

HOUSE CS FOR SENATE BILL NO. 305(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 4/30/04

Referred: Rules

Sponsor(s): SENATORS THERRIAULT, Dyson, Ogan, Stedman, Cowdery, Bunde, Wilken, Green, Seekins, Wagoner

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to state ownership of submerged land underlying water that was**
2 **navigable at the time Alaska achieved statehood."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 FINDINGS AND INTENT. (a) The legislature finds that

7 (1) at the time Alaska achieved statehood, the state took title to submerged
8 land underlying navigable waterways within its boundaries;

9 (2) the state acquired title to this submerged land under the equal footing
10 doctrine, which arises under the United States Constitution and requires that new states enter
11 the Union with the same powers and attributes of sovereignty as were held by the original 13
12 colonies;

13 (3) sec. 6(m) of the Alaska Statehood Act (P.L. 85-508, 72 Stat. 339)
14 incorporated 43 U.S.C. 1301 - 1315 (Submerged Lands Act of 1953), and application of this

1 law to the state confirmed passage of title under the equal footing doctrine;

2 (4) states have title to submerged land within their borders because each has
3 an obligation to hold navigable waterways open for the public to use for navigation, fishing,
4 and commerce;

5 (5) in conveying federal land in the state before 1989, the United States
6 Department of the Interior, Bureau of Land Management, applied incorrect standards to
7 determine whether rivers and lakes passing through the land were navigable and sometimes
8 purported to convey to private parties submerged land whose title had been transferred to the
9 state at the time the state achieved statehood;

10 (6) in 1989, the United States Court of Appeals for the Ninth Circuit ruled that
11 the Bureau of Land Management had applied incorrect standards in determining navigability
12 for its land conveyances; however, the Bureau of Land Management has not reconsidered
13 most of its pre-1989 determinations;

14 (7) the Bureau of Land Management may have included state-owned
15 navigable water in certain conveyances to Native corporations established under 43 U.S.C.
16 1601 - 1629e (Alaska Native Claims Settlement Act); state-owned navigable water may have
17 been mistakenly counted against the entitlements of the corporations;

18 (8) Native corporations that have received conveyances of federal land may
19 request that the Bureau of Land Management redetermine whether the water crossing their
20 land was navigable at the time the state achieved statehood and, if found navigable, that the
21 submerged land not be counted against the corporations' entitlements;

22 (9) the state does not concede title to the submerged land that the Bureau of
23 Land Management erroneously conveyed under its pre-1989 standards and continues to assert
24 title to any water that was navigable at the time the state achieved statehood;

25 (10) while the state cannot lose its title by failing to file suit to quiet title, the
26 pre-1989 determinations by the Bureau of Land Management create public confusion about
27 ownership of this land;

28 (11) the state cannot definitively establish its title to submerged land easily but
29 generally must obtain a recordable disclaimer of interest issued by the Bureau of Land
30 Management under 43 C.F.R. 1864 or litigate disputed title and obtain a court judgment,
31 which is time-consuming and expensive; and

1 (12) the public would be served by having the state determine the navigability
 2 of water at the time the state achieved statehood in order to identify submerged land to which
 3 the state asserts title.

4 (b) It is the intent of the legislature that this Act will result in the identification of
 5 submerged land underlying navigable water at the time the state achieved statehood and
 6 public notice of that submerged land to which the state claims title.

7 * **Sec. 2.** AS 38.04 is amended by adding a new section to article 3 to read:

8 **Sec. 38.04.062. Identification of state submerged land.** (a) Except as
 9 provided in (f) of this section, the state owns all submerged land underlying navigable
 10 water to which title passed to the state at the time the state achieved statehood under
 11 the equal footing doctrine or 43 U.S.C. 1301 - 1315 (Submerged Lands Act of 1953).

12 (b) The commissioner shall compile, maintain, and make public a list and map
 13 of all water in the state that the commissioner, the United States Department of the
 14 Interior, Bureau of Land Management, or a state or federal court determines was
 15 navigable water at the time the state achieved statehood. The submerged land
 16 underlying that navigable water shall be included in the inventory of state land
 17 prepared under AS 38.04.060.

18 (c) The commissioner shall also maintain and make public a list of all water in
 19 the state that the commissioner determines, in consultation with the commissioner of
 20 fish and game, was nonnavigable at the time the state achieved statehood.

21 (d) Water not included on the lists described in (b) or (c) of this section is not
 22 considered either navigable or nonnavigable until the commissioner has made a
 23 determination as to its navigability at the time the state achieved statehood. In
 24 addition, the commissioner may make corrections and alterations to the lists described
 25 in (b) and (c) of this section to maintain the accuracy of each list.

26 (e) A determination made by the commissioner under this section

27 (1) does not create an interest in or right of entry onto any real property
 28 that does not otherwise exist under state law;

29 (2) may not be recorded; and

30 (3) does not constitute final agency action.

31 (f) Submerged land that the state conveyed under AS 38.05.820 and 38.05.825

1 is not subject to the state's assertion of ownership under (a) of this section.

2 (g) In this section,

3 (1) "navigable water" means water that, at the time the state achieved
4 statehood, was used, or was susceptible of being used, in its ordinary condition as a
5 highway for commerce over which trade and travel were or could have been
6 conducted in the customary modes of trade and travel on water; the use or potential
7 use does not need to have been without difficulty, extensive, or long and continuous;

8 (2) "nonnavigable water" means surface water that was not navigable
9 water at the time the state achieved statehood.

10 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 NOTICE TO UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU
13 OF LAND MANAGEMENT, AND NATIVE CORPORATIONS. Within 180 days after the
14 effective date of this Act, the commissioner of natural resources shall send a written notice to
15 the Bureau of Land Management and to each regional corporation established under 43
16 U.S.C. 1606 (sec. 7, Alaska Native Claims Settlement Act) and each village corporation
17 established under 43 U.S.C. 1607 (sec. 8, Alaska Native Claims Settlement Act). The
18 purpose of the notice is to advise the recipients that

19 (1) errors in land conveyances to Native corporations under 43 U.S.C. 1601 -
20 1629h (Alaska Native Claims Settlement Act) may have occurred as described in sec. 1(a)(5)
21 of this Act;

22 (2) the state asserts ownership interest in submerged land that may have been
23 erroneously included in a conveyance or patent described in sec. 1(a)(5) of this Act; and

24 (3) an erroneous conveyance or patent described in sec. 1(a)(5) of this Act
25 should be corrected and the affected Native corporation granted eligible substitute land in
26 order to satisfy that corporation's land entitlement under 43 U.S.C. 1601 - 1629h (Alaska
27 Native Claims Settlement Act).