

**ALASKA LEGISLATURE**

**2382**

**HOUSE and SENATE FINANCE COMMITTEE FILES,**

**2001 - 2002**



# SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

## Committee Substitute for Senate Bill 206(TRA) Sponsor Statement

**"An Act relating to registration plates and parking permits for persons with disabilities and to illegal use of parking spaces for persons with disabilities."**

Committee Substitute for Senate Bill 206(TRA) helps insure the availability of priority parking for truly disabled Alaskans and is intended to prevent many of the instances of abuse that currently exist in our state's disabled parking system. It accomplishes this by improving the issuing process for disabled parking permits and cracking down on individuals convicted of illegally parking in disabled parking areas or convicted of misusing disabled parking permits.

To provide better access to disabled parking spaces for the truly disabled, the State of Washington toughened its laws to combat widespread abuse of disabled parking placards. Other states, fed up with abuse and fraud in their systems, have also tightened up their disabled parking laws. In 1998 a group of citizens and representatives from several state agencies recommended the need to reform and strengthen Alaska's disabled parking laws. This legislation is consistent with those recommendations.

It is often difficult to identify whether or not individuals who have parked an automobile in a disabled parking space are disabled or not. Working closely with the DMV, it was determined that their computer system indicates whether an individual has been issued a disabled parking placard and/or license plates. The division was able to make this information available to troopers and police officers when they perform a records check on either a license plate or a person's identification. This will allow law enforcement officials to determine if a placard or license plate is being used fraudulently.

Under current law, anybody may park in a disabled parking space as long as their vehicle has a disabled placard or license plate. This legislation clearly defines who may park in a parking place reserved for disabled individuals. A new provision is added specifying that the person issued a special permit must be occupying or operating the vehicle; or the person operating the vehicle is doing so for the purpose of transporting a disabled person and the disabled person must actually exit or enter the vehicle.

This legislation increases the penalties for illegally parking in a disabled parking space and for misusing a disabled permit to park in a disabled parking space. Under existing law, violators are fined \$100 if they are convicted of either of these offenses. Under CSSB 206(TRA) individuals convicted of illegally parking in a disabled parking space will be fined \$125 for the first offense

**Co-Chair: Senate Finance Committee**

**Vice-Chair: Senate Judiciary Committee**

**Member: Legislative Budget and Audit Committee • Legislative Council**

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January-May: STATE CAPITOL • JUNEAU, AK • 99801 • (907) 465-3892 • FAX: (907) 465-6595  
June-December: 716 West Fourth Avenue • Suite 400 • ANCHORAGE, AK • 99501 • (907) 269-0234 • FAX: (907) 269-0238  
Email: Senator\_Dave\_Donley@legis.state.ak.us  
[www.akrepublicans.org/Donley.htm](http://www.akrepublicans.org/Donley.htm) • [www.legis.state.ak.us/senate/donley/htm](http://www.legis.state.ak.us/senate/donley/htm)

and will receive the \$125 fine as well as being assessed two points from their driver's license for subsequent violations.

Individuals convicted of misusing a disabled permit will be fined \$250, assessed two points from their driver's license and be required to perform eight hours of community service for the first offense. Subsequent violations will carry a four point penalty on their driver's license along with the \$250 fine and eight hours of community service.

Committee Substitute for Senate Bill 206(TRA) adds protections for those who truly need to utilize disabled parking spaces and sends a clear message that misuse of disabled permits and the unauthorized use of disabled parking spaces is unacceptable and will no longer be tolerated in Alaska. Accessible parking areas are necessary to provide easier access to services for our disabled population and abusers of the system are hindering that access for those who truly need it.

DD/kk

**SB**

**206**

SFIN

FILE



OFFICIAL BUSINESS

Alaska State Legislature  
Senate  
Office of the Secretary

STATE CAPITOL, ROOM 213  
JUNEAU, ALASKA 99801-1182  
(907) 465-3701  
FAX: 465-2832  
EMAIL: senate\_secretary@legis.state.ak.us

**FOR YOUR IMMEDIATE ATTENTION**

DATE: February 27, 2002  
TO: Finance Committee  
(Mindy/Robin - Room 520)  
FROM: Office of the Senate Secretary  
SUBJ: Waived Bill(s)

The Chair of the Committee noted above has waived referral on the following bill(s):

**RETRIEVE**

***SENATE BILL NO. 206***

*"An Act relating to registration plates and parking permits for persons with disabilities and to illegal use of parking spaces for persons with disabilities."*

Please give the bill file(s) to the page for forwarding to the next Committee of referral.

Thank you.

**SB**

**215**

**HFIN**

**FILE**



SENATOR  
JOHN COWDERY

District I  
Anchorage

Committees

Chair: Transportation  
Chair: World Trade  
State & Federal Relations  
Rules  
Legislative Council  
Judiciary



*During Session:*  
State Capitol, Suite 101  
Juneau, Alaska 99801-1182  
Tel: 907-465-3879  
Toll Free: 888-269-3879  
Fax: 907-269-2069

*Interim:*  
716 W. 4th Avenue  
Anchorage, Alaska 99501  
Tel: 907-269-0222  
Fax: 907-269-0223

Senator\_John\_Cowdery@legis.state.ak.us

May 13, 2002

Representative Eldon Mulder  
Representative Bill Williams  
Co Chairmen  
House Rules Committee  
State Capitol  
Juneau, Alaska 99801

*Eldon Bill*

Dear Representatives Mulder & Williams,


I would like to request a hearing for CSSB 215 (FIN), an act relating to licensing common carriers to dispense alcoholic beverages. This bill would affect all vehicles, boats, aircraft or railway buffet cars in which alcoholic beverages are served.

One of the major air carriers operating in Alaska is required to maintain over 100 licenses in order to meet Alaska's ABC laws. My bill would streamline the licensing procedure by allowing the ABC Board to consolidate all licenses to the same date. The bill would further change the law to require a fee of \$1,000 for the first 10 licenses and then charge a fee of \$100 per license for each additional license.

I urge you to schedule a hearing for CSSB 215 (FIN). I would be happy to provide any further information you or the committee may need.

I appreciate your consideration.

Sincerely,

  
John J. Cowdery

# FISCAL NOTE

STATE OF ALASKA  
2002 LEGISLATIVE SESSION

No. 2  
Bill Version: CSSB 215 (Trans)  
(S) Publish Date: 3/6/02

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_ Revenue \_\_\_\_\_  
Title Common Carrier Liquor License BRU Alcoholic Beverage Control Board  
Component Alcoholic Beverage Control Board  
Sponsor Senator Cowdery  
Requester Senate Transportation Committee Component No. 100

**Expenditures/Revenues (Thousands of Dollars)**

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>	<b>(8.9)</b>	<b>(53.5)</b>	<b>0.0</b>	<b>(53.5)</b>	<b>0.0</b>	<b>(53.5)</b>
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS: (Attach a separate page if necessary)**

Liquor licenses are issued for two years, renewable at either an even or odd year. As part of the change in fees for common carriers that this legislation proposes (reducing fees for multiple-license holders), a change in the biennial period for all common carriers is also being proposed, making all common carrier licenses renewable in odd years. At present, Alaska Airlines would be the largest entity to benefit from this legislation. The company currently has 104 common carrier licenses -- 92 renewable in odd years, and 12 renewable in even years. Therefore, the savings to Alaska Airlines (and cost to the State of Alaska) is based on 94 aircraft being licensed at the reduced rate (94 X \$600 discount).

Prepared by: Dawn Holland-Williams Phone 269-0359  
Division: Alcoholic Beverage Control Board Date/Time 3/5/02 9:12 AM  
Approved by: Larry Perslly, Deputy Commissioner Date 3/5/2002  
Agency: Department of Revenue

Breakdown - CSSB 215 #2, Page 2 of 2

CC - 144 CC-Seasonal - 95

Biennial Year

Dec '02	FY '03	<b>Loss</b>	<b>\$6,850</b>	
	AK Air - 12	Loss of 10x\$350 & 2x\$850 (-\$4000) (fees: 10x\$350 & 2x\$50 pro-rated for biennial change)		
	Others - 18	No Change		
Seasonal	Westours - 11	Loss of 10x\$175 & 1x\$300 (-\$2050) (fees: 10x\$175 & 1x\$50 pro-rated for biennial change)		
	Others - 39	No Change		
Dec '03	FY '04	<b>Loss</b>	<b>\$53,450</b>	
	AK Air	Loss of 94x\$600 (\$56,400) (fees: 10x\$700 & 94x100)		
	Others	No Change		
Seasonal	Westours	Gain (8*350) (\$2800 + (3*50)) = \$2950		
	Others	No Change		
Dec '04	FY '05	<b>Loss - 0</b>		
		No Change		
		No Change		
Dec '05	FY '06	<b>Loss</b>	<b>\$53,450</b>	
	AK Air	Loss of 94x\$600 (\$56,400)		
	Others	No Change		
Seasonal	Westours	Gain (8*350) (\$2800 + (3*50)) = \$2950		
	Others	No Change		
Dec '06	FY '07	<b>Loss - 0</b>		
		No Change		
		No Change		
Dec '07	FY '08	<b>Loss</b>	<b>\$53,450</b>	
	AK Air	Loss of 94x\$600 (\$56,400)		
	Others	No Change		
Seasonal	Westours	Gain (8*350) (\$2800 + (3*50)) = \$2950		
	Others	No Change		

**CS FOR SENATE BILL NO. 215(FIN)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-SECOND LEGISLATURE - SECOND SESSION**

**BY THE SENATE FINANCE COMMITTEE**

**Offered: 3/6/02**

**Referred: Rules**

**Sponsor(s): SENATOR COWDERY**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to licensing common carriers to dispense alcoholic beverages; and**  
2 **providing for an effective date."**

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

4 **\* Section 1.** AS 04.11.180(b) is repealed and reenacted to read:

5 (b) A common carrier shall obtain a license for each vehicle, boat, aircraft, or  
6 railroad buffet car in which alcoholic beverages are served. After obtaining an initial  
7 license for the first vehicle, boat, aircraft, or railroad buffet car, the common carrier  
8 may obtain additional licenses for additional vehicles, boats, aircraft, or railroad buffet  
9 cars upon making a written request identifying the vehicle, boat, aircraft, or railroad  
10 buffet car in the manner prescribed by the board, and paying the biennial fee for  
11 additional licensed premises as required by (c) of this section.

12 **\* Sec. 2.** AS 04.11.180 is amended by adding a new subsection to read:

13 (c) The biennial fee for a common carrier dispensary license is \$1,000 for each  
14 of the first 10 licenses a common carrier holds and \$100 for each additional license

1 issued to the common carrier after the first 10 licenses. Upon request of the common  
2 carrier and payment of the proportionate prorated applicable fee, the board shall  
3 change the license period of a license for a vehicle, boat, aircraft, or railroad buffet car  
4 to allow registration to occur in the biennial period of the balance of the licensee's  
5 common carrier licenses.

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

8 APPLICABILITY. This Act applies to issuance of a new common carrier dispensary  
9 license or renewal of a common carrier dispensary license that occurs on or after the effective  
10 date of this Act.

11 \* Sec. 4. This Act takes effect July 1, 2002.

**SB**

**215**

SFIN

FILE

**SENATE FINANCE COMMITTEE REPORT**

REPORTED OUT

DATE: 1/23/02

MAR 5 2002

SENATE FINANCE COMMITTEE

FURTHER:

DATE TURNED IN TO OFFICE: 03/05/02

Finance Committee considered

SENATE BILL NO. 215

SB 215 COMMON CARRIER LIQUOR LICENSE

"An Act relating to licensing common carriers to dispense alcoholic beverages; and providing for an effective date."

and recommends:

be replaced with CS SB 215 (FIN)

adopt previous CS CS FORTHCOMING ( )

attached amendment(s)

adopt Letter of Intent by \_\_\_\_\_ Committee

further referral to \_\_\_\_\_ Committee

Senate Bill:

same title

new title

House Bill:

same title

technical title

new: SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#
REVENUE	3/5/02		✓	

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Lyle Dreyer</i>			✓	
<i>[Signature]</i>	✓			
<i>[Signature]</i>			✓	
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>			✓	
COCHAIR: <i>[Signature]</i>	✓			



# FISCAL NOTE

STATE OF ALASKA  
2002 LEGISLATIVE SESSION

RECEIVED  
MAR 5 2002  
SENATE FINANCE  
COMMITTEE

Fiscal Note Number: \_\_\_\_\_  
Bill Version: CSSB 215 (Trans)  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
Title: Common Carrier Liquor License BRU: Alcoholic Beverage Control Board  
Component: Alcoholic Beverage Control Board  
Sponsor: Senator Cowdery Component No.: 100  
Requester: Senate Transportation Committee

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL EXPENDITURES</b>						
<b>CHANGE IN REVENUES ( )</b>	<b>(8.9)</b>	<b>(53.6)</b>	<b>0.0</b>	<b>(53.5)</b>	<b>0.0</b>	<b>(53.5)</b>

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify type—Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2002) cost: 0.0  
Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
Liquor licenses are issued for two years, renewable at either an even or odd year. As part of the change in fees for common carriers that this legislation proposes (reducing fees for multiple-license holders), a change in the biennial period for all common carriers is also being proposed, making all common carrier licenses renewable in odd years. At present, Alaska Airlines would be the largest entity to benefit from this legislation. The company currently has 104 common carrier licenses — 92 renewable in odd years, and 12 renewable in even years. Therefore, the savings to Alaska Airlines (and cost to the State of Alaska) is based on 94 aircraft being licensed at the reduced rate (94 X \$600 discount).

Prepared by: Dawn Holland-Williams Phone: 269-0359  
Division: Alcoholic Beverage Control Board Date/Time: 3/5/02 9:12 AM  
Approved by: Larry Persly, Deputy Commissioner Date: 3/5/2002  
Agency: Department of Revenue

Breakdown - CSSB 215

CC - 144 CC-Seasonal - 95

Biennial Year

Dec '02	FY '03	<b>Loss</b>	<b>\$6,850</b>
	AK Air - 12	Loss of 10x\$350 & 2x\$850 (-\$4800) (fees: 10x\$350 & 2x\$50 pro-rated for biennial change)	
	Others - 18	No Change	
Seasonal	Westours - 11	Loss of 10x\$175 & 1x\$300 (-\$2050) (fees: 10x\$175 & 1x\$50 pro-rated for biennial change)	
	Others - 38	No Change	
Dec '03	FY '04	<b>Loss</b>	<b>\$53,450</b>
	AK Air	Loss of 94x\$800 (\$56,400) (fees: 10x\$700 & 94x100)	
	Others	No Change	
Seasonal	Westours	Gain (8*350) (\$2800 + (3*50)) = \$2950	
	Others	No Change	
Dec '04	FY '06	<b>Loss - 0</b>	
		No Change	
		No Change	
Dec '05	FY '08	<b>Loss</b>	<b>\$53,450</b>
	AK Air	Loss of 94x\$800 (\$56,400)	
	Others	No Change	
Seasonal	Westours	Gain (8*350) (\$2800 + (3*50)) = \$2950	
	Others	No Change	
Dec '06	FY '07	<b>Loss - 0</b>	
		No Change	
		No Change	
Dec '07	FY '08	<b>Loss</b>	<b>\$53,450</b>
	AK Air	Loss of 94x\$800 (\$56,400)	
	Others	No Change	
Seasonal	Westours	Gain (8*350) (\$2800 + (3*50)) = \$2950	
	Others	No Change	

Amendment #1  
adopted

22-LS0975\C

CS FOR SENATE BILL NO. 215(TRA)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE SENATE TRANSPORTATION COMMITTEE

Offered: 2/23/02  
Referred: Finance

Sponsor(s): SENATOR COWDERY

A BILL  
FOR AN ACT ENTITLED

1 "An Act relating to licensing common carriers to dispense alcoholic beverages; and  
2 providing for an effective date."

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

4 \* Section 1. AS 04.11.180(b) is repealed and reenacted to read:

5 (b) A common carrier shall obtain a license for each vehicle, boat, aircraft, or  
6 railroad buffet car in which alcoholic beverages are served. After obtaining an initial  
7 license for the first vehicle, boat, aircraft, or railroad buffet car, the common carrier  
8 may obtain additional licenses for additional vehicles, boats, aircraft, or railroad buffet  
9 cars upon making a written request identifying the vehicle, boat, aircraft, or railroad  
10 buffet car in the manner prescribed by the board, and paying the biennial fee for  
11 additional licensed premises as required by (c) of this section.

12 \* Sec. 2. AS 04.11.180 is amended by adding a new subsection to read:

13 (c) The biennial fee for a common carrier dispensary license is ~~\$700~~ for each  
14 of the first 10 licenses a common carrier holds and \$100 for each additional license

Amend #1  
\$1,000

1 issued to the common carrier after the first 10 licenses. Upon request of the common  
2 carrier and payment of the proportionate prorated applicable fee, the board shall  
3 change the license period of a license for a vehicle, boat, aircraft, or railroad buffet car  
4 to allow registration to occur in the biennial period of the balance of the licensee's  
5 common carrier licenses.

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

8 **APPLICABILITY.** This Act applies to issuance of a new common carrier dispensary  
9 license or renewal of a common carrier dispensary license that occurs on or after the effective  
10 date of this Act.

11 \* **Sec. 4.** This Act takes effect July 1, 2002.

**CAAPS** Council on Alcohol Abuse and Public Safety-Alaska  
Box 23007 - Juneau, Alaska 99802 - (907) 586-3032



**ADVISORY - SB 215**

To All participants:

Should you take any position whatsoever as individuals, we recommend that you indicate that there is no objection to, or support at all for passage of this measure.

- This is not an alcohol bill. It is a revenue reduction measure.
- The principal outcome of this bill, if enacted, will be a reduction of \$56,400 in the beverage dispensary license costs to Alaska Airlines. No other licensee would benefit much if at all from this measure.
- Alaska Airlines has 104 common carrier dispensing licenses, one for each aircraft. Current cost \$700 each, This bill would reduce the fee from \$700 to \$100 for 94 of those licenses. A direct savings to Alaska Airlines of \$56,400 a year. In the big picture, not an amount worth wasting any time on, or investing any political capital. It is a non-issue from our view.
- Alaska Airlines also has one full dispensing license at the Board Room in Anchorage. This is a standard \$2500 fee license, and this legislation has no effect at all on that or any other full dispensary license.
- SB 215 would have absolutely no effect whatsoever on our issues . . . consumption or availability.
- Alaska Airlines will not reduce or increase the price of alcoholic beverages sold in-flight. There will be absolutely no changes in consumption from this bill.
- You have chosen wisely, to focus on passage of a substantial increase in the 1983 level alcohol excise tax this session. That single issue will require your active participation, and we will keep you posted on the progress of several pieces of legislation currently under consideration, should you choose to get involved.

We recommend you take absolutely no position for or against this measure. If the legislature wishes to contribute to the economic picture at Alaska Airlines as a part of an effort to increase or protect tourism, or for any other reason, that is their business.

Howard Scaman

*Moderating alcohol abuse and violence through public policy information*





**SB**

**216**



SFIN

FILE

SB 216

was referred to the  
Senate Finance  
Committee

No hearing was held  
on this bill

**SB**

**218**

HFIN

FILE

# HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: May 6, 2001

FURTHER REFERRALS:

Date of Committee Action: 5/16/01

The FINANCE Committee considered:

CSSB 218(TRA) am

CS FOR SENATE BILL NO. 218(TRA) am

AIRPORTS:BONDS/CONSTR.FUND/FACILITY CHARG

"An Act relating to international airports revenue bonds and requiring that the spending plan for the International Airports Construction Fund include information about the amounts spent during the previous fiscal year for cost overruns on certain projects and the identification of time delays on certain projects; relating to customer facility charges to fund facilities in airports to be constructed without using international airport revenue bonds; and providing for an effective date."

Recommends it be replaced with CS \_\_\_\_\_ ( ) | ] Same Title | ] New Title  
 For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR \_\_\_\_\_

- [ ] attach amendments
- [ ] add new referral to \_\_\_\_\_ Committee
- [ ] Letter of Intent \_\_\_\_\_ Committee

List of Abbrev. For Depts:  
 ADM  
 CED  
 COR  
 CRT  
 EED  
 DEC  
 DFG  
 GOV  
 HSS  
 LAA  
 LAW  
 LWF  
 MVA  
 DNR  
 DPS  
 REV  
 DOT  
 UA

<u>NEW FISCAL NOTES</u>				
*For Chief Clerk's Office Use Only				
FN#	List by Dept(s):	Fiscal	Indet.	Zero

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN #	Fiscal	Indet.	Zero
REV	1	✓		

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	Bunde				✓
	Whitaker	✓			
	Harris	✓			
	CHAMBERLAIN				✓
	Darney				+
	Lancaster				✓
	FOSTER	X			
	MOSES	✓			
Chair:	Mulder	✓			
Chair:	Williams	✓			

# FISCAL NOTE

STATE OF ALASKA  
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: SB 218  
(S) Publish Date: 5/2/01

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
Title: International Airports: BRU: Revenue Operations  
Bonds / Construction Fund Component: Treasury Division  
Sponsor: Senator Cowdery  
Requester: Senate Transportation Component Number: 121

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel	25.0					
Contractual		15.0	15.0	15.0	15.0	15.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous			4,870.7	12,687.2	12,683.8	12,678.6
<b>TOTAL OPERATING</b>	<b>25.0</b>	<b>15.0</b>	<b>4,885.7</b>	<b>12,702.2</b>	<b>12,698.8</b>	<b>12,693.6</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	25.0	15.0	15.0	15.0	15.0	15.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
AIAS Revenue Fund			4,870.7	12,687.2	12,683.8	12,678.6
<b>TOTAL</b>	<b>25.0</b>	<b>15.0</b>	<b>4,885.7</b>	<b>12,702.2</b>	<b>12,698.8</b>	<b>12,693.6</b>

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
This legislation authorizes the State Bond Committee to issue an additional \$147,900,000 in revenue bonds to support the Alaska International Airport System's capital improvement program.  
**BASE ASSUMPTIONS:** Project size of approximately \$113.2 million, 25-year term of bonds. True interest cost of 6.76% (approximately 1.5% above current rates). Two years of capitalized interest (making the interest payments on the bonds with bond proceeds). Debt service reserve funded with bond proceeds.  
**SOURCES OF CAPITAL:** Par amount of bonds \$147.9 million. The issue of investment earnings on the bond proceeds during construction is not addressed in the legislation.  
**USES OF CAPITAL:** Project \$113.2 million. Capitalized interest \$19.5 million. Debt service reserve fund \$12.7 million. Costs associated with issuing the bonds \$2.5 million. Total uses of capital are \$147.9 million.  
(Note: If we were to use the interest cost of 5.31% that was available in January 2001, the annual debt service would be approximately \$1.5 million less than the amount stated above.)

Prepared by: Devon Mitchell, State Debt Manager Phone 465-3750  
Division: Treasury Division Date/Time May 1, 2001, 3 p.m.  
Approved by: Larry Persily, Deputy Commissioner Date 05/01/2001  
Agency: Department of Revenue

For distribution information, call the Governor's Legislative Office

**SB**

**218**

SFIN

FILE



**SENATE FINANCE COMMITTEE REPORT**

DATE: 5/2/01

FURTHER:

REPORTED OUT
MAY 03 2001
SENATE FINANCE COMMITTEE

DATE TURNED IN TO OFFICE: 4 May 2001

Finance Committee considered SENATE BILL NO. 218

*SB 218 INTERNATIONAL AIRPORTS: BONDS/CONSTRUCTION FUND*

"An Act relating to international airports revenue bonds and to the spending plan for the International Airports Construction Fund; and providing for an effective date."

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS SB 218 (TRF)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

**Senate Bill:**

- same title
- new title

**House Bill:**

- same title
- technical title
- new: SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#
Revenue	5/2/01	25.0		

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>			<input checked="" type="checkbox"/>	
<i>[Signature]</i>			<input checked="" type="checkbox"/>	
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<i>[Signature]</i>	<input checked="" type="checkbox"/>			
<i>[Signature]</i>			<input checked="" type="checkbox"/>	
COCHAIR: <i>[Signature]</i>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
COCHAIR: <i>[Signature]</i>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	

MAY 04 2001

SENATE FINANCE  
COMMITTEE

# FISCAL NOTE

STATE OF ALASKA  
2001 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: CS SB 218 (TRANS)  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
Title: International Airports: BRU: Revenue Operations  
Bonds / Construction Fund Component: Treasury Division  
Sponsor: Senator Cowdery  
Requester: Senate Finance Component Number: 121

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel	25.0					
Contractual		15.0	15.0	15.0	15.0	15.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous			4,705.9	12,260.8	12,253.5	12,250.0
<b>TOTAL OPERATING</b>	<b>25.0</b>	<b>15.0</b>	<b>4,720.9</b>	<b>12,275.8</b>	<b>12,268.5</b>	<b>12,265.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	25.0	15.0	15.0	15.0	15.0	15.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
AIAS Revenue Fund			4,705.9	12,260.8	12,253.5	12,250.0
<b>TOTAL</b>	<b>25.0</b>	<b>15.0</b>	<b>4,720.9</b>	<b>12,275.8</b>	<b>12,268.5</b>	<b>12,265.0</b>

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This legislation authorizes the State Bond Committee to issue an additional \$142,900,000 in revenue bonds to support the Alaska International Airport System's capital improvement program.

BASE ASSUMPTIONS: Project size of approximately \$113.2 million, 25-year term of bonds. True interest cost of 6.76% (approximately 1.5% above current rates). Two years of capitalized interest (making the interest payments on the bonds with bond proceeds). Debt service reserve funded with bond proceeds.

SOURCES OF CAPITAL: Par amount of bonds \$142.9 million, with interest earnings on the construction fund estimated at \$4 million.

USES OF CAPITAL: Project \$113.2 million. Capitalized interest \$18.8 million. Debt service reserve fund \$12.3 million. Costs associated with issuing the bonds \$2.5 million. Total uses of capital are ~~\$142.9~~ 147.7 million.

Prepared by: Deven Mitchell, State Debt Manager Phone 465-3750  
Division: Treasury Division Date/Time May 2, 2001, 2 p.m.  
Approved by: Larry Persily, Deputy Commissioner Date 05/02/2001  
Agency: Department of Revenue

For distribution information, call the Governor's Legislative Office

# STATE OF ALASKA

## DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

3132 CHANNEL DRIVE  
JUNEAU, ALASKA 99801-7898

TEXT: (907) 465-3652  
FAX: (907) 586-8365  
PHONE: (907) 465-3900

February 9, 2001

Honorable John Cowdery  
Chair, Transportation Committee  
State Capitol, Room 101  
Juneau, AK 99801

Re: SB36 request for information

Dear Senator Cowdery: *John*

Thank you for hearing SB 36, a bill to authorize revenue bonds for financing capital improvements at the Alaska International Airport System. The legislation is important for the airport system and is essential for continued economic development at Anchorage and Fairbanks. I know you have been a strong supporter of private sector construction. There may be no single bigger construction opportunity for the private sector over the next two years than is represented in this legislation. Swift passage of this bill will ensure construction continues on schedule.

At the hearing on January 23, 2001, a question was asked about the relationship between projects identified in the bill and the Terminal Redevelopment project. The Terminal Redevelopment Project budget of \$230,000,000 is a combination of Airport Revenue Bonds, FAA Funds, and FHWA funding. The current CIP Revenue Bond proposal includes funding for certain airport improvements not part of the original Terminal Redevelopment scope. To facilitate orderly and timely flow of construction, some of these additional CIP elements must be integrated and accomplished as part of the various terminal construction contracts. The total amount of these "overlap" CIP projects is approximately \$ 8,700,000.

Below is a description of these "overlap" CIP project elements:

<b>HAZMAT Abatement</b>	<b>\$5,000,000</b>
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Due to the uncertainty associated with the degree and extent of Hazmat within the existing terminal structures, the project budget for the Terminal Redevelopment Project excluded all but minor amounts for known remediation needs. The preferred approach to dealing with Hazmat, as agreed with the airlines, was to address funding needs as they became known and better defined. In conjunction with Concourse C Demolition and the renovations to portions of the existing Ticket Lobby, extensive abatement of unanticipated asbestos containing materials (ACM) was required. Additional hazardous material abatement will also be required to complete the remaining South Terminal renovations. The current estimate for South Terminal related abatement is \$5 million.

<b>Access Control System</b>	<b>\$2,000,000</b>
------------------------------	--------------------

Security Access Control for both the Domestic and International Terminals was to be accomplished under a previously authorized CIP project and was therefore excluded from the original scope and budget for the Terminal Redevelopment Project. The recently completed installation of the new Access control system for the International Terminal and portions of the Domestic Terminal consumed the authorized funding. The estimated cost for remaining Access Control Systems that will support the new Concourse C and the balance of the existing terminal is \$2 million. The Access Control Systems will be added the Phase II – Concourse C – Building Completion contract and to the Ticket Lobby and Concourse B Renovation contracts.

<b>Medium Voltage Project</b>	<b>\$1,000,000</b>
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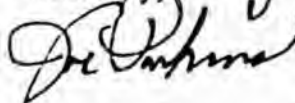
A separate CIP project for a Medium Voltage Distribution System was originally authorized in FY96. The cost of Phase I and II of this project collectively exceed the authorized CIP funding level. This Medium Voltage underground electrical loop was not part of the original Terminal Redevelopment Project scope of work. However, to proceed with construction of Concourse C and avoid delay, it was necessary to complete portions of the Phase II work under the Terminal Project. This CIP funding increment will pay for these additional costs.

<b>Furnishings and Equipment</b>	<b>\$ 700,000</b>
----------------------------------	-------------------

This CIP funding will provide new/upgraded Airport furnishings, equipment and interior landscaping components (planters, etc.) throughout the new and remodeled concourses. These furnishings and equipment are the "non built-in" components which are in addition to the permanent features being constructed as part of the new Concourse C and remodel of the existing terminal space.

Airline/Concession Relocation (\$5,000,000) is an additional project that was originally included in the list of projects for bond funding. This CIP funding will pay for airline and concessions/retail relocation costs as negotiated based on the terms of current lease agreements. Some of this relocation work will be accomplished in conjunction with the construction of the new Concourse C, other portions may be accomplished directly by the tenants. These costs are beyond the level of the tenant relocations included in the original scope of the Terminal Redevelopment Project. The airlines have recently requested this project be funded from the International Airport Revenue Fund rather than with revenue bonds. Therefore, the department will be requesting an amendment to reduce bond authorization in SB 36 by \$5,000,000.

Sincerely,



Joseph L. Perkins, P.E.  
Commissioner

From: DOT & PF

AIAS  
FY 2002 Capital Improvement Budget

ANC		Total														
Airport	Description	FY 02/03	AIP	Bonds	PFC	IARF	FY 02	AIP	Bonds	PFC	IARF	FY 03	AIP	Bonds	PFC	IARF
ANC	Advanced Project/Parking Design Study	6,316,000		6,316,000			3,158,000		3,158,000			3,158,000		3,158,000		
ANC	Airfield Electrical/Lighting Rehab/Upgrades	2,237,000	1,950,000	287,000			987,000	750,000	237,000			1,250,000	1,200,000	50,000		
ANC	Airfield Pavement Maintenance	15,524,000	10,700,000	4,824,000			7,499,000	4,700,000	2,799,000			8,025,000	6,000,000	2,025,000		
ANC	Airfield Safety and Blast Protectio	4,868,000	4,600,000	268,000			2,368,000	2,350,000	18,000			2,500,000	2,250,000	250,000		
ANC	Annual Improvements	2,832,000				2,632,000	1,316,000				1,316,000	1,316,000				1,316,000
ANC	Communication System and Relocation	5,515,000		5,515,000			5,515,000		5,515,000			-				
ANC	Deicing System	2,631,000	2,300,000	331,000			2,631,000	2,300,000	331,000			-				
ANC	Energy and Terminal Systems Upgrades	1,905,000		1,905,000			635,000		635,000			1,270,000		1,270,000		
ANC	Environmental Compliance and Cleanup	12,762,000		6,982,000		5,800,000	3,289,000		389,000		2,900,000	9,473,000		6,573,000		2,900,000
ANC	Equipment	4,999,000		4,999,000			2,368,000		2,368,000			2,631,000		2,631,000		
ANC	Field Maintenance Facility	32,000,000	2,600,000	29,400,000			10,000,000	2,600,000	7,400,000			22,000,000		22,000,000		
LHD	GA Parking and Taxiway Relocation	3,186,000	2,700,000	486,000			3,186,000	2,700,000	486,000			-				
ANC	Information Technology Improvements	1,053,000		1,053,000			658,000		658,000			395,000		395,000		
LHD	Lake Dredging and Bank Stabilization	1,270,000	1,150,000	120,000			-		-			1,270,000	1,150,000	120,000		
ANC	Land Acquisition and Mitigation	3,289,000	2,000,000	1,289,000			-		-			3,289,000	2,000,000	1,289,000		
ANC	Master Plan	2,496,000	2,000,000	496,000			1,248,000	1,000,000	248,000			1,248,000	1,000,000	248,000		
ANC	Noise Abatement Program Implementation	5,202,000	4,750,000	512,000			2,831,000	2,400,000	231,000			2,631,000	2,350,000	281,000		
ANC	NT Waterline Replacement	4,902,000		4,902,000			4,902,000		4,902,000			-		-		
ANC	Old International Airport Road Upgrade	998,000		998,000			-		-			998,000		998,000		
ANC	Roads, Utilities & Grounds Constr and Upgrades	4,539,000		4,539,000			1,579,000		1,579,000			2,960,000		2,960,000		
ANC	Security/Safety/Access Control Improvements	1,249,000	750,000	499,000			789,000	750,000	39,000			460,000		460,000		
ANC	Security/Safety/Emergency and Access Control/Comm	14,500,000	4,500,000	10,000,000			14,500,000	4,500,000	10,000,000			-		-		
ANC	Site Development Preparation	7,354,000		7,354,000			7,354,000		7,354,000			-		-		
ANC	Taxiway/Runway Improvements	6,075,000	5,500,000	575,000			1,939,000	1,800,000	139,000			4,136,000	3,700,000	436,000		
ANC	Terminal Rehabilitation	14,538,000		14,538,000			4,934,000		4,934,000			8,604,000		8,604,000		
ANC	Terminal Relocations	5,000,000				5,000,000	5,000,000				5,000,000					
ANC Total		\$ 167,100,000	\$ 45,500,000	\$ 108,168,000	\$ -	\$ 13,432,000	\$ 88,486,000	\$ 25,850,000	\$ 53,420,000	\$ -	\$ 9,216,000	\$ 78,814,000	\$ 19,650,000	\$ 54,748,000	\$ -	\$ 4,218,000

FAI		Total														
Description	FY 02/03	AIP	Bonds	PFC	IARF	FY 02	AIP	Bonds	PFC	IARF	FY 03	AIP	Bonds	PFC	IARF	
FAI	Terminal Imp. Ph 2 Const	3,990,000		438,900	3,551,100	3,990,000		438,900	3,551,100							
FAI	Terminal Roof Repl. Const.	2,450,000	2,284,600	165,400		2,450,000	2,284,600	165,400								
FAI	Equipment	1,807,000		1,287,000	440,000	975,000		535,000	440,000		832,000		832,000			
FAI	Drainage Improvements Ph. 3	1,650,000	1,538,700	111,300		135,000		135,000			1,515,000	1,538,700	(23,700)			
FAI	Last Side Utilities Ph 2	1,450,000		1,450,000							1,450,000		1,450,000			
FAI	Annual Improvements	700,000									350,000				350,000	
FAI	Environmental	500,000		500,000							500,000		500,000			
FAI	ARFF Facility Repairs	400,000		400,000		400,000		400,000								
FAI	Preliminary Planning	400,000		400,000							400,000		400,000			
FAI	Terminal HVAC	2,700,000	2,517,800	182,200							2,700,000	2,517,800	182,200			
FAI Total		\$ 18,047,000	\$ 6,341,100	\$ 5,014,800	\$ 3,991,100	\$ 700,000	\$ 8,300,000	\$ 2,284,600	\$ 1,874,300	\$ 3,991,100	\$ 350,000	\$ 7,747,000	\$ 4,056,500	\$ 3,340,500	\$ -	\$ 350,000

AIAS Total	\$ 183,147,000	\$ 51,841,100	\$ 113,182,800	\$ 3,991,100	\$ 14,132,000	\$ 96,786,000	\$ 28,134,600	\$ 55,094,300	\$ 3,991,100	\$ 9,566,000	\$ 86,361,000	\$ 23,706,500	\$ 58,088,500	\$ -	\$ 4,568,000
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**SENATE COMMITTEE REPORT  
First Committee of Referral**

DATE: May 1, 2001

FURTHER: Finance

Date of 5-Day Notice: \_\_\_\_\_  
(in accordance with Uniform Rule 23)

DATE TURNED  
IN TO OFFICE: 5/1/01

Transportation Committee considered      SENATE BILL NO. 218

"An Act relating to international airports revenue bonds and to the spending plan for the International Airports Construction Fund; and providing for an effective date."

and recommends:

- be replaced with CS SB 218 (TVA)
- adopt previous CS (        )
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

**Senate Bill:**

- same title
- new title

**House Bill:**

- same title
- technical title
- new: SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#
DOR	5/1/01	✓		1

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
CHAIR: <i>[Signature]</i>	✓			





**SB**

**219**



**HFIN**

**FILE**

# ALASKA STATE LEGISLATURE

## CONFLICTS CONCERNING TITLE TO SUBMERGED LANDS IN ALASKA

By: Ron Somerville, Resource Consultant  
and  
Ted Popely, Legal Counsel

Updated: 05/09/02

### Statehood Entitlement – Submerged Lands

Alaska became a state in 1959 and under the Equal Footing Doctrine and the Submerged Lands Act inherited title to almost 60+ million acres of submerged lands. Unfortunately, since statehood, only thirteen (13) rivers have been determined to be navigable by the federal courts. Considering the fact that Alaska contains 22,000+ potentially navigable rivers and well over 1,000,000 lakes that could qualify as navigable, it could take several life-times and billions of litigation dollars before Alaska realizes its entitlement, if at all. In addition, the passage of time weakens the state's ability to provide the factual determinations necessary to prove in a federal court that a waterbody was navigable at the time of statehood.

### Issues of State Ownership of Submerged Lands

Alaska faces two types of legal hurdles in establishing its entitlement to submerged lands. Its most critical problem is how to establish, in an efficient and timely manner, that the state's rivers and lakes are navigable. Alaska's second hurdle is to establish that the United States did not defeat the state's title to submerged lands within the federal reservations. The state's attempts to resolve these issues are thwarted by the extremely narrow interpretation the United States gives to the Quiet Title Act and by the lack of a non-judicial process to determine title.

### The Basis of the State's Claim of Title to Submerged Lands

Alaska owns the submerged lands underlying navigable waters and marine waters seaward three miles by virtue of the equal footing doctrine and the Submerged Lands Act of 1953. The equal footing doctrine dictates that new states enter the Union with all of the powers of sovereignty and jurisdiction that pertain to the original states. When a state enters the Union, it takes title to the lands underlying navigable waters and between mean high and mean low tide as a matter of constitutional right, subject only to the paramount federal power to control the waters for navigation in interstate and foreign commerce. The Submerged Lands Act conveys lands under marine waters and also includes lands underlying inland navigable waters to confirm their automatic passage under the equal footing doctrine.

For purposes of title to submerged lands, waters are navigable when they are used or susceptible of being used in their natural and ordinary condition as highways for commerce over which trade and travel may be conducted. Unfortunately, only a handful of waterways have been adjudged navigable

since Alaska's statehood, because of the unwillingness of the United States to settle navigability issues outside litigation, and because of the jurisdictional difficulties of litigation navigability against the United States.

Despite the equal footing doctrine and the Submerged Lands Act, the United States claims title to most or all of the state's submerged lands within the 25% of Alaska that the federal government had reserved before statehood. This issue is governed by *Utah Division of Lands v. United States*, 482 U.S. 193 (1987). Commonly referred to as the "Utah Lake" case. In Utah Lake, the court held that in order to establish that it retained title to submerged land within a reservation, the United States must establish (1) that Congress clearly intended to include submerged lands in the withdrawal, and (2) that Congress affirmatively intended to defeat the future state's title to submerged lands. In Utah Lake, the court found that the United States did not establish congress' intent to include the lake bed in the reservation, despite the fact that the purpose of the reservation was to preserve the lake for a reservoir.

### Navigable Waters Jurisdictional Issues

Some federal agencies have issued regulations governing activities on navigable waters flowing through federal lands. The extent of their authority to do so is unclear. In some instances the agency may have Commerce Clause authority (e.g. promulgating regulations to implement environmental laws) but the more difficult question is the scope of an agency's authority whose mandates are not directly related to water, but are tied to land management, such as the National Forest Service, National Park Service, National Fish and Wildlife Service and Bureau of Land Management. The Court of Appeals for the Eighth Circuit has held that some agencies may regulate non-public lands under the Property Clause if the activities could negatively affect the purpose of the federal reservation. In Alaska, the more common scenario is an agency restricting public access on navigable waters within a reservation, such as requiring restrictive permits to conduct commercial activities on a waterway.

### Navigability Criteria Conflicts

Where title to submerged lands is at stake, the dispositive issue is usually the navigability of the waters that overlie them. The United States Bureau of Land Management (BLM) makes navigability determinations infrequently, only for lakes less than 50 acres and rivers less than three chains (198 feet) wide, and only when it is conveying the adjacent uplands. When waterways are larger than these measurements BLM conveys the adjacent and non-submerged land without navigability determinations. Even when BLM finds a smaller waterway non-navigable, however, it maintains that the determination is relevant only to the amount of acreage it is conveying and does not reflect a federal position on title.

The greatest hurdle to overcome in the State's efforts to identify and manage navigable waters has been the long-standing differences of opinion between the State of Alaska and the United States regarding the application of the test for determining title navigability. Navigability is a question of fact, not a simple legal formula. Variations in waterbody use that result from different physical characteristics and transportation methods and needs must be taken into account. There are many legal precedents for determining navigability in other states based upon the particular facts presented in those cases.

The physical characteristics and uses of a waterbody used by the State for asserting navigability "criteria", are based upon legal principles that have been established by the federal courts. These criteria are applied to rivers, lakes, and streams throughout the State and take into account Alaska's geography, economy, customary modes of water-based transportation, and the particular physical characteristics of the waterbody under consideration.

To resolve these navigability criteria disputes, the State has actively pursued a limited number of court cases challenging particular findings of non-navigability by the federal government. Some of the important cases are:

**Gulkana River.** In this case, both in the U.S. District Court and on appeal to the U.S. Court of Appeals, the federal courts rejected the federal government's restrictive interpretation of the phrase "highway of commerce" in the title navigability test. The federal district court stated that to demonstrate navigability, it is only necessary to show that the waterbody is physically capable of "the most basic form of commercial use: the transportation of people or goods." Because the Gulkana River can be used for the transportation of people or goods, the Gulkana River was found navigable. The court of appeals found that the modern use of the Gulkana River for guided hunting, fishing, and sightseeing trips is a commercial use and, since the physical characteristics of the river have not significantly changed since 1959, provides conclusive evidence that the river was susceptible of commercial use at statehood. The court also found that modern inflatable rafts can be used to establish navigability. In 1990, the U.S. Supreme Court denied the request to review and overturn the decision and, thus, the Gulkana River precedent is now binding on all future navigability determinations in Alaska.

**Kandik and Nation Rivers.** In this administrative appeal, the State and Doyon Limited successfully established that the use or susceptibility of use of a river or stream by an 18-24 foot wooden riverboat capable of carrying at least 1,000 pounds of gear or supplies is sufficient to establish navigability. Based upon the use of these types of boats for the transportation of goods and supplies by trappers, as well as extensive historic and contemporary canoe use, the agency Board found the Kandik and Nation rivers navigable.

**Alagnak River, Nonvianuk River, Kukaklek Lake and Nonvianuk Lake.** In this federal district court case, the Alagnak River, Nonvianuk River, Kukaklek Lake and Nonvianuk Lake were all found navigable. Their primary transportation use is for commercially guided hunting, fishing, and sightseeing and for government research and management. They also serve as a means of access for local residents to their homes and to the surrounding areas for subsistence hunting and fishing.

### Difficulties Quieting Title to Submerged Lands

The State must file a Quiet Title Action in federal court to definitively resolve a dispute with the federal government regarding ownership of a navigable water body. The federal government has made it very difficult to quiet title. The Quiet Title Act provides that the United States may be named as a party defendant in a civil action "to adjudicate a disputed title to real property in which the United States claims an interest." 28 U.S. C. § 2409a(a). The United States has adopted a very narrow view

of the term "claims and interest," asserting that the federal court has no jurisdiction to hear quiet title actions against it unless the federal government actively and expressly asserts an interest in the lands. In the context of the submerged lands, this will occur only in rare circumstances.

While the Ninth Circuit Court of Appeals has decided that a federal non-navigability decision is a sufficient federal claim of interest to give the court jurisdiction under the Quiet Title Act, for these few waterways the State still may be unable to get a judgment, for the following reason. The State receives notice of a non-navigability determination when BLM issues a conveyance decision. Both because the State must give 180 days notice under the Quiet Title Act before filing a complaint, and because a preliminary injunction to prevent the conveyance is unavailable under the Quiet Title Act, the United States will likely convey the lands to a third party before the State can do anything to prevent it, and the State could arguably lose its cause of action against the United States.

Therefore, the State rarely has a viable cause of action to quiet title to submerged lands. The United States is in virtually the same position it was before the Quiet Title Act was passed: it controls when and how a court resolves title disputes. The exception to this general rule will be title disputes based on the issue of whether the United States defeated the State's right to submerged lands before statehood, where the United States has expressly taken a position.

The final legal determination of whether a water-body is navigable is a complex process requiring factual determinations that a waterway had been effectively used for commerce prior to statehood. In the States' litigation to quiet title to the Black, Kandik, and Nation Rivers in northeast Alaska, a panel for the Ninth Circuit Court of Appeals noted in January, 2000:

"There is also a serious policy concern in favor of allowing resolution of disputes based on the United States' inchoate claim to everything in Alaska but what it has disclaimed. Eventually, all the witnesses will be dead, reducing the reliability of litigation. Someone who used one of these rivers in 1959 at age 20 is now 60. The population in the area was so sparse at all relevant times – probably no more than a couple of hundred people who might have used the three rivers during the relevant time, most too young to have relevant knowledge or too old to have survived the forty years since statehood – that a few deaths by old age can remove most or all the knowledgeable witnesses. Also, a state entitled as of 1959 to all the incidents of ownership in its rivers, yet still deprived of clear title forty years later, is effectively deprived of what it is entitled to under the equal footing doctrine."

In addition, the process has become incomprehensibly complicated and expensive. A case in point is the quiet title action by the State to resolve submerged lands ownership under the Black, Kandik and Nation rivers in northeast Alaska. These three rivers clearly meet the criteria established by the federal courts for determining navigability in Alaska. Despite the fact that no one contested the State's claim that these three rivers met the federal courts criteria for determining navigability, this case took nine years and upwards of a million of state and federal dollars to litigate, eventually resulting in the State winning two of the three cases and achieving no solution on the third.

### Solutions Through Federal Legislation

- A. Changes to the Quiet Title Act.** The precise issue in dispute between the state and the United States is what should require the United States to "claim an interest" so as to trigger jurisdiction under the Quiet Title Act. A provision in the Quiet Title Act that defines this phrase broadly enough to permit the state to quiet title to its submerged lands would resolve the issue. This would require a definition that makes the existence of a legal cloud on title sufficient to constitute a federal claim of interest, so that the United States' refusal to take a position as to navigability for title purposes of waters on federal lands would give the state a cause of action in federal court.
- B. Joint State/Federal Navigable Waters Commission.** In 1971, Congress and the State of Alaska respectively created a Joint Federal/State Land Use Planning Commission for Alaska to assist in the massive land-use planning process following passage of the Alaska Native Claims Settlement Act. State legislation (SB 219 and HB 266) have been introduced by Senate President Halford in the Senate and House Speaker Brian Porter in the House to create a similar State/Federal Commission for the purpose of expediting navigability determinations and providing recommendations for ways to improve the process of making water use and navigability decisions in Alaska. Specific recommendations of the Commission concerning navigability or non-navigability may require ratification by Congress and the State Legislature.

### Examples of Navigability Complexities & Additional Information

Appendix A is a copy of the State of Alaska's August 27, 1992 notice to Secretary of the Interior, Manuel Lujan, Jr. of its intent to quiet title to submerged lands described under 194 specific water-bodies in Alaska. Similarly, Appendix B contains a copy of the official notice to Secretary of the Interior Bruce Babbitt of the State's intent to quiet title to submerged lands described under an additional 9 water-bodies.

Most of the water-bodies listed in Appendix A and Appendix B have been recognized by the Bureau of Land Management as being navigable for land conveyance purposes but have maintained that this assertion is not for title purposes. Clearly, some relief by the Courts or Congress is necessary if the state is ever to receive its statehood entitlement.

# FISCAL NOTE

STATE OF ALASKA  
2002 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: SB 219  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DNR  
Title Establishing Joint Federal and State BRU Commissioner's Office  
Navigable Waters Commission for Alaska Component Commissioner's Office  
Sponsor House Resources  
Requester House Resources Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous	200.0					
<b>TOTAL OPERATING</b>	<b>200.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other-CIP Receipts-1061	200.0					
<b>TOTAL</b>	<b>200.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

Prepared by: Legislative Finance Division  
Division \_\_\_\_\_  
Approved by: \_\_\_\_\_  
Agency \_\_\_\_\_

Phone 465-3795  
Date/Time 4/2/02 8:36 AM  
Date 4/2/2002



107th CONGRESS

2d Session

H. R. 4587

To establish the Joint Federal and State Navigable Waters Commission for Alaska.

**IN THE HOUSE OF REPRESENTATIVES**

**APRIL 24, 2002**

Mr. YOUNG of Alaska introduced the following bill; which was referred to the Committee on Resources

**A BILL**

To establish the Joint Federal and State Navigable Waters Commission for Alaska.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Joint Federal and State Navigable Waters Commission for Alaska'.

**SEC. 2. FINDINGS AND PURPOSES.**

(a) FINDINGS- The Congress finds the following:

- (1) The efficient and orderly development of the State of Alaska will be better achieved if the Federal Government joins the State of Alaska in a carefully coordinated approach to identify ownership and jurisdictional interests in land and waters.
- (2) Alaska has abundant water resources that are invaluable to State residents and all citizens of the United States.
- (3) Because of the massive number of navigable waterways and other bodies of water in the State of Alaska, the task of resolving submerged land ownership and navigable water determinations has been very slow, counter-productive from an orderly resource management standpoint, and costly as the State, private landowners, and the Federal Government attempt to initiate long-range planning processes.

(b) PURPOSES- The purposes of this Act are the following:



- (1) Expedite the process of quieting legitimate title to the submerged lands in the State of Alaska.
- (2) Facilitate determinations for purposes of the Submerged Lands Act (43 U.S.C. 1301 et seq.), to the extent possible, which bodies of water in Alaska are navigable waters and which such bodies of water are not navigable waters.
- (3) Recommend to the State of Alaska and the Federal Government--
  - (A) ways to improve the process of making water use and navigability decisions; and
  - (B) ways to fairly and expeditiously quiet title to the State's submerged lands.

### **SEC. 3. ESTABLISHMENT.**

There is established a commission to be known as the 'Joint Federal and State Navigable Waters Commission for Alaska' (in this Act referred to as the 'Commission').

### **SEC. 4. DUTIES OF THE COMMISSION.**

The Commission shall--

- (1) make recommendations to the Secretary of the Interior and the State of Alaska regarding determination of bodies of water in the State that are navigable waters for purposes of the Submerged Lands Act (43 U.S.C. 1301 et seq.);
- (2) establish a process for employing established standards to facilitate making such recommendations and determinations;
- (3) develop procedures for involving private landowners, including Alaska Native corporations and the general public, in that process;
- (4) for purposes of making such recommendations, undertake a process to identify navigable waters in Alaska pursuant to established standards and criteria; and
- (5) make recommendations to improve coordination and consultation between the government of the State of Alaska and the Federal Government regarding navigability determinations and decisions concerning title to submerged lands.

### **SEC. 5. MEMBERSHIP.**

(a) NUMBER AND APPOINTMENT-

(1) **IN GENERAL**- The Commission shall be composed of 10 members, of which 5 shall be Federal members appointed under subsection (b) and 5 shall be State members appointed under subsection (c).

(2) **APPOINTMENT DEADLINE**- Initial appointments under this section shall be made not later than 60 days after the date of enactment of this Act.

(b) **FEDERAL MEMBERS**- The 5 Federal members shall consist of--

(1) 1 member appointed by the President of the United States;

(2) 1 member appointed by each of the three members of the Congress who represent the State of Alaska; and

(3) 1 member appointed by the Secretary of the Interior.

(c) **STATE MEMBERS**- The 5 State members shall consist of--

(1) the Governor of the State of Alaska or the Governor's designee;

(2) 2 members appointed by the Governor of the State of Alaska, of whom 1 shall be an Alaska Native (as that term is defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.));

(3) 1 member appointed by the President of the Alaska Senate; and

(4) 1 member appointed by the Speaker of the Alaska House of Representatives.

Each of State members shall serve at the pleasure of the appointing authority for that member.

(d) **INELIGIBILITY FOR APPOINTMENT**- Members of Congress shall be ineligible for appointment to the Commission.

(e) **CO-CHAIRS**- The member appointed by the President of the United States and the Governor or Governor's designee shall serve as co-chairs of the Commission.

(f) **INITIAL MEETING**- The initial meeting of the Commission shall be called by the co-chairs.

(g) **TERM OF APPOINTMENT**-

(1) **IN GENERAL**- Subject to paragraph (2), members of the Commission shall be appointed for the life of the Commission.

(2) **EARLY TERMINATION OF APPOINTMENT**- (A) Membership of a member of the Commission shall terminate if the member is--

(i) an individual who is an officer or employee of a government body and who ceases to serve as such an officer or employee; or

(ii) an individual who is not an officer or employee of a government and who becomes an officer or employee of a government.

(B) Termination of an individual's membership pursuant to subparagraph (A)(i) or (ii) shall take effect on the expiration of the 90-day period beginning on the date such member ceases to be such an officer or employee of such government, or becomes an officer or employee of a government, respectively.

(h) QUORUM- 3 Federal members and 3 State members of the Commission shall constitute a quorum, but a lesser number may conduct meetings. All decisions of the Commission shall require concurrence by at least 3 State members and 3 Federal members of the Commission.

(i) VACANCY- A vacancy in the membership of the commission--

(1) shall not affect the powers of the Commission to meet or conduct business, subject to subsection (h); and

(2) shall be filled in the same manner in which the original appointment was made, by the same appointing authority.

## **SEC. 6. COMPENSATION OF THE COMMISSION.**

(a) PAY FOR FEDERAL MEMBERS OF THE COMMISSION-

(1) NONGOVERNMENT EMPLOYEES- Each Federal member of the Commission who is not otherwise an officer or employee of the Federal Government shall be entitled to receive the daily equivalent of the annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code, as in effect from time to time, for each day (including travel time) during which such member is engaged in the actual performance of duties of the Commission.

(2) GOVERNMENT EMPLOYEES- A member of the Commission who is an officer or employee of either the government of the State of Alaska or the Federal Government shall serve without additional pay or benefits for service as a member of the Commission.

(b) TRAVEL EXPENSES- Federal members of the Commission shall receive travel expenses, including per diem in lieu of subsistence, in accordance with subchapter I of chapter 57 of title 5, United States Code. State members of the Commission are entitled to per diem and travel expenses as authorized under pertinent laws of the State of Alaska.

## **SEC. 7. POWERS OF THE COMMISSION.**

(a) HEARINGS AND MEETINGS- The Commission or, on the authorization of the Commission, any subcommittee or member of the Commission may, for the purposes

of carrying out its duties, hold hearings, take testimony, receive evidence, print or otherwise reproduce and distribute all or part of commission proceedings and reports, and sit and act at those times and places as the Commission, subcommittee, or members consider desirable.

(b) **INFORMATION FOR THE COMMISSION-** The Commission may obtain directly from any executive agency (as defined in section 105 of title 5 of the United States Code) or court information necessary to enable it to carry out its duties under this Act. On the request of either co-chair of the Commission, and consistent with applicable law, the head of an executive agency or of a Federal court shall provide such information to the Commission.

(c) **POWERS OF MEMBERS AND AGENTS-** Any member or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this section.

(d) **VOLUNTEER SERVICES-** The Commission may accept volunteer services for the purpose of aiding or facilitating the work of the Commission.

(e) **MAILS-** The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(f) **ADMINISTRATIVE SUPPORT SERVICES-** Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this Act.

(g) **CONTRACT AUTHORITY-** To the extent or in the amounts provided in advance in appropriation Acts, the Commission may contract with and compensate government and private agencies or persons for property or services, without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).

## **SEC. 8. STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.**

(a) **STAFF-** Subject to rules prescribed by the Commission, the co-chairs may appoint and fix the pay of personnel as they consider appropriate.

(b) **APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS-** The staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the annual rate of basic pay for GS-15 of the General Schedule.

(c) **EXPERTS AND CONSULTANTS-** Subject to rules prescribed by the Commission, the co-chairs may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to

exceed the daily equivalent of the maximum annual rate of basic pay for GS-15 of the General Schedule.

(d) **STAFF OF FEDERAL AGENCIES-** Upon request of the co-chairs, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its duties under this Act.

#### **SEC. 9. RELATIONSHIP TO OTHER LAW.**

The Federal Advisory Committee Act (5 App. U.S.C.) shall not apply to the Commission.

#### **SEC. 10. REPORTS.**

(a) **ANNUAL REPORT-** Not later than January 31 of each year, the Commission shall submit to the President of the United States, the Congress, the Governor of the State of Alaska, and the legislature of the State of Alaska a written report describing its activities during the preceding year.

(b) **FINAL REPORT-** The Commission shall submit a final comprehensive report to the officials and entities referred to in subsection (a) at least 10 days before the date the Commission terminates.

#### **SEC. 11. TERMINATION OF THE COMMISSION.**

The Commission is terminated 2 years after the date of completion of appointment of all members of the Commission.



Official Business

**Alaska State Legislature**  
**President of the Senate**

**RICK**  
**HALFORD**

State Capitol  
Juneau, Alaska  
99801-1182  
Phone (907) 465-4958  
Fax (907) 465-4928

P.O. Box 670190  
Chugiak, Alaska 99567  
Phone (907) 694-4958  
Fax (907) 694-0549

**SPONSOR STATEMENT**

**SENATE BILL NO. 219**

**ESTABLISHING A STATE NAVIGABLE WATERS COMMISSION FOR ALASKA**

Senate Bill No. 219 is designed to highlight a major long-term crisis facing the state and to provide a public forum to discuss possible solutions. This legislation promotes the establishment of a State Navigable Waters Commission for Alaska. A joint Commission would become a reality if Congress provides the same authorization in federal law. The State Commission would continue to fulfill its mission, however, even if Congress does not authorize a joint Commission.

This Commission is patterned after the Joint Federal-State Land Use Planning Commission for Alaska created in federal law within the Alaska Native Claims Settlement Act (1971). Corresponding state legislation was created in Chapter 40 early in 1972.

The purpose of this Commission is not as broad as the mission given to the Land Use Planning Commission. The Navigable Waters Commission is designed specifically to address the major water related problem facing the state – particularly the determination of navigability and the resolution of title to submerged lands within the state.

At statehood in 1959, Alaska – like all new states under the Submerged Lands Act – received title to all submerged lands underlying state navigable waters and marine waters out to three miles. Thus the issue of navigability is critical for the state to quiet title to its rightful interest in those lands.

Since statehood, the federal government has been slow to concede any navigability determinations, and therefore, Alaska has received valid title to very little submerged land. In some cases, the federal government has utilized every possible legal tactic under the Quiet Title Act to impede the state's assertion of ownership. A case in point is the quiet title action by the state of Alaska to resolve submerged lands ownership under the Black, Kandig and Nation Rivers in northeast Alaska. These three Rivers clearly meet the criteria established by the federal courts for determining navigability in Alaska.

Despite the fact that no one contested the state's claim that these streams met the federal courts criteria for determining navigability, this case took nine years and millions of state and federal dollars to litigate, eventually resulting in the state winning two of the three cases and achieving no solution on the third. Alaska contains over 22,000 potentially

navigable rivers and well over 1,000,000 lakes that could qualify as navigable. If, however, the federal government continues to oppose every assertion of title to submerged lands by the state, final determinations of this magnitude will never be resolved in anyone's favor.

It is estimated that the state's submerged lands ownership encompasses over 60+ million acres. Unfortunately, since Alaska entered the Union, only thirteen (13) rivers have been determined to be navigable by the courts. While the Bureau of Land Management is responsible for making navigability determinations for the purpose of calculating acreage entitlements; their determinations cannot be used to clarify title. The ultimate decision of title navigability rests with the federal courts or Congress.

The schizophrenic approach taken by the government agencies in addressing navigability assertions and submerged land title since statehood has resulted in millions of acres of clouded private land titles and a process ultimately designed to fail. Preliminary discussions with the new federal administration have indicated that the time may be right to pursue innovative solutions. A more proactive stance on the part of the state could be the right stimulus at the right time.

The primary purposes of this legislation are to spotlight this dilemma facing the state, to emphasize the importance of proceeding expeditiously with resolving navigability claims, to provide a public forum for discussion and to entice Congress and the federal agencies to participate in a fair and open process. If successful, the Commission could save virtually billions of dollars in litigation costs and significantly reduce jurisdictional and title conflicts.



# HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: April 29, 2002

FURTHER REFERRALS:

Date of Committee Action: 5/10/02

The FINANCE Committee considered:

CSSB 219(FIN)

CS FOR SENATE BILL NO. 219(FIN)

FED/STATE NAVIGABLE WATERS COMMISSION

"An Act establishing and relating to the Navigable Waters Commission for Alaska."

Recommends it be replaced with CS ( ) [ ] Same Title [ ] New Title  
 For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR \_\_\_\_\_

- [ ] attach amendments
- [ ] add new referral to \_\_\_\_\_ Committee
- [ ] Letter of Intent \_\_\_\_\_ Committee

List of Abbrev. for Depts.:

- ADM
- CED
- COR
- CRT
- EED
- DEC
- DFG
- GOV
- HSS
- LAA
- LAW
- LWF
- MVA
- DNR
- DPS
- REV
- DOT
- UA

<u>NEW FISCAL NOTES</u>				
*For Chief Clerk's Office Use Only				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
LAA/DNR(L)				

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
<i>[Signature]</i>	Bunde	✓			
<i>[Signature]</i>	HARRIS	✓			
<i>[Signature]</i>	CRANK			✓	
<i>[Signature]</i>	DAVIES	✓			
<i>[Signature]</i>	MOSES			✓	
<i>[Signature]</i>	Lanaster	✓			
<i>[Signature]</i>	FOSTER	X			
Chair: <i>[Signature]</i>	Mulder	✓			
Chair: <i>[Signature]</i>	Williams	✓			



# FISCAL NOTE

STATE OF ALASKA  
2002 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SB 219  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DNR  
 Title Establishing Joint Federal and State BRU Commissioner's Office  
Navigable Waters Commission for Alaska Component Commissioner's Office  
 Sponsor House Resources  
 Requester House Resources Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous	200.0					
<b>TOTAL OPERATING</b>	<b>200.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other-CIP Receipts-1061	200.0					
<b>TOTAL</b>	<b>200.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2002) cost: 0.0  
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Legislative Finance Division Phone 465-3795  
 Division \_\_\_\_\_ Date/Time 4/2/02 8:36 AM  
 Approved by: \_\_\_\_\_ Date 4/2/2002  
 Agency \_\_\_\_\_

**SB**

**219**

SFIN

FILE

# SENATE FINANCE COMMITTEE REPORT

REPORTED OUT  
 APR 12 2002  
 SENATE FINANCE COMMITTEE

DATE: 4/4/02

FURTHER:

DATE TURNED IN TO OFFICE: 12 April 2002

Finance Committee considered SENATE BILL NO. 219  
*SB 219 FED/STATE NAVIGABLE WATERS COMMISSION*

"An Act establishing and relating to the Joint Federal and State Navigable Waters Commission for Alaska; and providing for an effective date."

and recommend:

- be replaced with CS SB 219 (FIN)  
*(CS Forthcoming)*
- adopt previous CS \_\_\_\_\_
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

- Senate Bill:**  
 same title  
 new title  
**House Bill:**  
 same title  
 technical title  
 new: SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#
DNR	4/4/02	200.0		#1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Linda Green</i>	✓			
<i>Alan J. Jensen</i>	✓			
<i>Donna Wilber</i>				
<i>Debbie Hoff</i>			✓	
<i>Alan Curtis</i>			✓	
COCHAIR:				
COL AIR: <i>Pete Kelly</i>	✓			

APR 12 2002

SENATE FINANCE  
COMMITTEE

# FISCAL NOTE

STATE OF ALASKA  
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: SB 219  
(S) Publish Date: 4/4/02

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Natural Resources  
Title Establishing Joint Federal and State BRU Commissioner's Office  
Navigable Waters Commission for Alaska Component Commissioner's Office  
Sponsor House Resources  
Requester House Resources Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous	200.0					
<b>TOTAL OPERATING</b>	<b>200.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other-CIP Receipts-1061	200.0					
<b>TOTAL</b>	<b>200.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

Prepared by: Anna Kim, Fiscal Analyst  
Division: Legislative Finance Division  
Approved by: David Teal, Legislative Fiscal Analyst  
Agency: Legislative Finance Division

Phone 465-3795  
Date/Time 4/4/02 2:40 PM  
Date 4/4/02

adopted

WORK DRAFT

WORK DRAFT

WORK DRAFT

22-LS0965\L  
Cook  
4/11/02

CJ FOR SENATE BILL NO. 219( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): SENATOR HALFORD

A BILL  
FOR AN ACT ENTITLED

1 "An Act establishing and relating to the Navigable Waters Commission for Alaska."

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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

5 STATE POLICY. The legislature determines that the efficient and orderly  
6 development of the state will be better achieved if the state and the federal governments join  
7 together in a carefully coordinated approach to land and water use planning and management.  
8 The legislature recognizes that, although the state is the primary trustee of public trust  
9 resources, it is in the best interest of the citizens if the state and federal governments, as  
10 designated stewards of these resources, cooperate to the maximum extent possible in  
11 determining their uses. However, the legislature also recognizes that, even without federal  
12 participation, the state must proceed to make management decisions. The state is particularly  
13 blessed with significant water resources that are invaluable in numerous ways to state  
14 residents and all citizens of the United States. With the massive numbers of navigable  
15 waterways and bodies of water in the state, the task of resolving submerged land ownership

1 and navigable water determinations has been painfully slow, counter-productive from an  
2 orderly resource management standpoint, and costly as the state, private landowners, and the  
3 federal government attempt to initiate long-range planning processes. For this reason, it is  
4 determined by the legislature that the State of Alaska and the United States should cooperate  
5 in establishing a joint state and federal commission or, if the federal government elects not to  
6 participate, a state commission must be established to proceed efficiently and effectively to

7 (1) expedite the process of quieting legitimate title to the state's submerged  
8 lands;

9 (2) determine, to the extent possible, which bodies of water are navigable or  
10 non-navigable; and

11 (3) provide recommendations to the state and the federal governments  
12 concerning ways to improve the process of making navigability determinations and ways to  
13 quiet title to the state's submerged lands fairly and expeditiously.

14 \* Sec. 2. The uncodified law of the State of Alaska is amended by adding a new section to  
15 read:

16 NAVIGABLE WATERS COMMISSION FOR ALASKA. (a) A Navigable Waters  
17 Commission for Alaska is established. If authorized by federal law, the commission shall be a  
18 joint federal and state commission.

19 (b) The governor or the governor's designee shall serve as chair of the commission. If  
20 federal participation is authorized by federal law, the member appointed by the President of  
21 the United States or the United States Secretary of the Interior shall serve as co-chair of the  
22 joint commission. The chair or co-chairs of the commission shall call meetings.

23 (c) If a joint commission is formed, four state and four federal members of the  
24 commission constitute a quorum, and all decisions of the commission require concurrence by  
25 at least four state and four federal members of the commission. Otherwise, four state  
26 members of the commission constitute a quorum, and all decisions of the commission require  
27 concurrence by at least four members.

28 (d) A vacancy in the membership of the commission does not affect its powers. The  
29 vacancy shall be filled in the same manner in which the original appointment was made.

30 (e) Subject to procedures adopted by the commission, the chair or co-chairs, in  
31 accordance with applicable laws, may

1 (1) appoint and fix the compensation of the commission staff and personnel as  
2 they consider necessary; and

3 (2) procure temporary and intermittent services.

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

6 MEMBERSHIP OF THE COMMISSION. (a) The state membership on the  
7 Navigable Waters Commission for Alaska is composed of the governor or the governor's  
8 designee, two members appointed by the governor, two members appointed by the president  
9 of the senate, and two members appointed by the speaker of the house, all of whom serve at  
10 the pleasure of the appointing authority.

11 (b) The membership also includes individuals appointed under federal law if a joint  
12 commission is authorized.

13 \* Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to  
14 read:

15 COMPENSATION AND PER DIEM. (a) A state member of the Navigable Waters  
16 Commission for Alaska who is a state officer or employee serves without compensation in  
17 addition to that received for regular employment. Other state members of the commission  
18 receive compensation as authorized for the Board of Fisheries under AS 16.05.290.

19 (b) State members of the commission are entitled to per diem and travel expenses  
20 authorized by law for boards and commissions under AS 39.20.180.

21 \* Sec. 5. The uncodified law of the State of Alaska is amended by adding a new section to  
22 read:

23 DUTIES OF THE COMMISSION. The Navigable Waters Commission for Alaska  
24 shall

25 (1) establish a process for researching navigability determinations that affect  
26 land title;

27 (2) develop procedures for involving private landowners and the general  
28 public in the navigability determination process of the commission;

29 (3) undertake a process of navigable and non-navigable waters identification  
30 under criteria established in law;

31 (4) make recommendations to improve coordination and consultation between



1 the state and federal governments in making navigability determinations and decisions  
2 concerning title to submerged lands.

3 \* Sec. 6. The uncodified law of the State of Alaska is amended by adding a new section to  
4 read:

5 HEARINGS. The Navigable Waters Commission for Alaska or, on the authorization  
6 of the commission, any subcommittee or member of the commission may, for the purposes of  
7 carrying out its duties, hold hearings, take testimony, receive evidence, print or otherwise  
8 reproduce and distribute all or part of commission proceedings and reports, and sit and act at  
9 those times and places as the commission, subcommittee, or members consider desirable.

10 \* Sec. 7. The uncodified law of the State of Alaska is amended by adding a new section to  
11 read:

12 INFORMATION FOR THE COMMISSION. Each agency, department, board, or  
13 commission of the state government is authorized to furnish to the Navigable Waters  
14 Commission for Alaska, upon request of a chair or co-chair, information the commission  
15 considers necessary to carry out its functions under this Act.

16 \* Sec. 8. The uncodified law of the State of Alaska is amended by adding a new section to  
17 read:

18 REPORTS. (a) On or before January 31 of each year, the Navigable Waters  
19 Commission for Alaska shall submit to the President of the United States, the United States  
20 Secretary of the Interior, the United States Congress, the governor, and the state legislature a  
21 written report describing its activities during the preceding year and its recommendations  
22 regarding its duties under sec. 5 of this Act.

23 (b) The commission shall submit its final comprehensive report at least 10 days  
24 before the date the commission is terminated.

25 \* Sec. 9. The uncodified law of the State of Alaska is amended by adding a new section to  
26 read:

27 TERMINATION OF THE COMMISSION. The Navigable Waters Commission for  
28 Alaska is terminated two years after the effective date of this Act.

not offered

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CS FOR SENATE BILL NO. 219( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): SENATOR HALFORD

A BILL  
FOR AN ACT ENTITLED

1 "An Act establishing and relating to the Navigable Waters Commission for Alaska."

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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

5 STATE POLICY. The legislature determines that the efficient and orderly  
6 development of the state will be better achieved if the state and the federal governments join  
7 together in a carefully coordinated approach to land and water use planning and management.  
8 The legislature recognizes that, although the state is the primary trustee of public trust  
9 resources, it is in the best interest of the citizens if the state and federal governments, as  
10 designated stewards of these resources, cooperate to the maximum extent possible in  
11 determining their uses. However, the legislature also recognizes that, even without federal  
12 participation, the state must proceed to make management decisions. The state is particularly  
13 blessed with significant water resources that are invaluable in numerous ways to state  
14 residents and all citizens of the United States. With the massive numbers of navigable  
15 waterways and bodies of water in the state, the task of resolving submerged land ownership

1 and navigable water determinations has been painfully slow, counter-productive from an  
2 orderly resource management standpoint, and costly as the state, private landowners, and the  
3 federal government attempt to initiate long-range planning processes. For this reason, it is  
4 determined by the legislature that the State of Alaska and the United States should cooperate  
5 in establishing a joint state and federal commission or, if the federal government elects not to  
6 participate, a state commission must be established to proceed efficiently and effectively to

7 (1) expedite the process of quieting legitimate title to the state's submerged  
8 lands;

9 (2) determine, to the extent possible, which bodies of water are navigable or  
10 non-navigable; and

11 (3) provide recommendations to the state and the federal governments  
12 concerning ways to improve the process of making navigability determinations and ways to  
13 quiet title to the state's submerged lands fairly and expeditiously.

14 \* Sec. 2. The uncodified law of the State of Alaska is amended by adding a new section to  
15 read:

16 NAVIGABLE WATERS COMMISSION FOR ALASKA. (a) A Navigable Waters  
17 Commission for Alaska is established. If authorized by federal law, the commission shall be a  
18 joint federal and state commission.

19 (b) The governor or the governor's designee shall serve as chair of the commission. If  
20 federal participation is authorized by federal law, the member appointed by the President of  
21 the United States or the United States Secretary of the Interior shall serve as co-chair of the  
22 joint commission. The chair or co-chairs of the commission shall call meetings.

23 (c) If a joint commission is formed, three state and three federal members of the  
24 commission constitute a quorum, and all decisions of the commission require concurrence by  
25 at least three state and three federal members of the commission. Otherwise, three state  
26 members of the commission constitute a quorum, and all decisions of the commission require  
27 concurrence by at least three members.

28 (d) A vacancy in the membership of the commission does not affect its powers. The  
29 vacancy shall be filled in the same manner in which the original appointment was made.

30 (e) Subject to procedures adopted by the commission, the chair or co-chairs, in  
31 accordance with applicable laws, may

1 (1) appoint and fix the compensation of the commission staff and personnel as  
2 they consider necessary; and

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5 read:

6 MEMBERSHIP OF THE COMMISSION. (a) The state membership on the  
7 Navigable Waters Commission for Alaska is composed of the governor or the governor's  
8 designee, two members appointed by the governor, one member appointed by the president of  
9 the senate, and one member appointed by the speaker of the house, all of whom serve at the  
10 pleasure of the appointing authority.

11 (b) At least one member appointed by the governor shall be an Alaska Native.

12 (c) The membership also includes individuals appointed under federal law if a joint  
13 commission is authorized.

14 \* Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to  
15 read:

16 COMPENSATION AND PER DIEM. (a) A state member of the Navigable Waters  
17 Commission for Alaska who is a state officer or employee serves without compensation in  
18 addition to that received for regular employment. Other state members of the commission  
19 receive compensation as authorized for the Board of Fisheries under AS 16.05.290.

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25 shall

26 (1) establish a process for researching navigability determinations that affect  
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29 public in the navigability determination process of the commission;

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31 under criteria established in law;

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3 concerning title to submerged lands.

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6 HEARINGS. The Navigable Waters Commission for Alaska or, on the authorization  
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15 Commission for Alaska, upon request of a chair or co-chair, information the commission  
16 considers necessary to carry out its functions under this Act.

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19 REPORTS. (a) On or before January 31 of each year, the Navigable Waters  
20 Commission for Alaska shall submit to the President of the United States, the United States  
21 Secretary of the Interior, the United States Congress, the governor, and the state legislature a  
22 written report describing its activities during the preceding year and its recommendations  
23 regarding its duties under sec. 5 of this Act.

24 (b) The commission shall submit its final comprehensive report at least 10 days  
25 before the date the commission is terminated.

26 \* Sec. 9. The uncodified law of the State of Alaska is amended by adding a new section to  
27 read:

28 TERMINATION OF THE COMMISSION. The Navigable Waters Commission for  
29 Alaska is terminated two years after the effective date of this Act.



Official Business

Alaska State Legislature  
President of the Senate

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SPONSOR STATEMENT

SENATE BILL NO. 219

ESTABLISHING A STATE NAVIGABLE WATERS COMMISSION FOR ALASKA

Senate Bill No. 219 is designed to highlight a major long-term crisis facing the state and to provide a public forum to discuss possible solutions. This legislation promotes the establishment of a State Navigable Waters Commission for Alaska. A joint Commission would become a reality if Congress provides the same authorization in federal law. The State Commission would continue to fulfill its mission, however, even if Congress does not authorize a joint Commission.

This Commission is patterned after the Joint Federal-State Land Use Planning Commission for Alaska created in federal law within the Alaska Native Claims Settlement Act (1971). Corresponding state legislation was created in Chapter 40 early in 1972.

The purpose of this Commission is not as broad as the mission given to the Land Use Planning Commission. The Navigable Waters Commission is designed specifically to address the major water related problem facing the state – particularly the determination of navigability and the resolution of title to submerged lands within the state.

At statehood in 1959, Alaska – like all new states under the Submerged Lands Act – received title to all submerged lands underlying state navigable waters and marine waters out to three miles. Thus the issue of navigability is critical for the state to quiet title to its rightful interest in those lands.

Since statehood, the federal government has been slow to concede any navigability determinations, and therefore, Alaska has received valid title to very little submerged land. In some cases, the federal government has utilized every possible legal tactic under the Quiet Title Act to impede the state's assertion of ownership. A case in point is the quiet title action by the state of Alaska to resolve submerged lands ownership under the Black, Kandig and Nation Rivers in northeast Alaska. These three Rivers clearly meet the criteria established by the federal courts for determining navigability in Alaska.

Despite the fact that no one contested the state's claim that these streams met the federal courts criteria for determining navigability, this case took nine years and millions of state and federal dollars to litigate, eventually resulting in the state winning two of the three cases and achieving no solution on the third. Alaska contains over 22,000 potentially

4/10/02