

**MINUTES**  
**SENATE FINANCE COMMITTEE**  
**March 01, 2004**  
**9:05 AM**

**TAPES**

SFC-04 # 24, Side A  
SFC 04 # 24, Side B

**CALL TO ORDER**

Co-Chair Lyda Green convened the meeting at approximately 9:05 AM.

**PRESENT**

Senator Lyda Green, Co-Chair  
Senator Con Bunde, Vice Chair  
Senator Fred Dyson  
Senator Ben Stevens  
Senator Lyman Hoffman  
Senator Donny Olson

**Also Attending:** JOE BALASH, Staff to Senator Gene Therriault; ZACH WARWICK, Staff to Senator Gene Therriault; JANE ALBERTS, Staff to Senator Con Bunde and Aide, Senate Labor and Commerce Committee, DOUG LETCH, Staff to Senator Gary Stevens; PAM LABOLLE, President, Alaska State Chamber of Commerce

**Attending via Teleconference:** From Offnet Sites: DICK MYLIUS, Deputy Director, Division of Mining, Land and Water, Department of Natural Resources; JOANNE GRACE, Senior Assistant Attorney, Opinions, Appeals, & Ethics, Office of the Attorney General, Department of Law; TINA CUNNING, State-Federal Issues Program Manager, Office of the Commissioner, and Co-Chair, State Navigable Waters Team, Department of Fish and Game; RON SOMERVILLE, Resource Consultant to the House of Representatives and Senate Majority; JILL JAECKEL, Legal Assistant, Spenard Builders Supply; SCOTT KING, Cornerstone Credit Services

**SUMMARY INFORMATION**

SB 305-ASSERTING STATE TITLE TO SUBMERGED LAND

The Committee heard from the bill's sponsor, the Department of Natural Resources, the Department of Law, the Department of Fish

and Game, and a resource consultant. The bill reported from Committee.

SB 295-EXTEND NAVIGABLE WATERS COMMISSION

The Committee heard from the sponsor, the Department of Natural Resources, and a Resources Consultant. The bill reported from Committee

SB 194-LIQUOR DELIVERED TO HOTELS/CRUISE SHIPS

The Committee heard from the bill's sponsor, adopted a committee substitute, and reported the bill from Committee.

SB 299-BAD CHECK CHARGE

The Committee heard from the sponsor, took public testimony, and reported the bill from Committee.

SB 203-ADMINISTRATIVE HEARINGS/OFFICE

This bill was scheduled but not heard.

#sb305

SENATE BILL NO. 305

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

This was the first hearing for this bill in the Senate Finance Committee.

JOE BALASH, Staff to Senator Gene Therriault, the bill's sponsor, read the Sponsor Statement as follows.

With the exception of withdrawn federal lands, at statehood in 1959, Alaska received title under the equal footing doctrine to all submerged lands under state navigable waters and marine waters out to three miles. Unfortunately, the federal government has been slow to concede any navigability determinations. Since Alaska entered the Union, the federal courts have determined fewer than 20 rivers navigable. Unless the state is pro-active in asserting its claims, it stands to lose up to 60 million acres of its statehood entitlement.

In some cases, the federal government has used every possible

legal tactic under the Federal Quiet Title Act to impede the state's assertion of ownership. The Black, Kandig and Nation Rivers in northeast Alaska are examples. These three Rivers clearly meet the criteria established by the federal courts for determining navigability in Alaska

Although no one contested the state's claim that these streams met the federal criteria, this case took nine years and millions of state and federal dollars to litigate. Eventually the state won two of the three cases. The third was resolved by a Federal Recordable Disclaimer of Interest in 2003.

In addition, prior to 1989 the federal government applied incorrect standards to determine navigability and may have mistakenly conveyed state-owned land to Native corporations, clouding the title to hundreds of thousands, if not millions, of acres. This is a critical topic as Congress considers a deadline for completing the land selection and conveyance processes.

Contributing to the problem is the lack of a reasonable and efficient way for the state to secure title to its submerged lands. SB 305 takes three steps to begin the process of identifying state claims.

First, SB 305 provides to all parties that the state is laying claim to all submerged lands, except those withdrawn at the time of statehood, that meet the standards and criteria established in the Submerged Lands Act and in various federal court decisions.

Second, it provides authority for state agencies to identify, in accordance with the appropriate federal and state laws, which waterbodies the state claims as navigable and non-navigable. This will help the state clarify criteria for identifying navigable waters, address conflicts involving clouded titles due to inaccurate conveyances from the Bureau of Land Management, and more clearly delineate its title claims.

Third, the bill directs the Department of Natural Resources to give notice to all private property owners, including native corporations created under the Alaska Native Claim Settlement Act, that may have received title to lands that could have erroneously included state submerged lands in their conveyance. This is critical to resolve future problems regarding mineral development, gravel extraction, access and other related land uses.

This legislation is only one step for the state to eventually resolve the title disputes over its submerged lands, and deals only with the issue of state title to submerged lands. It does not address conflicts over federal fish and wildlife management in state navigable waters created by federal reserved water rights claims.

Mr. Balash concluded that, "this is primarily an issue where federal agencies have used incorrect definitions and means of conveying title to primarily the Native corporations." He continued that, "this is just an assertion of the State's claims and an effort" to put on record that the State does not "concede any of our title to anybody."

Co-Chair Green questioned whether conceding title, which has been incorrectly conveyed, to one group might set a precedent whereby the State would be required to concede title to other groups.

Mr. Balash responded that "the real question" is establishing that the water was recognized as being "navigable at the time of Statehood." He shared that "the knowledge, the files, the criteria upon which that is all based in order to stake that claim is getting old." He exemplified that "the people who know about particular bodies of water are soon to be passing," and in that case, the State "would lose the ability to regain that knowledge and reclaim that title in a Court or a federal agency." He furthered that were the State to not pursue the issue now while the information is still available, the Court might decide that since the State "didn't care about it for the last 45 years, why do you care about it now."

Senator Olson asked regarding the State's assertion "that incorrect standards were being used" by the federal Bureau of Land Management (BLM), whether there is a definition of what constitutes navigable waters or whether the contrary opinion is the result of a difference of opinions as to what navigable waters are.

Mr. Balash reiterated the State's position that the BLM used incorrect definitions. He informed that "the Courts have delineated what a navigable waterbody is." Continuing, he pointed out that some conveyances were granted "prior to 1989, before some of that case law" was determined, and, he voiced that this "would indicate" that some of the State's title have been incorrectly conveyed to Native corporations.

Mr. Balash stated that one component of the Alaska Native Claims Settlement Act was that each of the Native corporations was awarded

a certain acreage allotment, and he continued, any of the submerged land acreage that was incorrectly conveyed "counted against that total acreage." He noted that were the State to reclaim title to those submerged lands, that acreage would be removed from the allotment, and the Native corporations would be entitled "to make additional selections in the uplands or in other parts of the State."

Senator Olson surmised therefore "that the Native corporations are not going to be happy with this legislation."

Mr. Balash responded that this might not be the case as a Native corporation might be able to select more acreage. However, he noted that conflict might arise were a Native corporation not desire to relinquish the land. He noted that the Sealaska Native Corporation has been reviewing this legislation to determine any negative consequences; however, he noted that no information has, of yet, been provided.

Senator Hoffman commented on the State's assertion that the federal government has been "dragging its feet in the conveying of the State's submerged lands" and that, as a result, the State has had to resort to taking expensive legal action. He asked whether the State would be required to continue the litigation process were the federal government to continue its status quo approach to the issue.

Mr. Balash replied that there are numerous courses of action. He noted that the federal Department of the Interior and the BLM are working with the State to review cases for the Federal Recordable Disclaimer of Interest process. He stressed that because litigation is difficult, expensive, and time consuming, other legislation would be forthcoming to establish a State/federal Navigable Waters Commission, which would address the issue "in an expedited manner." He shared that there are options that the State and federal government could use to try and speed up the process; however, he reiterated that this legislation is the first step in clarifying the State's position to future federal Courts and agencies in regards to the State's claim to submerged lands.

Senator Hoffman noted that the year 2009 has been specified as the target date to identify all State submerged lands.

Mr. Balash responded that the goal is to identify as much of the land as possible by that date. He noted, however that the submerged land issue is not being addressed on the federal Congressional level at this time. However, he noted that the Navigational Waters Commission legislation has been previously addressed at the

Congressional level, and he continued, the hope is that that Commission would be established "sooner rather than later."

DICK MYLIUS, Deputy Director, Division of Mining, Land and Water, Department of Natural Resources testified via teleconference from an offnet site and noted that he is available to answer questions.

JOANNE GRACE, Senior Assistant Attorney General, Opinions, Appeals, & Ethics Section, Office of the Attorney General, Department of Law, testified via teleconference and clarified, in response to Senator Hoffman's questions, that while the State was granted the title to its submerged lands at Statehood, the issue "is to determine what belongs to the State and what doesn't." She noted that, before 1989 when the BLM was applying incorrect standards, it might have conveyed some submerged lands to Native Corporations "that the United States did not actually have title to convey." She continued that BLM's position was that the lands being conveyed to the Native corporations were designated as non-navigable, and that the Native corporations would be charged acreage for that land. She clarified, however, that were these lands determined to be navigable, the Native corporations' concern is that "they were charged acreage for land that they did not actually receive, and if the conveyances are all completed by the year 2009, then the Native corporations would lose the opportunity to go back to BLM and say you purported to convey this submerged land to us when you were using incorrect standards, and we would like you to go back and reconsider using the correct standards so that we can be credited with the acreage that we should have gotten for those submerged lands."

Senator Hoffman voiced that numerous Native corporations received "over-selections" of lands, and therefore, he continued, the assertion that they would be losing land "may not be exactly true, as it depends on how large their over-selections are." He shared that the corporation he is a member of has an over-selection of approximately ten percent. Therefore, he opined, when the submerged land identification is completed in 2009, "many of the Corporations would still get their land."

Co-Chair Green asked whether a wrongful conveyance would place "a cloud on the title."

Senator Hoffman affirmed that while there would be a cloud on the title and the land would be withdrawn from the corporation, the over-selection would compensate for the removed land.

RON SOMERVILLE, Resource Consultant to the House of Representatives and Senate Majority, testified via teleconference from an offnet

site and noted that during the drafting of SB 305 and SB 295, one of the issues of discussion was that "only the corporations could request the clarification from BLM" regarding the navigability issues. He asserted that the State could not make this request. Therefore, he continued, the encouragement is to the Native corporations to get that process going "if the villages want to do that."

TINA CUNNING, State-Federal Issues Program Manager, Office of the Commissioner, and Co-Chair, State Navigable Waters Team, Department of Fish and Game, testified via teleconference from an offnet site to note that there are some corporations that "are closer to" their entitlement allotment than others. She shared that one of these corporations had requested BLM "to review some of the waters" conveyed to it, and the determination was that the land "was incorrectly included in the conveyances." She stated, therefore, that some corporations would benefit from the inclusion of the upland acreage language.

Co-Chair Green asked whether the time frame of 180 days, as identified in Sec. 3, line 7, that reads as follows, would be sufficient.

NOTICE TO NATIVE CORPORATIONS. Within 180 days after the effective date of this Act, the commissioner of natural resources shall send a written notice of the state's claim of ownership of submerged land described in AS 38.04.062(a), as enacted in sec. 2 of this Act, to each regional corporation established under 43 U.S.C 1607 (sec. 8, Alaska Native Claims Settlement Act). The purpose of the notice is to assert the state's ownership interest in submerged land that may have been erroneously included in a conveyance or patent to a regional or village corporation from the federal Bureau of Land Management.

Mr. Balash stated that, "this is a generic notification to be sent out to potential landowners who might have been wrongly conveyed lands." He stated that the "language was developed in consultation with the State agencies, and therefore, he stated, any concern about this timeframe would have, at that time, been addressed.

Co-Chair Green asked for confirmation that the notice would be of generic nature as opposed to being required to delineate each parcel of land.

Mr. Balash confirmed that is correct. He stated that the 2009 date is the date targeted by Alaska's Congressional delegation and the Office of the Governor; however, he noted that the Congressional

legislation regarding this issue has not yet been adopted.

Senator Dyson moved to report the bill from Committee with individual recommendations and accompanying fiscal note.

There being no objection, SB 305 was REPORTED from Committee with fiscal note #1 in the amount of \$186,500 from the Department of Natural Resources.

#sb295

SENATE BILL NO. 295

"An Act extending the termination date of the Navigable Waters Commission for Alaska; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

ZACH WARWICK, Staff to Senator Gene Therriault, stated that the Joint Federal and State Navigable Waters Commission for Alaska, which would consist of seven State and seven federal members, was established by the Legislature in 2002 "to expedite the process of acquiring legitimate title to the State's submerged lands; to determine which bodies of water are navigable or non-navigable; and to provide recommendations to the State and federal government concerning ways to improve the process of making navigability determinations in ways to acquire title to the State's submerged lands judiciously and expeditiously." He informed the Committee that while the Alaska Commission members were appointed, the accompanying federal legislation was not adopted and therefore, no federal members were appointed. Continuing, he stated that extending the life of the Commission until September 16, 2006 would provide an opportunity for Alaska's Congressional delegation to further the effort for the creation and authorization of the Commission on the federal level.

Senator Bunde asked the fiscal impact of the legislation.

Mr. Warwick responded that while an indeterminate fiscal note accompanies the legislation, it is estimated that, were the federal authorization approved, the fiscal impact would range between \$180,000 and \$200,000.

Senator Hoffman asked why this legislation is limited to extending the years of the Commission rather than including a resolution requesting Alaska's Congressional delegation to further the federal legislation efforts.

Mr. Warwick understood that a separate resolution, sponsored by Senator Ralph Seekins, is currently in the Senate Rules Committee and would be advanced to the Senate floor session. He stated that while the State's delegation is discussing the issue, the federal Commission legislation has not advanced beyond the one hearing that was conducted in 2002.

Co-Chair Green summarized that this legislation would extend the termination date.

DICK MYLIUS, Deputy Director, Division of Mining, Land and Water, Department of Natural Resources, testified via teleconference from an offnet site regarding the indeterminate fiscal note. He stated that no expenses would be incurred at the State level until the Commission is established at the federal level. He noted that the amount of State funding required at that time would also be dependent upon the level of federal funding allocated to the Commission.

RON SOMERVILLE, Resource Consultant to the House of Representatives and Senate Majority, testified via teleconference from an offnet site. He agreed that the key to the establishment of the Commission is dependent on the federal government participation as well as the Commission's addressing of the issues outlined by Mr. Warwick in his opening remarks.

Senator Dyson moved to report the bill from Committee with individual recommendations and accompanying fiscal note.

There being no objection, SB 295 was REPORTED from Committee with indeterminate fiscal note #1 from the Department of Natural Resources.

#sb194

SENATE BILL NO. 194

"An Act authorizing delivery of up to two bottles of distilled spirits to a cruise ship passenger or hotel guest."

This was the second hearing for this bill in the Senate Finance Committee.

Co-Chair Green explained that a committee substitute that expands the original legislation to include the delivery of beer, in addition to the delivery of spirits, has been provided for

consideration.

DOUG LETCH, Staff to Senator Gary Stevens, the bill's sponsor, agreed that expanding the bill to address a broader range of alcoholic beverages would prevent the bill from having to be brought back before the Legislature "year after year" to address the issue.

Senator B. Stevens moved to adopt committee substitute, Version 23-LS1015\D as the working document.

There being no objection, the Version "D" committee substitute was adopted as the working document.

Mr. Letch shared that the Alcohol Beverage Control Board (ABC) has determined that the inclusion of the beer language would encompass other malt beverages such as hard lemonades and iced teas. He also noted that ABC finds that the 40-ounce specification would be appropriate; however, he noted that the sponsor would be willing to discuss changing that limitation were the Committee to so desire.

Senator Hoffman asked whether 40-ounces would equate to three bottles of beer.

Mr. Letch responded that this would equate to one large bottle of beer or a few bottles of beer.

Senator Hoffman asked whether a size definition of bottled distilled spirits has been established.

Mr. Letch stated the ABC Board would be making that determination. He noted that the Board would also be willing to address the beer quantity, "within its regulatory powers," were the Committee to decide to remove the 40-ounce specification.

Senator Dyson informed the Committee that efforts are ongoing by the Pacific Northwest Economic Region to encourage the cruise ship industry to utilize a variety of local west coast food products on their menus, in addition to beers and other spirits.

Senator B. Stevens moved to report the committee substitute from Committee with individual recommendations and accompanying fiscal note.

There being no objections, CS SB 194(FIN) was REPORTED from Committee with a zero fiscal note, dated January 12, 2004, from the Department of Public Safety.

#sb299

SENATE BILL NO. 299

"An Act relating to a charge for a bad check."

This was the first hearing for this bill in the Senate Finance Committee.

Senator Bunde, Chair of the Senate Labor & Commerce (L&C) Committee, explained that this legislation is an attempt to address the issue of bounced checks. He noted that current law specifies a business could collect up to a \$25 penalty fee in the case where a person writes bad checks to a business. Continuing, he shared that, on occasion, a business has been challenged to provide proof that its penalty fee is warranted, and he commented that this legislation has been drafted to address this situation because bring required to honor the documentation request incurs additional expenses to a business. Therefore, he summarized that this legislation would increase the bad check penalty from \$25 to \$30 and would remove the legal requirement to provide cost documentation.

Co-Chair Green noted that current statute limits the penalty fee to \$25, and she confirmed that the Court has overturned some of the penalty fees.

JANE ALBERTS, Staff to Senator Con Bunde and Aide, Senate Labor & Commerce Committee, noted that this bill would establish a set fee for "a bounced or insufficient" funds check. She noted that the bill would also make the collection process "less cumbersome" for businesses. She mentioned that "15 percent of bad checks that are written are by innocent customers who are unaware of their fund level at the time," and who make good on their checks within a day or two of notification. She pointed out that "42 percent of bad check writers are chronic bad check writers who often take more than 90 days" to rectify the problem. She also noted that 45 percent of all bad checks written are unrecoverable. She stated that this legislation would be "a clear deterrent" to writing a bad check. In addition, she noted that without relief, some businesses might decline to accept checks as a form of payment due to the "hassle" of the collection process. She noted that the legislation "is widely supported" by Alaskan businesses, as witnessed by the number of letters received regarding it. She also noted that the fee for bad checks has not been increased in 18 years.

Co-Chair Green pointed out that a \$30 bad check fee would align with the fees charged in other states, according to the handout

titled "Service Fees for Returned Checks" [copy on file] that Senator Bunde has provided.

Senator Olson asked whether there is any opposition to this legislation.

Ms. Alberts responded that no one has voiced opposition.

JILL JAECKEL, Legal Assistant, Spenard Builders Supply, testified via teleconference from an offnet site in support of the bill. She declared that businesses suffer losses "when the profit from a cash sale is dramatically reduced" because of a 90-day delay in payment or is uncollectible as a result of a bad check.

Co-Chair Green asked Spenard Builders Supply's policy when a person refuses to make restitution on a bad check.

Ms. Jaeckel shared that Spenard Builders Supply seeks civil penalties when attempting to collect a large check and resorts to filing small claims cases. She continued that were the business "lucky enough to be able to locate" the individual, they seek a court judgment and collect from the offender's Permanent Fund Dividend (PFD) check if one is applied for. She stated that this process "is trickier" than when dealing with someone who has filled out a credit application because less information is available.

Co-Chair Green asked whether in current law, there is "intent language" which might be detrimental to the collection process because the intent language might specify that proof must be provided to show that the offender knowingly wrote a bad check.

Ms Jaeckel responded that this might be applicable to a fraud issue in which there is criminal intent.

Co-Chair Green asked whether, in a fraud case, a specific monetary level must be involved.

Ms. Jaeckel responded that when Spenard Builders Supply has had to deal with a situation in which a large check "has been clearly written fraudulently and clearly are a criminal case," its chance of collection "are so low," that "if there is criminal action and if there is restitution that is awarded through those court cases," the business might collect "ten cents on a dollar eight years from now."

Senator Hoffman asserted that part of the difficulty in collecting on bad checks lies with the fact that financial institutions limit the number of times a bad check could be presented for processing

to two times. He asked whether this is an issue.

Ms. Jaeckel affirmed that a bad check could only be presented for payment twice. However, she noted that the check could be presented at the originating bank and a cashier's check for the amount owed could be gotten were funds in the account. She expressed however that this increases the collection process expense.

Senator Hoffman asked whether addressing the number of times that a financial institution would be required to process a check could be considered.

Ms. Jaeckel replied that this would result in additional expenses as financial institutes charge up to \$30 each time an insufficient fund check is submitted and the funds are not there.

Senator Hoffman declared that this expense might serve as a disincentive to individuals to write bad checks.

Ms. Jaeckel responded that this does not seem to be "a big concern" to individuals who knowingly write bad checks. She stated that it would serve to get "them further in the hole, and in a worse situation" and might make it more difficult for a business to be able to collect. She opined that while it would not deter those who knowingly write bad checks, it might deter those 15-percent who unknowingly write a bad check. However, she noted that those are the ones whose checks normally clear the bank the second time they are submitted.

Co-Chair Green asked who is responsible for paying the insufficient funds bank fee.

Ms. Jaeckel clarified that both the bad check writer and the business submitting the check are charged a fee, although she noted that the person responsible for writing the bad check is charged a higher fee than the business.

Co-Chair Green summarized therefore that both the business and the person writing the bad check would be penalized.

Ms. Jaeckel concurred.

SCOTT KING, Representative, Cornerstone Credit Services, LLC, testified via teleconference from an offnet site in support of the bill. He stressed that his company's interest in this legislation was prompted by a recent District Court decision in Fairbanks that specified that businesses would be required to "document and account for all costs incurred" in their efforts to collect on a

bad check.

Mr. King continued that the current \$25 fee assists businesses in covering internal expenses associated with the collection process including such things as merchants' bank fees, personnel costs, letters, telephone calls, accounting documentation, and fees paid to collection agencies. He stated that the District Court's decision would require a business to document each of these activities and that only the activities documented could be included in the collection assessment fee. He communicated that important changes in the bill include the elimination of the words "for costs incurred" from State statutes so that a business would not be required to document the costs incurred from collecting a bad check and the increase of the maximum fee from \$25 to \$30 to bring it more in line with other states' fees and to adjust for at least 18 years of unadjusted inflation.

Mr. King stated that his company, which provides check verification and check collection services, represents more than 2,000 businesses in the State who would be negatively affected by the District Court decision.

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Mr. King spoke of the volume of business letters that have been submitted in support of this legislation, and he urged the Committee to support the bill.

PAM LABOLLE, President, Alaska State Chamber of Commerce, testified to the Chamber's support of the bill. She shared that the Chamber's members in their collection efforts have experienced costs exceeding the currently allowed \$25, and even the proposed \$30 fee. She reiterated that the District Court's ruling has necessitated the proposed changes in this law, as it would have "great" negative impact on businesses.

Co-Chair Green asked whether the Chamber's members have any other bad check issues that should be addressed.

Ms. LaBolle responded in the negative.

AT EASE 9:55 AM / 9:55 AM

Ms. Alberts informed that currently bank fees charged to businesses for processing bad checks range from \$2 to \$25 dollars.

Co-Chair Green asked for that information to be provided to Members.

Senator Bunde moved to report the bill from Committee with individual recommendations and accompanying fiscal note.

There being no objection, SB 299 was REPORTED from Committee with zero fiscal note #1 from the Department of Administration.

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**ADJOURNMENT**

Co-Chair Lyda Green adjourned the meeting at 09:57 AM