

SECOND REGULAR SESSION

HOUSE BILL NO. 1457

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES FRASER (Sponsor) AND SUTHERLAND (Co-sponsor).

Read 1st time January 19, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

3685L.01I

AN ACT

To repeal section 253.420, RSMo, and to enact in lieu thereof two new sections relating to shipwreck site protection, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 253.420, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 253.420 and 253.421, to read as follows:

253.420. 1. **As used in sections 253.420 and 253.421, the following words and phrases mean:**

(1) **"Department", the department of natural resources, state historic preservation office;**

(2) **"Embedded", firmly affixed in lands such that the use of excavation tools is required in order to gain access to historic shipwreck materials;**

(3) **"Historic shipwreck", a vessel or wreck, its cargo, and other contents, reasonably believed to have wrecked or been abandoned at least fifty years prior to any permit application;**

(4) **"Historic shipwreck materials", artifacts and remains of historic shipwreck sites which are over fifty years in age, including but not limited to a ship's structure and rigging, machinery, hardware, tools, utensils, cargo, personal items of crew passengers, and monetary or treasure trove;**

(5) **"Lands beneath navigable waters":**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 (a) All lands within the boundaries of this state which are covered by nontidal
16 waters that are now navigable, or were navigable under the laws of the United States at the
17 time this state became a member of the Union or acquired sovereignty over such lands and
18 waters thereafter, up to the ordinary high water mark as heretofore or hereafter modified
19 by accretion, erosion, river channel shifts, and reliction;

20 (b) All filled in, made, or reclaimed lands which formerly were lands beneath
21 navigable waters;

22 (6) "National Register", the National Register of Historic Places maintained by the
23 Secretary of the Interior under 16 U.S.C. Section 470a;

24 (7) "Professional archaeologist", an individual who has a graduate degree in
25 archaeology, anthropology, or closely related field, at least one year of supervised field and
26 analytic experience, and at least four years of full-time professional supervisory experience
27 in archaeological research or field work;

28 (8) "Salvage", recovering historic shipwreck materials;

29 (9) "Visitation", the act of visiting the location of a shipwreck for the purposes of
30 viewing and taking of photographs without disturbance to the site or its environment.

31 2. Pursuant to the Abandoned Shipwreck Act of 1987, 43 U.S.C. Sections 2101-
32 2106, all historic shipwreck materials and such objects having intrinsic or historical and
33 archaeological value which have been abandoned on lands beneath navigable waters shall
34 belong to the state with jurisdiction thereto vested in the department for the purposes of
35 administration and protection. The department shall have the authority to promulgate
36 rules and regulations for the acceptable visitation, study, and salvage of such historic
37 shipwreck materials.

38 3. After August 28, 1991, no person, corporation, partnership, proprietorship or
39 organization shall initiate salvage operations, excavation or similar ground disturbing activities
40 of any [submerged or embedded abandoned] **historic shipwreck materials** in this state which
41 meets the national register of historic places criteria without obtaining [a] **the required** permit
42 from the department [of natural resources] as provided in this section. [As used in this section,
43 the term "embedded" means firmly affixed in lands such that the use of excavation tools is
44 required in order to gain access to any part of the shipwreck or its cargo.

45 2. The department of natural resources shall not issue a permit under this section unless
46 the applicant submits a detailed plan of the activities regulated by this section to be made by the
47 applicant and such plan is approved by the department. The department is authorized to
48 promulgate appropriate regulations for the administration of this section. All recovery and
49 investigation plans shall meet the current professional standards for such activities, which
50 minimize the risk of loss or damage to the shipwreck or its cargo. An applicant shall be a

51 professional archaeologist, as defined in section 194.400, RSMo, or shall hire a professional
52 archaeologist as a staff member or consultant to the activities regulated by this section. Upon
53 approval of a permit application] **4. The state shall require reasonably positive identification**
54 **of each specific historic shipwreck location for a salvage permit. The department shall not**
55 **issue a permit under this section unless the applicant submits a detailed excavation,**
56 **conservation, and preservation plan of the activities regulated by this section to be made**
57 **by the applicant and a detailed agreement between the property owner and the applicant**
58 **describing the parties' liabilities under sections 537.348 and 537.600, RSMo, and such plan**
59 **and agreement are approved by the department. The department is authorized to**
60 **promulgate appropriate regulations for the administration of this section. All excavation,**
61 **conservation, and preservation plans shall meet the current professional standards for such**
62 **activities, which minimize the risk of loss or damage to the historic shipwreck or its historic**
63 **shipwreck materials. An applicant shall be a professional archaeologist, as defined in this**
64 **section, or shall hire a professional archaeologist as a staff member or consultant to the**
65 **activities regulated by this section. The professional archaeologist shall direct, on site, all**
66 **aspects of the proposed excavations. The salvage permit shall not grant access to private**
67 **or public property. The permit holder shall be responsible for obtaining permission from**
68 **the owner of such property for proper access.**

69 **5. The applicant may apply for a salvage permit for historic shipwrecks that have**
70 **been previously and positively identified and located by the state site files. Salvage permits**
71 **shall not be available for historic shipwrecks located in state parks or historic sites.**

72 **6. At the time of application for a salvage permit, the applicant shall pay [a permit fee**
73 **of one] an amount to cover the costs incurred by the department of natural resources but**
74 **not to exceed fifteen** hundred dollars to the director of the department [of revenue], who shall
75 deposit all funds received pursuant to this section in the state treasury to the credit of the [general
76 revenue] **historic preservation revolving** fund. The department [of natural resources] shall
77 [approve or deny] **comment on** any application for a permit under this section within [thirty]
78 **sixty** days of **receipt of** application. **The applicant shall have prepared an excavation,**
79 **preservation, and conservation plan available at the time of application for a salvage**
80 **permit.**

81 **7. Upon completion of the primary tasks in the excavation, conservation, and**
82 **preservation plans, property interests in the shipwreck materials shall transfer to the**
83 **permit holder. A permit holder, whether a person, corporation, partnership,**
84 **proprietorship, or organization, who does not fulfill the primary tasks in the excavation,**
85 **conservation, and preservation plans shall forfeit all recovered historic shipwreck**
86 **materials and all generated data and related information to the state.**

87 **8. Professional archaeologists and accredited museums with established work**
88 **experience with historic shipwreck materials, shall apply for a research permit for the**
89 **purposes of performing any activity associated with any survey or research project, or**
90 **student training field school. The department shall not issue a permit under this section**
91 **unless the applicant submits a detailed excavation, conservation, and preservation plan of**
92 **the activities regulated by this section to be made by the applicant and such plan is**
93 **approved by the department. All excavation, conservation, and preservation plans shall**
94 **meet the current professional standards for such activities, which minimize the risk of loss**
95 **or damage to the historic shipwreck and historic shipwreck materials. The applicant shall**
96 **pay a nonrefundable one hundred dollar application fee to the director of the department,**
97 **who shall deposit all funds received under this subsection in the state treasury to the credit**
98 **of the historic preservation revolving fund. The department shall make a decision on any**
99 **application for a permit under this section within sixty days of receipt of application.**

100 **9. For historic shipwrecks upon which ongoing professional archaeological research**
101 **is taking place, or upon which professional archaeological research has taken place and**
102 **where additional research can reasonably be expected, an applicant shall not be allowed**
103 **to apply for a salvage permit.**

104 **[3.] 10. In the event there is a sale, at least fifty percent of each class, category or type**
105 **of all artifacts or recovered materials shall be donated or offered for sale at fair market value to**
106 **public or private museums or to other public institutions in this state. Such museums and**
107 **institutions shall have to agree to study, interpret and display such materials or artifacts before**
108 **the transfer of the items shall be approved by the department. To the maximum extent**
109 **possible, such artifacts shall remain in Missouri.**

110 **[4.] 11. Any person, corporation, partnership, proprietorship or organization who violates**
111 **the provisions of this section shall be guilty of a class A misdemeanor. Upon conviction, all**
112 **specimens, objects and materials collected or excavated by such person, together with all**
113 **photographs and records relating to such material, are property of the state. Each day of a**
114 **continuing violation of [subsection 1] the provisions of this section shall constitute a separate**
115 **offense.**

116 **[5. No rule or portion of a rule promulgated under the authority of this section shall**
117 **become effective unless it has been promulgated pursuant to the provisions of section 536.024,**
118 **RSMo.] 12. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,**
119 **that is created under the authority delegated in this section shall become effective only if**
120 **it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if**
121 **applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable**
122 **and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,**

123 to review, to delay the effective date, or to disapprove and annul a rule are subsequently
124 held unconstitutional, then the grant of rulemaking authority and any rule proposed or
125 adopted after August 28, 2006, shall be invalid and void.

126 13. Any person or entity that holds a valid permit issued prior to the effective date
127 of this section shall not be required to obtain a new permit for the specific historic
128 preservation site for which the original permit was issued.

253.421. 1. The state shall not limit visitation to historic shipwrecks unless threats
2 are apparent to any of the following:

- 3 (1) Natural resources or habitats;
- 4 (2) The historic shipwreck site itself; and
- 5 (3) Visitors of the historic shipwreck site.

6 2. Any possible threat to a historic shipwreck site shall be reviewed by the
7 department in consultation with other appropriate state and federal agencies; except that,
8 a landowner shall not be considered a possible threat to a historic shipwreck if the
9 landowner is engaging in the normal or customary use of such property. The state shall
10 make available upon request information on the dangers of diving on submerged historic
11 shipwrecks.

12 3. Any person who knowingly takes historic shipwreck materials from the
13 navigable waters of the state or destroys or vandalizes a shipwreck in violation of sections
14 253.420 to 253.422 is guilty of a class A misdemeanor for a first offense, and is guilty of a
15 class D felony for a second or subsequent offense.

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