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

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

(2) CONTRACTOR. Any individual, company, corporation, private or public institution determined by the commission to be appropriately qualified, that has applied for
and received a permit or contract from the commission to begin
exploration or excavation activities in state-owned waters.

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

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

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

(6) SUBMERGED LANDS. Lands under navigable waterways
owned or controlled by the State of Alabama.
(7) TREASURE TROVE. Any gold bullion, gold ingots, gold dust, silver bars, and other precious metals or stones.

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

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

Section 4. (a) The commission, in coordination with the Department of Conservation and Natural Resources, shall develop and implement a management plan for cultural resources. The commission may appoint an advisory committee to assist the commission in the development and implementation of a management plan for cultural resources, and to advise the commission with respect to needed rules or regulations. The commission, in coordination with the Department of Conservation and Natural Resources, may promulgate, in accordance with the state Administrative Procedure Act and in the best interest of the state, any rule or regulation necessary to implement this act; provided however, that the
rules and regulations shall be subject to the approval of the
director of the commission and the Commissioner of
Conservation and Natural Resources. The rules and regulations
shall have the force and effect of law.

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

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

(2) Contracting or permitting for various
activities.

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

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

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

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

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

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

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

Section 7. (a) Any funds received by the commission
under the terms and conditions of permits or contracts made
pursuant to this act shall be placed in one or more of the
funds maintained in the State Treasury for the commission or
in the trust fund maintained by the Retirement Systems of
Alabama for the commission, in any ratio of distribution determined by the commission, for use by the commission for carrying out its duties in the management, preservation, and protection of the state's general cultural resources. Funds maintained in the State Treasury.

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

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

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

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

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

(c) Intentional and knowing theft or disturbance of a cultural resource with a value of one thousand dollars
($1,000) or more shall constitute a Class C felony and shall be punishable, upon conviction, as provided by law.

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

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

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

(b) Notwithstanding any other provisions of this act to the contrary, any violation of this act caused by activities conducted for purposes not related to the exploration, excavation, or salvaging of cultural resources may be cured and any otherwise applicable crimes, penalties, or seizures will no longer apply if the activities in violation of this act are halted as soon as practicable after notice from the commission and an application for any contract or permit determined to be necessary is submitted to the commission.
Section 12. The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the part which remains.

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

Section 14. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.
HB390

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

GOVERNOR

Alabama Secretary of State
Act Num....: 1999-595
Bill Num....: H-390
Recvd 06/19/99 10:16amHMB