



HOUSE BILL 184: Change DCR Process for Unclaimed Property.- AB

2015-2016 General Assembly

Committee:	Senate Judiciary I	Date:	July 23, 2015
Introduced by:	Reps. R. Brown, Cleveland, Floyd, Riddell	Prepared by:	Brad Krehely
Analysis of:	PCS to Third Edition		Committee Counsel
	H184-CSR-N-38		

SUMMARY: *House Bill 184 would permit the Office of Archives and History to use the net proceeds of sales of artifacts for the maintenance or conservation of other artifacts, would clarify the circumstances and procedures under which a public or private museum or archives repository may acquire title to loaned property, and would cause all restrictions on access to public records to expire 100 years after creation of the record, with specified exceptions. The Proposed Committee Substitute (PCS) clarifies that all photographs, video recordings, or other documentary materials of a derelict vessel or shipwreck or its contents in the custody of any agency of North Carolina government or its subdivisions are a public record.*

CURRENT LAW: G.S. 121-7(a) charges the Department of Cultural Resources ("DCR") with maintaining and administering State "historic attractions" under the management of the Office of Archives and History for "the collection, preservation, study and exhibition of authentic artifacts and other historical materials relating to the history and heritage of North Carolina." DCR is also authorized to "sell, trade, or place on permanent loan" any artifact owned by the State that is curated by the Office of Archives and History if not contrary to the terms of the acquisition. The net proceeds of any such sale are deposited to the State treasury to the credit of the Office of Archives and History Artifact Fund, and shall be used only for the purchase of other artifacts.

G.S. 121-7(c) and (d) provides a process by which title to artifacts placed on loan with the Office of Archives and History passes to DCR under specified circumstances, and by which conflicting claims to legal title to artifacts are resolved.

BILL ANALYSIS: **Section 1** of the PCS would amend G.S. 121-7(a) by replacing the term "historic attractions" with "historic sites and museums," and would require proceeds from sales of artifacts to be deposited in the Artifact Fund "to the credit of the museum or archives that had custody of the artifact sold," and would permit the proceeds to be used for expenses associated with the maintenance or conservation of other artifacts, as well as with their purchase. Section 1 would repeal the current provisions governing transfer of title to artifacts to DCR.

Section 2 of the PCS would enact a new Article 5 in Chapter 121 of the General Statutes governing the determination of title to and responsibility for property loaned to museums and archives repositories.

New G.S. 121-51 would define several terms used in new Article 5, including "archives repository"¹ and "museum."²

¹ "A nonprofit organization or a public agency that is open to the public on a regular basis and whose primary functions include selecting, preserving, and making available records of historical or enduring value. As used in this Article, the term 'archives repository' includes libraries." G.S. 121-51(2).

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House Bill 184

Page 2

New G.S. 121-52 would provide a procedure, including detailed notice requirements, by which a museum or archives repository can acquire title to loaned property after the loan period has expired and there has been no contact between lender and the museum or archives repository for at least seven years, or for loans with no expiration date, when there has been no contact with the lender for at least seven years since the loan was made. DCR would be required to determine the validity of any claims to the loaned property. If no valid claim is received within 45 days after the date of the last required publication of newspaper notice, the museum or archives repository would acquire title free and clear from all claims of ownership.

New G.S. 121-53 would provide a right of appeal from a DCR determination that a claim of ownership is not valid under the procedures of the Administrative Procedures Act.

New G.S. 121-54 would place responsibility on the lender to notify the museum or archives repository of the owner's identity and current address. Within 60 days of acquiring ownership of a loaned item, the new owner would be required to notify the museum or archives repository of his or her name and address.

New G.S. 121-55 would permit a museum or archives repository to charge a lender for the expenses of caring for loaned property that is unclaimed after the expiration date of the loan. If the lender is unknown, this section would create a lien against the value of the loaned property for expenses necessary to protect it from decay due to natural causes, theft, or vandalism.

New G.S. 121-56 would entitle a museum or archives repository, after meeting the notice requirements of new G.S. 121-52, to acquire title to property that is reasonably believed to be on loan but the identity of the property's owner is not known and cannot by reasonable means be known, if no person has claimed it within seven years after it came into the possession of the museum or repository archives or its predecessor or assignor.

New G.S. 121-57 would make the provisions of new Article 5 the exclusive means for disposing of property subject to that Article.

Section 3 would add a new G.S. 132-11 to the State's public records laws, providing that all restrictions on access to public records shall expire 100 years after the creation of the record, but would not require or authorize opening of any record:

- sealed by order of any state or federal court except as provided by that court
- the disclosure of which is prohibited by federal law
- containing federal social security numbers
- that is a juvenile, probationer, parolee, post release, or prison inmate record
- containing detailed plans and drawings of public buildings and infrastructure facilities

For purposes of new G.S. 132-11, DCR or such other agency in actual possession of a record would be deemed to be the custodian of that record.

Section 4 clarifies that all photographs, video recordings, or other documentary materials of a derelict vessel or shipwreck or its contents in the custody of any agency of North Carolina government or its

² "A nonprofit organization or a public agency that is open to the public on a regular basis and is operated primarily for the purpose of collecting, cataloging, preserving, or exhibiting property of educational, scientific, historic, cultural, or aesthetic interest. As used in this Article, the term 'museum' includes historical societies and historic sites." G.S. 121-51(4).

House Bill 184

Page 3

subdivisions are a public record. There is no limitation on the use of or no requirement to alter any such photograph, video recordings, or other documentary material; any such provision in any agreement, permit, or license is void and unenforceable.

EFFECTIVE DATE: This act is effective when it becomes law.

Bill Patterson, Counsel to House Judiciary III, contributed substantially to this summary.