to strict
18 investment guidelines, adherence to the prudent-^{investor}man rule, and good manage-
19 ment; and

20 (2) legislative appropriations to the fund have exceeded the
21 amounts required to be deposited in the fund.

22 (c) The Alaska permanent fund has become a major factor in the
23 state's financial planning for the following reasons:

24 (1) the income of the fund is now second to oil revenue and will
25 soon exceed that revenue; and

26 (2) there are now legislative proposals designed to divert fund
27 income from dividend distribution and inflation proofing to other govern-
28 mental purposes.

29 (d) Therefore, the legislature finds that it is in the best interest

1 the state to gather testimony from the public concerning the investment
2 policy for the principal and the use that should be made of the income of
3 the permanent fund. The commission shall use the telecommunication network
4 to provide the opportunity for maximum statewide public testimony.

5 (b) By February 1, ¹⁹⁸⁸ ~~1989~~, the commission shall submit a report to the
6 ~~governor and the legislature~~ summarizing the public testimony and contain-
7 ing its recommendations about the investment policy for the principal and
8 the use that should be made of the income of the permanent fund. [The
9 commission may also comment on changes in the management of the fund that
10 may be needed as a result of its recommendations.]

11 * Sec. 4. This Act is repealed February 2, ¹⁹⁸⁸ ~~1989~~.

12 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

Original sponsors: Boucher and Davidson

1 IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE
2 CS FOR HOUSE BILL NO. 160 (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 establishing the Commission on the Future of
7 the Permanent Fund; providing for public testimony on
8 the investment policy for the principal and the use
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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

12 * Section 1. FINDINGS. (a) The legislature finds that the Alaska
13 permanent fund, approved by the people of Alaska through an amendment to
14 the state constitution, has evolved from a mechanism for reserving money
15 from current spending to a trust fund, to benefit the people of the state.

16 (b) The fund has enjoyed public support for the following reasons:

17 (1) the income of the fund has proven reliable due to strict
18 investment guidelines, adherence to the prudent ^{investor} man rule, and good manage-
19 ment; and

20 (2) legislative appropriations to the fund have exceeded the
21 amounts required to be deposited in the fund.

22 (c) The Alaska permanent fund has become a major factor in the
23 state's financial planning for the following reasons:

24 (1) the income of the fund is now second to oil revenue and will
25 soon exceed that revenue; and

26 (2) there are now legislative proposals designed to divert fund
27 income from dividend distribution and inflation proofing to other govern-
28 mental purposes.

29 (d) Therefore, the legislature finds that it is in the best interest

1 of the state for a commission to be established to gather public testimony
2 concerning the investment policy for the principal and the use that should
3 be made of the income from the permanent fund. The commission shall also
4 report its findings and make recommendations to the governor and the
5 legislature on the investment policy for the principal and the use that
6 should be made of the income of the permanent fund.

7 * Sec. 2. COMMISSION ESTABLISHED. (a) There is established in the
8 Department of Revenue the Commission on the Future of the Permanent Fund
9 consisting of the chairman of the board of directors of the Alaska Perma-
10 nent Fund Corporation, the commissioner of revenue, two members of the
11 Senate appointed by the president of the Senate, two members of the House
12 of Representatives appointed by the speaker of the House, and five ap-
13 pointees of the governor as follows:

14 (1) one former elected state official who has been involved with
15 the permanent fund;

16 (2) one executive from an oil company doing business in the
17 state;

18 (3) one person representing Native interests;

19 (4) one person from the private sector involved in business or
20 finance; and

21 (5) one person representing public interest causes.

22 (b) The commission shall elect a chairman from among its members.

23 (c) Members of the commission serve without compensation but members
24 appointed by the governor are entitled to per diem and travel expenses as
25 authorized by law for boards and commissions under AS 39.20.180 and legis-
26 lator members are entitled to per diem and travel expenses under AS 24.-
27 10.105.

28 * Sec. 3. DUTIES OF THE COMMISSION. (a) The Commission on the Future
29 of the Permanent Fund shall conduct hearings in each judicial district of

→ (6) Labor

1 the state to gather testimony from the public concerning the investment
2 policy for the principal and the use that should be made of the income of
3 the permanent fund. The commission shall use the telecommunication network
4 to provide the opportunity for maximum statewide public testimony.

5 (b) By February 1, ¹⁹⁸⁸ ~~1989~~, the commission shall submit a report to the
6 ~~governor and the legislature~~ summarizing the public testimony and contain-
7 ing its recommendations about the investment policy for the principal and
8 the use that should be made of the income of the permanent fund. The
9 commission may also comment on changes in the management of the fund that
10 may be needed as a result of its recommendations.

11 * Sec. 4. This Act is repealed February 2, ~~1989~~ / 1988

12 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

FULL PAGE AD:

THE ANCHORAGE TIMES MAY 13, 1987
ANCHORAGE DAILY NEWS MAY 14, 1987

~~Respect~~ HB 160 Permanent Fund Issue Your State, Your Money, Your Future, Your Voice

Alaska. The future of our state. The quality of life. Choices for the public. All are being decided right now by your elected representatives in Juneau. One of the most hotly debated issues relates to the use of the Permanent Fund, created to be Alaska's savings account. So far this session 42 Bills have been introduced on ways to use the Permanent Fund. I think it is high time we stop introducing bills, and create a forum for the people we represent. That is what HB 160 is all about, taking the necessary time to evaluate alternatives as you, the Alaska people, see them. HB 160 would establish the *Commission on the Future of the Permanent Fund* to provide for statewide public testimony on the proper use of the income from the Permanent Fund.

I consider this the most important piece of legislation I have introduced in my three years as a state representative. Time is running out... that is why I am paying for this ad. If HB 160 passes in the few remaining days of the session, the process could start this summer. Please read the bill, it is presented below.

IN THE HOUSE BY BOUCHER AND DAVIDSON
HOUSE BILL NO. 160
IN THE LEGISLATURE OF
THE STATE OF ALASKA
FIFTEENTH LEGISLATURE - FIRST SESSION
A BILL
For an Act entitled "An Act establishing the Commission on the Future of the Permanent Fund, providing for public testimony on the use that should be made of the income and principal of the permanent fund, and providing for an effective date."
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
"Section 1. FINDINGS (a) The legislature finds that the Alaska permanent fund, created by the people of Alaska through an amendment to the state constitution has evolved from a mechanism for reserving money from current spending to a trust fund, with sole beneficiaries that are the people of the state.
(2) The fund has enjoyed public support for the following reasons:
(1) the income of the fund has proven reliable due to strict investment guidelines, adherence to the prudent rule, and good management.
(2) legislative appropriations to the fund have exceeded the amounts required to be deposited in the fund, and
(3) since 1981, it attempts to appropriate income

from the fund for purposes other than paying dividends have been successfully resisted.
(c) The Alaska permanent fund has become a major factor in the state's financial planning for the following reasons:
(1) the income of the fund is not subject to tax revenue and will soon exceed that revenue; and
(2) there are now legislative proposals designed to divert fund income from dividend distribution and inflation proofing to other governmental purposes.
(d) Therefore, the legislature finds that it is in the best interest of the state for a commission to be established to gather public testimony concerning the use that should be made of the income and principal from the permanent fund. The commission shall also report its findings and make recommendations on the use that should be made of the income and principal of the permanent fund to the governor and the legislature.
"Sec. 2. COMMISSION ESTABLISHED. (a) There is established in the Department of Revenue the Commission on the Future of the Permanent Fund consisting of the chairman of the board of directors of the Alaska Permanent Fund Corporation, the commissioner of revenue, a member of the senate appointed by the president of the senate, a member of the house of representatives appointed by the speaker of the house, and five appointees of the governor as follows:
(1) one former elected state official who has been involved with the permanent fund.
(2) one executive from an oil company doing business in the state,
(3) one person representing Native interests;
(4) one person from the private sector involved in business or finance, and
(5) one person representing public interest causes.
(b) The commission shall elect a chairman from among its members.
(c) Members of the commission serve without compensation but members appointed by the governor are entitled to per diem and travel expenses as authorized by law for boards and commissions under AS 39.20.180.
"Sec. 3. DUTIES OF THE COMMISSION (a) The Commission on the Future of the Permanent Fund shall conduct hearings in each judicial district of the state to gather testimony from the public concerning the use that should be made of the income and principal of the permanent fund. The commission shall use the telecommunication network to provide the opportunity for maximum statewide public testimony.
(b) By February 1, 1989, the commission shall submit a report to the governor and the legislature summarizing the public testimony and containing its recommendations about the use that should be made of the income and principal of the permanent fund. The commission may also comment on the changes in the management and investment of the fund that may be needed as a result of its recommendations.
"Sec. 4. This Act is repealed February 2, 1989.
"Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

from the fund for purposes other than paying dividends have been successfully resisted.
(c) The Alaska permanent fund has become a major factor in the state's financial planning for the following reasons:
(1) the income of the fund is not subject to tax revenue and will soon exceed that revenue; and
(2) there are now legislative proposals designed to divert fund income from dividend distribution and inflation proofing to other governmental purposes.
(d) Therefore, the legislature finds that it is in the best interest of the state for a commission to be established to gather public testimony concerning the use that should be made of the income and principal from the permanent fund. The commission shall also report its findings and make recommendations on the use that should be made of the income and principal of the permanent fund to the governor and the legislature.
"Sec. 2. COMMISSION ESTABLISHED. (a) There is established in the Department of Revenue the Commission on the Future of the Permanent Fund consisting of the chairman of the board of directors of the Alaska Permanent Fund Corporation, the commissioner of revenue, a member of the senate appointed by the president of the senate, a member of the house of representatives appointed by the speaker of the house, and five appointees of the governor as follows:
(1) one former elected state official who has been involved with the permanent fund.
(2) one executive from an oil company doing business in the state,
(3) one person representing Native interests;
(4) one person from the private sector involved in business or finance, and
(5) one person representing public interest causes.
(b) The commission shall elect a chairman from among its members.
(c) Members of the commission serve without compensation but members appointed by the governor are entitled to per diem and travel expenses as authorized by law for boards and commissions under AS 39.20.180.
"Sec. 3. DUTIES OF THE COMMISSION (a) The Commission on the Future of the Permanent Fund shall conduct hearings in each judicial district of the state to gather testimony from the public concerning the use that should be made of the income and principal of the permanent fund. The commission shall use the telecommunication network to provide the opportunity for maximum statewide public testimony.
(b) By February 1, 1989, the commission shall submit a report to the governor and the legislature summarizing the public testimony and containing its recommendations about the use that should be made of the income and principal of the permanent fund. The commission may also comment on the changes in the management and investment of the fund that may be needed as a result of its recommendations.
"Sec. 4. This Act is repealed February 2, 1989.
"Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

Now that you have read HB 160, it is time to express your opinion. To do so call Legislative Affairs at 278-3668 and tell them you want to send a Public Opinion Message to all representatives and senators concerning HB 160. Or contact your representative/s and senator by sending a telegram or letter to P.O. Box V, Juneau, Alaska 99811. The future of your Permanent Fund could depend on it.

Red Boucher

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STATE AFFAIRS COMMITTEE

LETTER OF INTENT

HOUSE BILL 160

APRIL 9, 1987

House Bill 160 would establish a nine-member commission on the future of the Permanent Fund, including one member each from the House and the Senate. The State Affairs Committee Substitute adds one additional member from each body, making an eleven-member commission. It is the intent of the House State Affairs Committee that these four legislative members would be from the majority and minority caucuses of each house.

A handwritten signature in cursive script, appearing to read "Fran Ulmer", written over a horizontal line.

Fran Ulmer, Chair
House State Affairs Committee