

FIRST REGULAR SESSION

HOUSE BILL NO. 549

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES FRASER (Sponsor), OXFORD, DARROUGH, HARRIS (110),
SUTHERLAND AND KRATKY (Co-sponsors).

Read 1st time February 15, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1413L.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Section A. Section 253.420, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 253.420 and 253.421, to read as follows: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"**:

(a) **All lands within the boundaries of this state which are covered by nontidal**

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.

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 maritime archaeologist", an individual who has a graduate degree
25 in archaeology, anthropology, or closely related field with a specialty in underwater,
26 maritime, or nautical archaeology, at least one year of supervised field and analytic
27 experience, and at least four years of full-time professional supervisory experience or
28 equivalent specialized training in maritime or nautical archaeological research,
29 administration, or management;

30 (8) "Salvage", recovering historic shipwreck materials for the purpose of selling
31 any amount of them;

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

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

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

48 2.] 4. The state shall require reasonably positive identification of each specific
49 historic shipwreck for which the applicant wishes to apply for a salvage permit. The
50 applicant shall initially apply for an exploratory permit from the department. The
51 applicant shall pay a nonrefundable fee, in an amount set by the department not to exceed

52 one thousand five hundred dollars, to the director of the department of revenue, who shall
53 deposit all funds received under this subsection in the state treasury to the credit of the
54 general revenue fund. The permit shall allow the applicant to search for and identify the
55 precise location of the individual historic shipwreck. The department shall comment on
56 any application for a permit under this section within thirty days of receipt of application.
57 The successful applicant shall have no more than two years from the date of issue to
58 demonstrate that the specific historic shipwreck has been located. If, after two years, the
59 historic shipwreck has not been located, the permit shall expire. The applicant may
60 reapply for another permit immediately upon expiration of the preceding permit so long
61 as no other party has applied for the same historic shipwreck, or otherwise two years after
62 the expiration of the preceding permit for the same wreck, both with no additional fee.
63 The applicant may not hold more than three exploratory permits during any period of
64 time. No more than one standing permit may be held on any one historic shipwreck at one
65 time. Landowners shall be exempt from the exploratory permit for their own property.

66 5. Professional maritime archaeologists and accredited museums with established
67 work experience with historic shipwreck materials, shall apply for a research permit for
68 the purposes of performing any activity associated with any survey or research project, or
69 student training field school. The department shall not issue a permit under this section
70 unless the applicant submits a detailed excavation, conservation, and preservation plan of
71 the activities regulated by this section to be made by the applicant and such plan is
72 approved by the department. All excavation, conservation, and preservation plans shall
73 meet the current professional standards for such activities, which minimize the risk of loss
74 or damage to the historic shipwreck and historic shipwreck materials. The applicant shall
75 pay a nonrefundable one hundred dollar application fee to the director of the department
76 of revenue, who shall deposit all funds received under this subsection in the state treasury
77 to the credit of the general revenue fund. The department shall make a decision on any
78 application for a permit under this section within sixty days of receipt of application. An
79 exploratory permit shall not grant access to private or public property, and the permit
80 holder shall be responsible for receiving permission from the owner of such property for
81 proper access.

82 6. For historic shipwrecks that have been previously and positively identified and
83 located by the state site files, an exploratory permit shall not be necessary and the
84 applicant may apply for a salvage permit.

85 7. For historic shipwrecks upon which ongoing professional archaeological research
86 is taking place, or upon which professional archaeological research has taken place and
87 where additional research can reasonably be expected, an applicant shall not be allowed

88 **to apply for a salvage permit.**

89 **8. Neither exploratory nor salvage permits shall be available for historic shipwrecks**
90 **located in state parks or historic sites.**

91 **9. Should a historic shipwreck be successfully located and adequately documented**
92 **to the department, the applicant may then apply for a salvage permit.** The department [of
93 natural resources] shall not issue a permit under this section unless the applicant submits a
94 detailed **excavation, conservation, and preservation** plan of the activities regulated by this
95 section to be made by the applicant and such plan is approved by the department. The
96 department is authorized to promulgate appropriate regulations for the administration of this
97 section. All [recovery and investigation] **excavation, conservation, and preservation** plans
98 shall meet the current professional standards for such activities, which minimize the risk of loss
99 or damage to the **historic** shipwreck or its [cargo] **historic shipwreck materials.**

100

101 An applicant shall be a professional **maritime** archaeologist[, as defined in section 194.400,
102 RSMo,] or shall hire a professional **maritime** archaeologist as a staff member or consultant to
103 the activities regulated by this section. **The professional maritime archaeologist shall direct,**
104 **on site, all aspects of the proposed excavations. The salvage permit shall not grant access**
105 **to private or public property, and the permit holder shall be responsible for receiving**
106 **permission from the owner of such property for proper access.**

107 [Upon approval of a permit application] **10. At the time of application for a salvage**
108 **permit,** the applicant shall pay a **nonrefundable** permit fee of [one] **five** hundred dollars to the
109 director of the department of revenue, who shall deposit all funds received pursuant to this
110 section in the state treasury to the credit of the general revenue fund. The department [of natural
111 resources] shall [approve or deny] **comment on** any application for a permit under this section
112 within [thirty] **sixty** days of **receipt of** application. **The applicant shall have prepared an**
113 **excavation, preservation, conservation, and curation plan available at the time of**
114 **application for a salvage permit. The applicant shall present proof acceptable to the**
115 **department that there exists an appropriate financial plan available for the successful**
116 **completion of the project as defined in the scope of work, up to and including the curation**
117 **phase.**

118 [3.] **11.** In the event there is a sale, at least fifty percent of each class, category or type
119 of all artifacts or recovered materials shall be donated or offered for sale at fair market value to
120 public or private museums or to other public institutions in this state. Such museums and
121 institutions shall **have to agree to** study, interpret and display such materials or artifacts **before**
122 **the transfer of the items shall be approved by the department.** To the maximum extent
123 possible, such artifacts shall remain in Missouri.

124 [4.] **12.** Any person, corporation, partnership, proprietorship or organization who violates
125 the provisions of this section shall be guilty of a class A misdemeanor. Upon conviction, all
126 specimens, objects and materials collected or excavated by such person, together with all
127 photographs and records relating to such material, are property of the state. Each day of a
128 continuing violation of [subsection 1] **the provisions** of this section shall constitute a separate
129 offense.

130 [5. No rule or portion of a rule promulgated under the authority of this section shall
131 become effective unless it has been promulgated pursuant to the provisions of section 536.024,
132 RSMo.] **13.** Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,
133 that is created under the authority delegated in this section shall become effective only if
134 it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if
135 applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
136 and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,
137 to review, to delay the effective date, or to disapprove and annul a rule are subsequently
138 held unconstitutional, then the grant of rulemaking authority and any rule proposed or
139 adopted after August 28, 2005, shall be invalid and void.

140 **14.** A permit holder, whether a person, corporation, partnership, proprietorship,
141 or organization, who does not fulfill all tasks in the scope of work shall forfeit all recovered
142 historic shipwreck materials and all generated data and related information to the state.

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. The state
8 shall publish notice of the dangers of diving on submerged historic shipwrecks.

9 **3.** Any person who knowingly takes historic shipwreck materials from the
10 navigable waters of the state or destroys or vandalizes a shipwreck in violation of sections
11 253.420 to 253.422 is guilty of a class A misdemeanor for a first offense, and is guilty of a
12 class D felony for a second or subsequent offense.