

1 HB390
2 15621-3
3 By Representative Turner
4 RFD: Boards and Commissions
5 First Read: 23-MAR-1999

ACT No. 99-595



1
2 Enrolled, An Act,

3 To provide for the Alabama Underwater Cultural
4 Resources Act; to provide that certain underwater artifacts,
5 treasure troves, or other resources designated as cultural
6 resources shall be managed and preserved by the Alabama
7 Historical Commission; to prohibit the taking or damaging of
8 those resources, intentionally and knowingly, without a
9 contract or permit with the commission; to authorize the
10 commission to adopt rules pursuant to a management plan for
11 those resources and to exercise other powers to enforce this
12 act; to prescribe criminal penalties and seizures of certain
13 property for violation of the act; and to construe this act
14 together with Section 41-9-249.1, Code of Alabama 1975.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. This act shall be known as and may be
17 cited as the "Alabama Underwater Cultural Resources Act."

18 Section 2. As used in this act, the following terms
19 shall have the following meanings:

20 (1) COMMISSION. The Alabama Historical Commission,
21 acting as the custodian of cultural resources for the State of
22 Alabama.

23 (2) CONTRACTOR. Any individual, company,
24 corporation, private or public institution determined by the
25 commission to be appropriately qualified, that has applied for

1 and received a permit or contract from the commission to begin
2 exploration or excavation activities in state-owned waters.

3 (3) CULTURAL RESOURCES. All abandoned shipwrecks or
4 remains of those ships and all underwater archaeological
5 treasures, artifacts, treasure troves, or other cultural
6 articles and materials, whether or not associated with any
7 shipwreck, that are contained in or on submerged lands
8 belonging to the State of Alabama and the sea within the
9 jurisdiction of the state, and that have remained unclaimed
10 for more than 50 years, excluding therefrom sunken logs,
11 cants, and timber resources of any other type not associated
12 as part of a shipping vessel, and are eligible for, or listed
13 in, the National Register of Historic Places or the Alabama
14 Register of Landmarks and Heritage.

15 (4) EXCAVATION. The study and intentional removal
16 from submerged land belonging to the state, by accepted
17 scientific methods, of any objects recognized as cultural
18 resources.

19 (5) EXPLORATION. The systematic examination by
20 actual survey of an area of submerged land belonging to the
21 state for the purpose of locating and recognizing cultural
22 resources.

23 (6) SUBMERGED LANDS. Lands under navigable waterways
24 owned or controlled by the State of Alabama.

1 ~~(6)~~ (7) TREASURE TROVE. Any gold bullion, gold
 2 ingots, gold dust, silver bars, and other precious metals or
 3 stones.

4 Section 3. (a) All cultural resources as defined
 5 herein are declared to be state cultural resources subject to
 6 the exclusive dominion and control of the State of Alabama.

7 (b) Cultural resources shall not be taken, damaged,
 8 destroyed, salvaged, excavated, or otherwise altered without a
 9 prior contract or permit obtained through the commission,
 10 which is designated as the official custodian of state
 11 cultural resources within the jurisdiction of the State of
 12 Alabama ; provided, however, that issuance of any contract or
 13 permit shall also be subject to the prior written approval of
 14 the Commissioner of Conservation and Natural Resources .

15 Section 4. (a) The commission , in coordination with
 16 the Department of Conservation and Natural Resources, shall
 17 develop and implement a management plan for cultural
 18 resources. The commission may appoint an advisory committee to
 19 assist the commission in the development and implementation of
 20 a management plan for cultural resources, and to advise the
 21 commission with respect to needed rules or regulations. The
 22 commission , in coordination with the Department of
 23 Conservation and Natural Resources, may promulgate, in
 24 accordance with the state Administrative Procedure Act and in
 25 the best interest of the state, any rule or regulation
 26 necessary to implement this act ; provided however, that the

1 rules and regulations shall be subject to the approval of the
2 director of the commission and the Commissioner of
3 Conservation and Natural Resources. The rules and regulations
4 shall have the force and effect of law.

5 (b) These regulations shall include, but not be
6 limited to, any of the following:

7 (1) The classification of historic maritime and
8 submerged resources.

9 (2) Contracting or permitting for various
10 activities.

11 (3) Establishing a repository or repositories for
12 holding the ships, artifacts, treasure troves, or other
13 cultural artifacts and materials recovered in the areas
14 stipulated in this act.

15 (4) Methods of enforcement of this act and rules and
16 regulations promulgated hereunder.

17 Section 5. (a) Any qualified individual, company,
18 corporation, or public institution desiring to conduct any
19 type of exploration or excavation of cultural resources shall
20 first make application to the commission for a permit or
21 contract to conduct the operation. If the commission finds
22 that the granting of a permit or contract is in the best
23 interest of the state, it may , subject to the other
24 provisions of this act, grant the applicant a permit or
25 contract for a period of time and under those terms and

1 conditions as the commission considers to be in the best
2 interest of the state.

3 (b) Holders of permits or contracts shall be
4 responsible for obtaining permission of any federal agencies
5 having jurisdiction, including, but not limited to, the United
6 States Department of the Navy and the United States Army Corps
7 of Engineers, prior to conducting those activities.

8 (c) Permits or contracts ~~shall~~ may be issued or made
9 for any of the following activities, without limitation:

- 10 (1) Recreational diving permit or contract.
11 (2) Exploration and evaluation permit or contract.
12 (3) Excavation and recovery permit or contract.

13 Section 6. The commission may restrict, when
14 necessary, as determined in writing in the sole discretion of
15 the Commissioner of Conservation and Natural Resources, the
16 activities of commercial fishing vessels in or around known
17 underwater cultural resources when the likelihood of damage to
18 or any alterations of the cultural resources is deemed
19 evident. The restricted area shall encompass only the
20 immediate area of the resource so as not to unduly disrupt
21 fishing operations.

22 Section 7. (a) Any funds received by the commission
23 under the terms and conditions of permits or contracts made
24 pursuant to this act shall be placed in ~~one or more of the~~
25 ~~funds maintained in the State Treasury for the commission or~~
26 ~~in the trust fund maintained by the Retirement Systems of~~

1 ~~Alabama for the commission, in any ratio of distribution~~
 2 ~~determined by the commission, for use by the commission for~~
 3 ~~carrying out its duties in the management, preservation, and~~
 4 ~~protection of the state's general cultural resources. funds~~
 5 ~~maintained in the State Treasury.~~

6 (b) The commission shall, pursuant to its rulemaking
 7 power, provide a procedure for the sale at public auction of
 8 any articles seized pursuant to this act, with the proceeds
 9 going to the ~~fund or funds, as determined by the commission.~~
 10 ~~Alabama Cultural Resource Trust Fund~~ the State General Fund to
 11 be appropriated by the Legislature.

12 Section 8. (a) A person commits the crime of theft
 13 or disturbance of a cultural resource protected by the
 14 commission if the person does either of the following:

15 (1) Intentionally and knowingly removes, alters,
 16 disturbs, or destroys any cultural resource without the prior
 17 written authorization of the commission by permit or contract.

18 (2) Knowingly buys, receives, conceals, aids in the
 19 concealment of, or possesses any illegally obtained cultural
 20 resources as defined in subsection (a).

21 (b) Intentional and knowing theft or disturbance of
 22 a cultural resource having a value of less than one thousand
 23 dollars (\$1,000) shall constitute a Class A misdemeanor and be
 24 punishable, upon conviction, as provided by law.

25 (c) Intentional and knowing theft or disturbance of
 26 a cultural resource with a value of one thousand dollars

1 (\$1,000) or more shall constitute a Class C felony and shall
2 be punishable, upon conviction, as provided by law.

3 Section 9. In all cases of arrest and conviction
4 under Section 8, all boats, instruments, and other equipment
5 used directly in connection with the offenses are declared to
6 be contraband and shall be seized and brought before the court
7 having jurisdiction of the offense for proper disposal.

8 Section 10. All law enforcement agencies and
9 officers, state and local, shall assist the commission in the
10 enforcement of this act.

11 Section 11. (a) Notwithstanding any other provisions
12 of this act to the contrary, no contract with or permit from
13 or fee paid to the commission shall be required for activities
14 performed pursuant to United States Army Corps of Engineers'
15 permits, including general permits.

16 (b) Notwithstanding any other provisions of this act
17 to the contrary, any violation of this act caused by
18 activities conducted for purposes not related to the
19 exploration, excavation, or salvaging of cultural resources
20 may be cured and any otherwise applicable crimes, penalties,
21 or seizures will no longer apply if the activities in
22 violation of this act are halted as soon as practicable after
23 notice from the commission and an application for any contract
24 or permit determined to be necessary is submitted to the
25 commission.

1 Section 12. The provisions of this act are
2 severable. If any part of this act is declared invalid or
3 unconstitutional, that declaration shall not affect the part
4 which remains.

5 Section 13. This act shall be construed in pari
6 materia with Section 41-9-249.1, Code of Alabama 1975.

7 Section 14. This act shall become effective on the
8 first day of the third month following its passage and
9 approval by the Governor, or its otherwise becoming law.

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in and was passed by the House 11-MAY-1999, as amended.

Greg Pappas
Clerk

Senate

09-JUN-1999

Amended and Passed

House

09-JUN-1999

Concurred in Senate Amendment

APPROVED 6/19 1999
TIME 9:00 AM

GOVERNOR

Alabama Secretary of State

Act Num....: 1999-595
Bill Num...: H-390