



HOUSE BILL 184: Change Department of Cultural Resources' Process for Unclaimed Property

2015-2016 General Assembly

Committee:

Introduced by:

Analysis of: S.L. 2015-218

Date:

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SUMMARY: *S.L. 2015-218 does all of the following: (i) permits the Office of Archives and History within the Department of Cultural Resources to use the net proceeds of sales of artifacts for the maintenance or conservation of other artifacts, (ii) clarifies the circumstances and procedures under which a public or private museum or archives repository may acquire title to loaned property, (iii) causes all restrictions on access to public records to expire 100 years after creation of the record, with specified exceptions, (iv) 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, and (v) provides that a card or certificate for merchandise credit is not abandoned property if the card or certificate meets certain criteria.*

The provision dealing with merchandise credit became effective July 1, 2012, and applies to merchandise credit issued on or after that date. The remainder of this act became effective August 18, 2015.

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 must 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 amends G.S. 121-7(a) by replacing the term "historic attractions" with "historic sites and museums," requires 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 permits the proceeds to be used for expenses associated with the maintenance or conservation of other artifacts, as well as with their purchase. Section 1 repeals the current provisions governing transfer of title to artifacts to DCR.

Section 2 enacts 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.

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

New G.S. 121-52 provides 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 must determine the validity of any claims to the loaned property. If notice requirements are satisfied and no valid claim is received within 45 days after the date of the last required publication of notice, the museum or archives repository acquires title free and clear from all claims of ownership.

New G.S. 121-53 provides 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 places 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 must notify the museum or archives repository of his or her name and address.

New G.S. 121-55 permits 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 creates 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 sets up a procedure for the acquisition of undocumented property. Property in the possession of a museum or archives repository that the museum or archives repository has reason to believe may be on loan and for which the museum or archives repository does not know the owner or have any reasonable means of determining the owner becomes the property of the museum or archives repository as provided in this section. If no person has claimed the property within seven years after the museum or archives repository or a predecessor or assignor of the museum or archives repository took possession of the property, then the museum or archives repository must follow the notification process set out in G.S. 121-52(c).

If the Department receives a claim and determines that the claim is valid and that the claimant is the legal owner of the artifact, the Department must return the artifact to the owner at the owner's expense. Otherwise, after following notification procedures, the museum or archives repository will become the owner of the property, will acquire title to the property and will own the property free and clear from all claims of ownership.

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

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

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).

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).

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- 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 is 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 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.

Section 4.5 provides that a card or certificate for merchandise credit is not abandoned property if the card or certificate meets certain criteria. This section became effective July 1, 2012, and applies to merchandise credits issued on or after July 1, 2012. This section must not be construed to affect the interpretation of any statute that is the subject of pending litigation or future litigation based on merchandise credits issued prior to the effective date of this section.

EFFECTIVE DATE: Except as otherwise provided, this act became effective August 18, 2015.