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By Senator Biddle

RFD Agriculture, Conservation, and Forestry

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**SYNOPSIS:**This bill would enact a new Alabama Submerged Historic Cultural Resources Act to provide for the preservation of submerged historic cultural resources in the Gulf of Mexico and Mobile Bay. The act would be administered by the Department of Archives and History in consultation with an oversight committee with specified membership. The bill would define submerged historic cultural resources to include certain shipwrecks and other items submerged in the Gulf of Mexico and Mobile Bay. The bill would repeal the existing Alabama Underwater Cultural Resources Act administered by the Alabama Historical Commission.

Amendment 621 of the Constitution of Alabama of 1901 prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3 vote unless: it comes within one of a number of specified exceptions; it is approved by the affected entity; or the Legislature appropriates funds, or provides a local source of revenue, to the entity for the purpose. The purpose or effect of this bill would be to require a new or increased expenditure of local funds within the meaning of Amendment 621. However, the bill does not require approval of a local governmental entity or enactment by a 2/3 vote to become effective because it comes within one of the specified exceptions contained in Amendment 621.

A BILL TO BE ENTITLED AN ACT To provide for the Alabama Submerged Historic Cultural Resources Act; to provide that submerged historic cultural resources located in certain waters shall be managed and preserved by the Department of Archives and History; to create the Submerged Historic Cultural Resources Oversight Committee; to prescribe criminal penalties for violation of the act; to repeal Sections 41-9-291 to 41-9-299.2, inclusive, Code of Alabama 1975; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Amendment 621 of the Constitution of Alabama of 1901.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

- (1) COMMITTEE. The Submerged Historic Cultural Resources Oversight Committee.
- (2) DEPARTMENT. The Department of Archives and History.
- (3) EXCAVATION. The intentional removal of any sand, mud, sediment, debris, or other bottom material for the purpose of uncovering or attempting to remove any submerged historic cultural resource.
- (4) EXPLORATION. The systematic examination by accepted survey methods of an area of submerged land belonging to the state for the purpose of locating and recognizing submerged historic cultural resources.
- (5) SUBMERGED HISTORIC CULTURAL RESOURCES. All abandoned shipwrecks or remains of those ships and contents unclaimed for more than 100 years in the Gulf of Mexico and Mobile Bay which are listed in the National Register of Historic Places.
- (6) REMOVAL or RECOVERY. The taking or salvaging of submerged historic cultural resources from submerged lands.
- (7) SUBMERGED LANDS. Lands under the Gulf of Mexico or Mobile Bay belonging to the State of Alabama and the sea within the jurisdiction of the state.

Section 3. There is created within the Department of Archives and History, the Submerged Historic Cultural Resources Oversight Committee, consisting of three representatives of the Department of Archives and History, appointed by the director; three members of the House of Representatives, appointed by the Speaker of the House of Representatives; three persons representing State of Alabama licensed dive schools, one appointed by the Speaker of the House of Representatives, one appointed by the Lieutenant Governor, and one appointed by the Governor; three members of the

Senate appointed by the Lieutenant Governor; and three persons who are one of the following: A diver, amateur historian, archeologist, or collector, one appointed by the Speaker of the House of Representatives, one appointed by the Lieutenant Governor, and one appointed by the Governor.

Section 4. (a) All submerged historic cultural resources are declared to be subject to the exclusive dominion and control of the State of Alabama. (b) No person may explore, excavate, remove or recover, damage, destroy, or otherwise alter a submerged historic cultural resource without a permit obtained through the department, which is designated as the official custodian of submerged historic cultural resources.

Section 5. (a) The department shall develop and implement a management plan for cultural resources, as approved by the committee. The department, in consultation with the committee, may promulgate, in accordance with the state Administrative Procedure Act and in the best interest of the state, any rule necessary to implement this act. (b) These rules shall include the following: (1) Permitting for the exploration for or excavation or removal of submerged historic cultural resources only. (2) Establishing a repository or repositories for holding the submerged historic cultural resources. (3) Methods of enforcement of this act and rules promulgated under this act. (4) The encouragement of amateur archeology on submerged lands.

Section 6. (a) Any qualified individual, company, corporation, or public institution desiring to conduct any type of exploration, excavation, or removal of submerged historic cultural resources shall first make application to the department for a permit to conduct an operation. The application for a permit must be submitted in person or by registered mail or courier. If the department finds that the granting of a permit is in the best interest of the state, subject to the other provisions of this act, it may grant the applicant a permit for a period of time and under those terms and conditions as the department considers to be in the best interest of the state. If the department does not grant a permit, it must state in writing its reason or reasons for denying a permit. If the department fails to act upon an application for a permit within 60 days, the permit shall be deemed valid for a period of one year. (b) Holders of permits 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 may be issued or made for any of the following activities, without limitation: (1) Exploration and evaluation only for submerged historic cultural resources. (2) Excavation and removal of submerged historic cultural resources. (d) Activities related to the finding or taking of abandoned or lost underwater items that are not classified as submerged historic cultural resources are not subject to the requirements of this act. Those items may be explored for, excavated, and removed without a permit.

Section 7. The department may restrict, when necessary, the activities of commercial fishing vessels in or around known underwater submerged historic cultural resources when the likelihood of damage to or any alterations of the submerged historic cultural resources is deemed evident. The restricted area shall encompass only the immediate area of the submerged historic resource so as not to unduly disrupt fishing operations. Section 8. (a) Any funds received by the department under the terms and conditions of permits made pursuant to this act shall be placed in the State General Fund in the State Treasury. (b) The department, pursuant to its rulemaking power, shall provide a procedure for the sale at public auction of any articles seized pursuant to this act, with the proceeds going to the State General Fund to be appropriated by the Legislature.

Section 9. (a) A person commits the crime of theft or disturbance of a submerged historic cultural resource protected by the department if the person does either of the following: (1) Intentionally and knowingly removes, alters, disturbs, or destroys any submerged historic cultural resource without the prior written authorization of the department by permit. (2) Knowingly buys, receives, conceals, aids in the concealment of, or possesses any illegally obtained submerged historic cultural resource. (b) Intentional and knowing theft or disturbance of a submerged historic 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 submerged historic 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 10. All law enforcement agencies and officers, state and local, shall assist the department in the enforcement of this act.

Section 11. (a) Notwithstanding any other provisions of this act to the contrary, no permit from or fee paid to the department 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 submerged historic cultural resources may be cured and any otherwise applicable crimes and penalties will no longer apply if the activities in violation of this act are halted as soon as practicable after notice from the department.

Section 12. This act shall be construed in pari materia with Section 41-9-249.1, Code of Alabama 1975.

Section 13. Although this bill would have as its purpose or effect the requirement of a new or increased expenditure of local funds, the bill is excluded from further requirements and application under Amendment 621 because the bill defines a new crime or amends the definition of an existing crime.

Section 14. All laws or parts of laws which conflict with this act are repealed. Sections 41-9-291 to 41-9-299.2, inclusive, Code of Alabama 1975, are specifically repealed.

Section 15. 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.

Archives and History Department	Historical Preservation	Shipwrecks
Submerged Historic Cultural Resources	Code Repealed	