

ALASKA LEGISLATURE

2730

HOUSE and SENATE FINANCE COMMITTEE FILES, 2003-2004

ALASKA STATE LEGISLATURE

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Senate
Senate District F

Senate Bill 305

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

SPONSOR: Senator Gene Therriault

SPONSOR STATEMENT:

With the exception of withdrawn federal lands, at statehood in 1959 Alaska received title under the equal footing doctrine to all submerged lands under state navigable waters and marine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

In some cases, the federal government has used every possible legal tactic under the Federal Quiet Title Act to impede the state's assertion of ownership. The Black, Kandig and Nation Rivers in northeast Alaska are examples. These three Rivers clearly meet the criteria established by the federal courts for determining navigability in Alaska. Although no one contested the state's claim that these streams met the federal criteria, this case took nine years and millions of state and federal dollars to litigate. Eventually the state won two of the three cases. The third was resolved by a Federal Recordable Disclaimer of Interest in 2003.

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

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

First, SB 305 provides notice to all parties that the state is laying claim to all submerged lands, except those withdrawn at the time of statehood, that meet the standards and criteria established in the Submerged Lands Act and in various federal court decisions.

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

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

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

ALASKA STATE LEGISLATURE

CONFLICTS CONCERNING TITLE TO SUBMERGED LANDS IN ALASKA

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

Updated: 02/11/04

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, less than 20 rivers have been determined to be navigable by the federal courts. Although BLM has made numerous navigability determinations and the Department of the Interior is presently working positively with the state to identify and issue a "Recordable Disclaimer of Interest" for navigable waterways, the process is still painfully slow. Considering the fact that Alaska contains 20,000+ 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 to establish, in an efficient and timely manner, which of the state's rivers and lakes are navigable. Alaska's second hurdle is to determine which submerged lands the United States legally withdrew prior to statehood. The state's attempts to resolve these issues are thwarted by the extremely narrow interpretation the United States gives to the federal 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 litigating 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, Nation and Black Rivers. In this case, 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 federal courts found the Kandik and Nation rivers navigable and, due to a technical interpretation of the federal Quiet Title Act, failed to rule on the Black River. The Department of the Interior issued a "Recordable Disclaimer of Interest" for the Black River, however, in 2003.

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.

From the standpoint of the public, the state and the federal governments both contribute to the confusion over navigability determinations. The State Policy on Navigability adopted by the Alaska Department of Natural Resources includes the following explanations:

“When information is lacking, and it must make a navigability determination, the state is forced to rely solely upon the physical characteristics shown on maps and aerial photographs. In these cases, the state identifies as navigable all streams depicted on the U.S.G.S. maps with double lines (generally at least 70 feet wide) and having an average gradient over the length of the stream of no more than 50 feet per mile.”

“Streams depicted with single lines, although narrower in width, may also be listed as potentially navigable if they have gradients of substantially less than 50 feet per mile and are at least 10 miles.”

“If a lake is totally isolated, it will be included on the state’s navigability maps if it is at least 1 ½ miles long. That length insures that the lake can be used as a highway.”

“An isolated lake might need to be 2-3 miles long to be included on the state’s navigability maps.”

“...those lakes which are shown on maps and aerial photographs as having a navigable water connection with other navigable waters, or which are accessible by short overland portages, are considered navigable regardless of the size of the lake.”

Clouded Titles Due to Erroneous Navigability Determinations

The standard procedures for surveying and conveying federal land are found in the Manual of Instructions for the Survey of the Public Lands of the United States. Under those procedures, consistently used in every public land state except Alaska, only uplands are surveyed and conveyed in fulfillment of acreage entitlements, not submerged lands. The survey rules require that all lakes 50 acres or larger, and rivers and streams three chains (198 feet) in width or wider, regardless of navigability, be meandered rivers, lakes, and streams is not included in computing the amount of land involved in the conveyance.

In Alaska, however, the federal government had not consistently followed these survey rules. Until 1983, the federal government treated submerged lands the same as uplands. All bodies of water that were considered non-navigable by the federal government, regardless of size, were surveyed as though they were uplands and the acreage of submerged lands were charged against the total acreage entitlement.

Because of these conveyance procedures, the navigability of waterbodies in Alaska has been an issue of contention since the enactment of the Alaska Statehood Act and ANCSA. In addition to the problems caused by a lack of information about many waterbodies, the situation was exacerbated by the narrow definition of navigability used by the federal government. Hundreds of rivers, lakes and streams considered navigable by the state were determined non-navigable by the federal government.

In 1983, the Department of the Interior agreed that the standard rules of survey should be followed for land conveyances in Alaska. The recipients of conveyances from the federal government are charged only for the amount of public land is calculated by the survey, which does not include the areas of meandered rivers, lakes and streams. This decision by the Department of the Interior was legislatively approved in 1988.

Despite the fact that the use of these survey procedures has eliminated many of the land conveyance problems after 1983, a major problem concerning navigability decisions made by the federal government under the old system remains unresolved. At issue are the hundreds of erroneous non-navigability decisions and the resulting submerged land conveyances made to ANCSA corporations in previous years. This issue becomes more critical as efforts are made by the federal government to establish a deadline for completing land conveyances. ANCSA corporations may be unable to replace erroneously conveyed submerged lands if the selection process had been terminated.

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 Administrative Action – Recordable Disclaimer of Interest

Following meetings with the Legislative leadership in 2002, the Department of the Interior offered to examine the possibility of using a “Recordable Disclaimer of Interest” as a means of resolving submerged lands title disputes between the state and the federal government. In 2003, the Department of the Interior issued a “Recordable Disclaimer of Interest” in the Black River located in Northeast Alaska. This River was one of three rivers in that region that the ownership of the submerged lands was not resolved through litigation.

The legislature, through Legislative Budget and Audit, has funded a special project for the Alaska Departments of Natural Resources and Fish and Game to expedite the petition process to the Department of the Interior for issuing “Recordable Disclaimers of Interest” for navigable waters and RS 2477 Rights-of-way. The major emphasis of the project has been directed at navigable waters. Some petitions are pending and others are due to be submitted early in 2004.

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. The State Legislature passed a bill in 2002 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. Similar legislation was introduced in Congress by the Alaska delegation to create the federal portion of the Commission. Unfortunately, this legislation did not pass as the federal and state administrations looked for other ways to accelerate title dispute resolutions.

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.

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STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

December 17, 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Bruce Babbitt
Department of the Interior
1849 C Street NW
Washington, D.C. 20240

Dear Mr. Babbitt:

The State of Alaska intends to file real property quiet title actions as to the submerged lands described on the list attached as appendix A, and is providing you this notice pursuant to 28 U.S.C. § 2409a(m). Title to these lands passed to Alaska at statehood based on the equal footing doctrine, the Submerged Land Act of May 22, 1953, P.L. 83-31, 67 Stat. 29, 43 U.S.C. §§ 1301 et seq., and the Alaska Statehood Act of July 7, 1958, P.L. 85-508, 72 Stat. 339, 48 U.S.C. note preceding §21.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:

Joanne M. Grace
Joanne M. Grace
Assistant Attorney General

Attachment

cc: Laurie Adams, Regional Solicitor, Department of Interior
Tom Allen, State Director, Bureau of Land Management
Niles Cesar, Area Director, Bureau of Indian Affairs
David B. Allen, Regional Director, Fish and Wildlife Service
Robert Barbee, Regional Director, National Park Service

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

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APPENIDIX A

Copper River Region
Copper River

Northern Region
Kuk River
Meade River
Kukpowruk River

Bristol Bay Region
Arolik River
Kanektok River
Kisaralik River
Goodnews River
Togiak River

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

August 27, 1992

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

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P.O. BOX 110300 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-3295

Manuel Lujan, Jr., Secretary
Department of the Interior
1849 C Street NW
Washington, D.C. 20240

Dear Mr. Lujan:

The State of Alaska intends to file real property quiet title actions as to the submerged lands described on the list attached as appendix A, and is providing you this notice pursuant to 28 U.S.C. §2409a(m). Title to these lands passed to Alaska at statehood based on the equal footing doctrine, the Submerged Land Act of May 22, 1953, P.L. 83-31, 67 Stat. 29, 43 U.S.C. §§1301 et seq., and the Alaska Statehood Act of July 7, 1958, P.L. 85-508, 72 Stat. 339, 48 U.S.C. note preceding §21.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By:

Joanne M. Grace
Joanne M. Grace
Assistant Attorney General

JMG/sh
Attachment

cc: J. T. Tangen, Regional Solicitor, Department of Interior
Edward F. Spang, State Director, Bureau of Land Management
Niles Cesar, Area Director, Bureau of Indian Affairs
Walter Stieglitz, Regional Director, Fish and Wildlife Service
John Morehead, Regional Director, National Park Service

8/27 mailed cert return receipt

Appendix A to letter of August 27, 1992.

Colville Region

Mouth of Colville River to Muka River
Mouth of Kuna River to Chefornak

Northwest Region

Mouth of Agiapuk River to American River
Mouth of American River to Budd Creek
Mouth of Buckland River to West Fork
Mouth of Fish River to Omilak Creek
Mouth of Niukluk River to Council
Mouth of Kobuk River to Lower Kobuk Canyon
Mouth of Koyuk River to Dime Landing
Mouth of Kuzitrin River to Noxapaga River
Mouth of Noxapaga River to Turner Creek
Mouth of Noatak River to Aniak River
Mouth of Selawik River to Kugarak River
Shaktoolik River
Throat River
Ungalik River
Mouth of Unalakleet River to Tenmile Creek

Koyukuk River Region

Mouth of Hoqatza River to Hog Landing
Mouth of Koyukuk River to Bettles
Mouth of Middle Fork to Wiseman

Upper Yukon Region

Mouth of Bearpaw River to Diamond
Mouth of Beaver Creek to Victoria Creek
Birch Creek
Mouth of Black River to Boundary
Mouth of Chandalar River to North and West Forks
Mouth of Charley River to Bear Creek
Mouth of Chatanika River to Steese Highway Bridge
Christian River
Mouth of Coleen River to Lake Creek (59 miles)
Mouth of Crooked Creek to Bridge
Grass River
Mouth of Hess Creek to North and South Forks
Mouth of Hodzana River to Pitka Fork (79 miles)
Jim Lake
Mouth of Kandik River to Boundary
Mouth of Nation River to Boundary

Mouth of Porcupine River to Boundary
Ray River
Mouth of Seventymile River to Barney Creek
Mouth of Sheenjek River to Thluickohnjik Creek
Mouth of Tatonduk River to Boundary

40 Mile Area

Forty Mile River
Mouth of North Fork Forty Mile River to Kink
Mouth of South Fork Forty Mile River to Mosquito Fork

South Central Region

Mouth of Chulitna River to Tokositna River
Mouth of Kasilok River to Tustumena Lake
Mouth of Kenai River to Kenai Lake
Kenai Lake
Knik River
Lake Louise and outlet
Lake Tustumena
Mouth of Skwentna River to Portage Creek
Susitna Lake
Mouth of Susitna River to Indian River
Mouth of Talkeetna River to Chumilna Creek
Mouth of Tokositna River to Home Lake Outlet
Tyone Lake
Mouth of Tyone River to Tyone Lake
Mouth of Yentna River to confluence of its East and West Forks
Johnson River
Red River

Tanana Region

Mouth of Chena River to North Fork
Mouth of Chisana River to Scottie Creek
Mouth of Goodpasture River to Central Creek
Harding Lake
Healy Lake and outlet
Johnson River
Mouth of Kantishna River to Lake Minchumina
Lake George and outlet
Lake Mansfield and outlet
Mouth of Nabesna River to Nabesna Mine
Mouth of Nenana River to Healy River
Mouth of Salcha River to Paldo Creek
Mouth of Tanana River to Nabesna and Chisana Rivers
Mouth of Teklanik River to near Comma Lake
Mouth of Tetlin River to Tetlin Lake
Mouth of Tolovana River to West Fork
Mouth of Wood River to Fish Creek

Middle Yukon River

Mouth of Innoko River to Cripple Creek
 Mouth of Iditarod River to Iditarod
 Khotol River
 Little Melozitna River
 Melozitna River
 Mouth of Nowitna River and Sulstna Rivers to Tamarack Creek
 Tozitna River

Lower Yukon Region

Anvik River
 Borasila River
 Kotlik River
 Nulato River
 Pastolik River

Kuskokwim River Region

Mouth of Aniak River to Salmon River
 Mouth of Big River to Otter Creek
 Mouth of Chukowan River to Gemuk River
 Crooked Creek
 Mouth of East Fork Kuskokwim River to Slow Fork and Tonzona River
 Mouth of Gemuk River to Beaver Creek
 Mouth of George River to Julian Creek
 Mouth of Holitna River to Chukowan River
 Hoholitna River
 Mouth of Johnson River from Mud Creek Portage to Crooked Creek
 Mouth of Johnson River to Nunapitchuk and Atmautluak
 Kisaralik River ✓
 Mouth of Kuguklik River to Kipruk
 Kulik Lake ✓
 Mouth of Kuskokwim River to North Fork
 Little Tonzona River
 Mouth of Middle Fork and Big River to Salmon River
 Mouth of Middle Fork Kuskokwim River to Pitka Fork
 Mouth of Nixon Fork to its West Fork
 Mouth of North Fork Kuskokwim to Lake Mirchumina Portage
 Mouth of South Fork Kuskokwim River to Tatina River
 Mouth of Stoney River to Lime Village
 Mouth of Swift Fork to Highpower Creek
 Mouth of Tokotna River to Fourth of July Creek
 Mouth of Talbiksok River to Yukon-Kuskokwim Portage
 Mouth of Tuluksak River to Upper Land
 Whitefish Lake and outlet

Bristol Bay Region

Alec River *chignik*
 Aniakchak River *chignik*

Black Lake Chignik
Mouth of Chignik River to Black Lake Chignik
Chikaminuk Lake
Chilikadrotna River
Chulitna River
Clark River
Mouth of Copper River to Falls
Dago Creek - Ugashik
Dog Salmon River Ugashik
Eek River
Egegik River and Becharof Lake Naknek
Gibraltar Lake and outlet
Mouth of Goodnews River to Watlamuse Creek
Mouth of Igushik River to Amanka Lake
Illiamna Lake
Mouth of Illiamna River to Forks
Mouth of Kanektok River to Kagati Lake
Kakhonak Lake
Mouth of King Salmon River to Olds Creek Ugashik
Mouth of Kvichak River to Illiamna Lake
Lake Aleknagik
Lake Chavekukuli
Lake Clark
Lake Beverly
Lake Kulik Mt. Katmai
Lake Nerka
Lower Pike Lake and outlet Ugashik
Kokwak River
Koktuli River
Muklung River
Mouth of Mulchatna River to Summit Creek
Mouth of Naknek River to Naknek Lake Naknek/Mt. Katmai
Negukthlik River
Newhalen River
Nishlik Lake
Mouth of Nushagak River to New Stuyahok
Mouth of Nuyakuk River to Nuyakuk Lake
Ongoke River
Osviak River
Quigmy River
Pile River
Ruth Lake and outlet Ugashik
Mouth of Smelt Creek to Smelt Lake Naknek
Mouth of Snake River to Munavaugaluk Lake
Stuyahok River
Tazmina River
Mouth of Togiak River to Togiak Lake
Turuk River
Ualik Lake
Mouth of Ugashik River to Lower and Upper Ugashik Lakes Ugashik
Upruk Lake
Weary River

Mouth of Wood River to Lake Aleknagik

Copper River Region

Mouth of Bering River to near Bering Lake

Mouth of Chitna River to Tana River

Mouth of Copper River to Batzulnetas (above Slana)

Crosswind Lake

Mouth of Eyak River and Eyak Lake

Mouth of Klutina River to Klutina Lake

Low River

Miles Lake and outlet

Nelchina River

- Tasmuna River

- Mouth of Tazlina River to Tazlina Lake

Southeast Region

Chilkat River

Chilkoot River

Stikine River

Kodiak Island and Shelikof Strait Region

Afognak Lake

Mouth of Afognak River to the remains of the Bridge

Akalura and Red Lakes

Mouth of Aniakchak River to Albert Johnson Creek

Karluk Lake

Mouth of Karluk River to Karluk Lake

Statewide Region

Yukon River



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State Policy on Navigability

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Policies and Procedures on Ownership and Management of Navigable and Public Waters

June 18, 1996 State ownership of the beds of navigable waters is an inherent attribute of state sovereignty protected by the United States Constitution. *Utah v. United States*, 482 U.S. 193 (1987). Under the doctrine, all states enter the Union on an equal footing with respect to sovereign rights and powers, title to the beds of navigable waters in Alaska vested in the newly formed State of Alaska in 1959. In addition, under the Alaska Constitution and the public trust doctrine, all waters in the state are held and managed by the state in trust for

the use of the people, regardless of navigability and ownership of the submerged lands under the Equal Footing Doctrine.

The purpose of this paper is to describe the State of Alaska's policies and procedures for identifying and protecting the state's title to the beds of navigable waters. In addition, this paper outlines the legal and policy considerations which guide the ownership and management of submerged lands and public waters.

I. IDENTIFYING AND PROTECTING STATE TITLE TO THE BEDS OF NAVIGABLE WATERS

Identification and management of the beds of navigable waters is an important policy of the State of Alaska. In 1980, the state established a comprehensive navigability program to respond to federal land conveyances and land management activities under the Alaska Statehood act, the Alaska Native Claims Settlement Act (ANCSA), and the Alaska National Interest Lands Conservation Act (ANILCA). Pursuant to the provisions of those acts, the federal government has issued navigability determinations for thousands of lakes, rivers, and streams throughout the state in an effort to determine whether the state or federal government owns the submerged lands. Navigability determinations are also made prior to many state land disposals to insure that adequate public use easements are reserved.

The basic purpose of the state's program is to protect the public rights associated with navigable waters, including, in particular, the state's title to the submerged lands. Because state and native land selections and federal conservation units blanket the state, navigability questions have arisen for rivers, lakes, and streams throughout Alaska. The navigability of many of those waterbodies has already been established. There are hundreds of others, however, where navigability is not yet determined.

To help resolve these navigability disputes, a major goal of the state's navigability program is to identify the proper criteria for determining title navigability in Alaska and to gather sufficient information about the uses and physical characteristics of individual waterbodies so that accurate navigability determinations can be made as disputes arise. Other important aspects of the program include monitoring federal land conveyance and management programs to identify particular navigability disputes, seeking cooperative resolution of navigability problems through negotiations and legislation, and preparing for statewide navigability litigation.

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RIPARIAN RIGHTS AND STATUTE OF LIMITATIONS

Disputes over ownership of submerged lands in Alaska have arisen under a variety of circumstances. The principal source of the disputes in Alaska is the survey and acreage accounting system used by the federal government for conveying land to the state and native corporations.

The standard procedures for surveying and conveying federal land are found in the Manual of Instructions for the Survey of the Public Lands of the United States, generally known as the BLM Manual of Surveying Instructions. Under those procedures, consistently used in every public land state except Alaska, only uplands are surveyed and conveyed in fulfillment of acreage entitlements, not submerged lands. The survey rules require that all lakes 50 acres or larger, and rivers and streams three chains (198 feet) in width or wider, regardless of navigability, be meandered and segregated (excluded) from the surveyed public lands. Only the surveyed uplands are conveyed. The acreage of meandered rivers, lakes, and streams is not included in computing the amount of land involved in the conveyance.

In Alaska, however, the federal government had not consistently followed these survey rules. Until 1983, the federal government treated submerged lands the same as uplands. All bodies of water that were considered non-navigable by the federal government, regardless of size, were surveyed as though they were uplands and the acreage of submerged lands was charged against the total acreage entitlement.

Because of these conveyance procedures, the navigability of waterbodies in Alaska has been an issue of contention since the enactment of the Alaska Statehood Act and ANCSA. In addition to the problems caused by a lack of information about many waterbodies, the situation was exacerbated by the narrow definition of navigability used by the federal government. Hundreds of rivers, lakes, and streams considered navigable by the state were determined non-navigable by the federal government.

In 1983, following years of negotiations, lawsuits and legislative attempts to solve the navigability problems created by the unusual survey and conveyance procedures in Alaska, the State of Alaska, the United States Department of the Interior and the Alaska Federation of Natives (AFN) agreed that the standard rules of survey should be followed for land conveyances in Alaska. The effect of that decision was to treat Alaska surveys and land conveyances like federal land surveys and conveyances in other states. The recipients of conveyances from the federal government are charged only for the amount of public land that is calculated by the survey, which does not include the areas of meandered rivers, lakes and streams.

The use of these survey procedures has eliminated many of the problems associated with the federal land conveyance programs in Alaska. Submerged lands are no longer being conveyed to fulfill acreage entitlements. With the exception of lakes smaller than 50 acres and streams narrower than 198 feet, navigability determinations are no longer being made prior to federal land conveyances. Determinations of ownership of submerged lands can be put off until a natural resource use or conflict requires resolution, such as issuance of an oil and gas

lease, mining claim, or a gravel sale.

Through the joint efforts of the State of Alaska, AFN, and the Department of the Interior, the 1983 decision to use the standard survey procedures for land conveyances in Alaska was legislatively approved in August 1988 when the United States Congress passed legislation (94 Stat. 2430) amending Section 901 of the Alaska National Interest Lands Conservation Act, codified at 43 U.S.C. 1631. The 1988 amendment, sometimes referred to as the Alaska Submerged Lands Act, requires that the standard rules of survey in the BLM Manual of Surveying Instructions be used for all federal surveys under the Alaska Statehood Act and ANCSA. The 1988 amendment also repealed the Section 901 statute of limitations that would have required the state to file a lawsuit within a very short period of time in order to preserve its title to the beds of navigable waters conveyed to native corporations by the federal government as a result of erroneous navigability determinations, poor maps, surveys or whatever.

Even with this legislation, a major problem concerning navigability decisions made by the federal government under the old system remains unresolved. At issue are the hundreds of erroneous non-navigability decisions and the resulting submerged land conveyances made to ANCSA corporations in previous years. In addition, to comply with the meandering requirements of the BLM Survey Manual, the federal government is still required to make navigability determinations for lakes smaller than 50 acres and rivers or streams narrower than 198 feet in width to determine if these waters must be meandered.

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NAVIGABILITY CRITERIA

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. In Alaska, though, we are just beginning to get the final court decisions that are necessary to provide legal guidance for accurate navigability determinations.

The physical characteristics and uses of a waterbody used by the state for asserting navigability, commonly referred to as 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.

The federal test for determining navigability was established over a hundred years ago. In the landmark decision of *The Daniel Ball*, 77 U.S. (19 Wall.) 557, 563, (1870), the Supreme Court declared:

Those rivers must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways of commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water.

Although *The Daniel Ball* test is accepted as the correct standard for determining navigability, there has been a lot of disagreement over application of many of the terms and phrases used in *The Daniel Ball* test to the specific uses of Alaska's lakes, rivers and streams. The State of Alaska uses the following interpretation of that test as the basis for its navigability program.

The Waterbody Must Be Usable As a Highway For the Transportation of People or Goods. Interpreting the requirements that navigable waterbodies be used or usable as "highways of commerce", the courts have ruled that the central theme of title navigability is that the waterbody be capable of use as a highway which people can use for transporting goods or for travel. Neither the types of goods being transported nor the purpose of the travel are important in determining navigability. Transportation on water associated with recognized commercial activities in Alaska, such as mining, timber harvesting, and trapping is, evidence of navigability. The use of waterbodies for transportation in connection with natural resources exploration or development, government land management, management of fish and game resources, or scientific research is also evidence of navigability. Travel by local residents or visitors for the purpose of hunting, fishing, and trapping, or as a means of access to an area can be used to establish navigability. The same holds for recreational transportation, including personal travel and professionally guided trips.

Waters Which Are Capable of Being Used For Transporting Persons and Goods, Although Not Actually Used, Are Navigable. It is not necessary that a waterbody be actually used for transportation to be found navigable. It is enough that it is susceptible, or physically capable, of being used. Whether a waterbody is susceptible of use for transportation depends upon the physical characteristics of the water course such as length, width, depth, and, for a river, current and gradient. If those physical characteristics demonstrate that a waterbody could be used for the transportation of persons or goods, it is legally navigable.

The susceptibility element of title navigability is very important for the identification of navigable waterbodies in Alaska. Because of Alaska's sparse population and lack of development, there are hundreds of remote rivers, lakes, and streams where there is little or no

evidence of actual use. Because of their physical characteristics, however, many of these remote waterbodies could be used for transporting people or goods if there was a need. Under these circumstances, they are considered legally navigable.

Transportation Must Be Conducted In the Customary Modes of Trade and Travel On Water. A finding of navigability does not require use or capability of use by any particular mode of transportation, only that the mode be customary. The courts have held that customary modes of transportation on water include all recognized types and methods of water carriage. Unusual or freak contrivances adapted for use only on a particular stream are excluded. Customary modes of trade and travel on water in Alaska include, but are not limited to, barges, scows, tunnel boats, flat-bottom boats, poling boats, river boats, boats propelled by jet units, inflatable boats, and canoes. In places suitable for harvesting timber, the flotation of logs is considered a customary mode of transportation.

The mode of travel must also be primarily waterborne. Boats which may be taken for short, overland portages qualify. The courts have ruled that the use of a lake for takeoffs and landings by floatplanes is insufficient, in and of itself, to establish navigability.

Without expressly rejecting the claim, at least two court decisions in Alaska have suggested that winter travel on the surface of a frozen river or lake is probably not evidence of navigability. The rivers involved in the two adjudicated cases were both found navigable based upon summer use by boats, however, and it appears likely that most waterbodies in Alaska that are used as highways in winter can also be travelled by at least small boats in the summer. Because of this, the state need not rely upon winter travel to support navigability.

Waters Must Be Navigable In Their Natural and Ordinary Condition. A waterbody which can be used for transportation only because of substantial man-made improvements to the condition of the watercourse is not navigable for title purposes. However, if transportation does or could occur on the waterbody even without the improvements and the improvements would only make transportation easier or faster or possible for larger boats (e.g., dredging), it is still considered navigable for title purposes.

The presence of physical obstructions to navigation (rapids, falls, log-jams, etc.) does not render a waterway non-navigable if the obstruction can be navigated despite the difficulties or if the obstruction can be avoided by other means, such as portaging, lining, or poling. A waterbody is also navigable even if seasonal fluctuations do not allow it to be navigated at all times of the year. However, a waterbody which is only navigable at infrequent and unpredictable periods of high water is not normally considered navigable. The fact that a waterbody may be frozen for several months of the year does not render it non-navigable if it is navigable in its unfrozen condition.

Title Navigability Is Determined As Of The Date Of Statehood. To be considered navigable for title purposes, the waterbody must have been

navigable in 1959 (when Alaska became a state). This element of the navigability test focuses on the physical characteristics of the waterbody and whether those characteristics have changed significantly since statehood. Most waterbodies have not physically changed enough since statehood to alter their navigability. Assuming there have been no significant changes in the physical characteristics of the waterbody, a waterbody that is navigable today would be considered legally navigable in 1959 as well. Exceptions might include the creation, by natural or man-made causes after statehood, of a totally new lake, river, or canal now used for navigation. Such a waterbody would not be considered navigable for title purposes. Conversely, a waterbody which was navigable in 1959 but, because of natural or man-made physical changes, is no longer navigable in fact would still be considered navigable for title purposes.

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NAVIGABILITY CRITERIA DISPUTES

Because of differing legal interpretations of court navigability decisions, several aspects of the criteria used by the state to determine navigability have been disputed by the federal government. As a direct result of these criteria disputes, many waterbodies considered navigable by the state have been determined non-navigable by the federal government.

The major criteria dispute has been over the type or purpose of the transportation required to establish navigability. The federal government has asserted that a waterway must be used, or capable of use, for transporting commerce to be considered navigable. Other, "noncommercial" transportation uses are not considered sufficient to establish navigability. In this context, the federal government has claimed that the only relevant "commercial" transportation is the distribution of goods for sale or barter, or the transportation for hire of people or things. The federal government has admitted that professionally guided transportation on Alaska's rivers, lakes and streams constitutes commerce, but nevertheless has argued that the waters are not being used as a navigable "highway" when recreation is involved, but rather more as an amusement park. The federal government has therefore claimed that waters used only for commercial recreation are legally nonnavigable even though they may be navigable in fact.

Through the work of the state's navigability program, this definition has been repeatedly rejected by the courts, most recently in the Gulkana River case. *Alaska v. United States*, 662 F.Supp.455 (D.Alaska 1986), affirmed sub nom. *Alaska v. Ahtna, Inc.*, 891 F.2d 1401 (9th Cir. 1989). Applying the correct definition of navigability, many of the submerged lands that the federal government attempted to convey to ANCSA corporations should have been recognized as belonging to the state. The state appealed many conveyances to protect its title. As occurred in the Kandik-Nation Rivers appeal, *Appeal of Doyon*, 86 I.D. 692 (ANCSA 1979), Alaska Native Corporations also found it necessary to

challenge erroneous federal determinations of non-navigability to insure they would not be deprived of any portion of their entitlement by being charged for submerged land owned by the state.

The federal government has also argued that aluminum boats, boats propelled by jet units, inflatable boats, and canoes are not customary modes of travel for the purpose of determining navigability in Alaska. As a result, many waterbodies navigated by these types of watercraft have been found legally non-navigable by the federal government. The claim is that these boats represent post-statehood technological advances, are too small to be considered "commercial", or that most "commercial" use of the watercraft developed after statehood.

Another navigability dispute involves remote, isolated lakes. The federal government has found many of these lakes legally non-navigable, even though they are physically capable of being navigated. The federal government's contention is that a navigable connection to another area is necessary to make travel on a remote lake worthwhile. Otherwise, the federal government views the lack of development in the area around the isolated lake as an indication that the lake will never be used for commercial transportation.

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. With the sole exception of floatplanes, the courts have agreed with the navigability criteria presented by the State of Alaska and have rejected the limitations suggested by the federal government. These cases include:

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. *Alaska v. United States*, 662 F.Supp.455 (D.Alaska 1987). On appeal, the court of appeals affirmed the district court's finding of navigability. *Alaska v. Ahtna, Inc.*, 892 F.2d 1401 (9th Cir. 1989). 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 April 1990, the United States Supreme court denied a request by Ahtna, Inc. to reconsider and overturn the court of appeals decision. The Gulkana River precedent is now binding on all future navigability determinations in Alaska.

Kandik and Nation Rivers. In this administrative appeal, the State of Alaska and Doyon Limited, an ANCSA regional corporation, 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 fur trappers, as well as extensive historic and contemporary canoe use, the court found the Kandik and Nation rivers, in Interior Alaska, navigable. Appeal of Doyon, 86 I.D.692 (ANCAB 1979).

Alagnak River. In this federal district court case, the Alagnak River, the Nonvianuk River, Kukaklek Lake and Nonvianuk Lake were all found navigable. These interconnected waterbodies are located in the Bristol Bay region of Alaska, south of Lake Iliamna. 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. After several years of litigation, the federal government conceded that these rivers and lakes are navigable. *Alaska v. United States*, No. 82-201 (D.Alaska Feb. 2, 1985).

Matanuska River. The recommended decision in this administrative appeal agreed with the State of Alaska's position that post-statehood commercial river rafting operations are sufficient to establish navigability. Based upon that type of use, the administrative law judge who heard the case recommended that the Matanuska River, in Southcentral Alaska, be found navigable. The Secretary of Interior, over the state's objections, assumed jurisdiction over the case and stayed implementation of the recommended decision. No action has been taken in the case since that time. Appeal of Alaska, No. 82-1133 (IBLA Rec. Decision Aug. 18, 1983)

Slopbucket Lake. The state claimed that the extensive use of floatplanes on Slopbucket Lake, a twenty acre lake adjacent to Lake Iliamna, was sufficient to establish navigability. The federal courts rejected this view. The courts reasoned that floatplanes do not use the lake as a navigable highway; they just take off and land there. *Alaska v. United States*, 754 F.2d 851 (9th Cir.) cert denied, 106 S. Ct. 333 (1985).

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IDENTIFICATION OF NAVIGABLE WATERS

Even if the criteria for determining navigability in Alaska were totally agreed upon, it still would be difficult to prepare a complete list of all of the navigable lakes, rivers, and streams in the state. Much of Alaska has not yet been surveyed and many maps are inaccurate and out-of-date. It is an immense and complex task simply to identify and locate all of the thousands of named and unnamed lakes, rivers, and streams in the state which might be considered navigable. Furthermore, once a potentially navigable lake, river, or stream has been

identified, detailed information about its size and uses is necessary for an accurate navigability determination. Because of Alaska's undeveloped and remote character, gathering navigability information is both time consuming and expensive. Finally, administrative navigability determinations made by the state or the federal government are always subject to legal challenge, since only the courts can authoritatively determine title to submerged lands.

Despite these difficulties, both the state and the federal government are frequently called upon to issue navigability determinations. Although the requirement that BLM adhere to the meandering requirements of the BLM Survey Manual has eliminated the need for navigability determinations on the larger rivers, lakes, and streams, which must now be meandered regardless of navigability, navigability determinations are still required for the smaller rivers, lakes, and streams to determine if they are to be meandered at the time of survey. Because of this, some navigability determinations are still made for nearly every federal land conveyance under ANCSA or the Alaska Statehood Act. The management plan for nearly every federal Conservation System Unit (CSU) also addresses the navigability issue.

Federal navigability determinations are reviewed by the state to insure that available information sources were used and interpreted correctly. Where the federal government determines non-navigable a waterbody which is considered navigable by the state, the state may provide the government with supplemental information about the uses and characteristics of the waterbody to obtain a redetermination of navigability. Under some circumstances the state needs to make its own navigability determinations, such as for a oil and gas lease sale, land disposal, material sale, mining claim, or another use of state land or resources requiring a determination of ownership of submerged lands within the affected area.

For large, undeveloped regions of Alaska there may be little or no accurate waterbody use or physical characteristics information available for making navigability determinations. When information is lacking, and it must make a navigability determination, the state is forced to rely solely upon the physical characteristics shown on maps and aerial photographs. In these cases, the state identifies as navigable all streams depicted on the U.S.G.S. maps with double lines (generally at least 70 feet wide) and having an average gradient over the length of the stream of no more than 50 feet per mile. With rare exceptions, the state's experience has been that streams of this type are deep enough and wide enough to be navigable by boats carrying persons or goods and must, therefore, be considered legally navigable. Streams depicted with single lines, although narrower in width, may also be listed as potentially navigable if they have gradients of substantially less than 50 feet per mile and are at least 10 miles.

If there is no public use or physical characteristics information readily available for lakes, those lakes which are shown on maps and aerial photographs as having a navigable water connection with other navigable waters, or which are accessible by short overland portages, are considered navigable regardless of the size of the lake. These

lakes are part of a system of interconnected navigable waters. If a lake is totally isolated, it will be included on the state's navigability maps if it is at least 1 1/2 miles long. That length insures that the lake can be used as a "highway". Future judicial decisions interpreting the "highway" requirement for isolated lakes could shorten or lengthen this 1 1/2 mile "rule of thumb."

The state recognizes that, under some circumstances, lakes smaller than 1 1/2 miles long can be and are used as navigable highways. In those cases, when known, these smaller lakes are also depicted on the state's navigability map. Moreover, as a matter of administrative policy and convenience only, the state may sometimes make an exception to the 1 1/2 mile standard in the extremely wet regions of the state, including some areas in the Yukon- Kuskokwim Delta, Yukon Flats, and on the North Slope. In these areas, an isolated lake might need to be 2-3 miles long to be included on the state's navigability maps. Although smaller lakes in these areas are capable of being used for transportation and should be found navigable by the courts, the state has decided to concentrate its limited resources in protecting the larger waterbodies first.

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NAVIGABLE WATERS WITHIN PRE-STATEHOOD FEDERAL WITHDRAWALS

Although disputes over which waters in Alaska are navigable are the most frequent cause of submerged land ownership disputes, there is another major legal issue which poses a threat to Alaska's sovereign claim to the beds of navigable waters. Even where navigability is conceded, the federal government often contends that title to the submerged lands did not vest in the state if the area was withdrawn or reserved by the federal government on the date of statehood. Within native conveyance areas, the federal government has used this claim of "reserved submerged lands" to justify its attempts to convey the beds of navigable waters in fulfillment of the native entitlements. Within state selections, the federal government has used the same claim to charge the acreage of submerged lands against the state's entitlement.

The state strongly disagrees with this federal claim and has actively pursued a number of court challenges to resolve the issue. In addition to numerous appeals from federal decisions to convey or charge for the beds of navigable waters, the state was actively involved as a friend of the court in one case before the United States Supreme Court and continues to be involved in another Supreme Court case which presents this issue. The pending case is United States v. Alaska, U.S. Supreme Court 84 Original (filed June, 1979).

On June 8, 1987 the Court issued its decision in Utah v. United States, No. 85-1772 (filed Oct. 14, 1986). In this case the federal government, in 1976, issued oil and gas leases for land underlying Utah Lake, a navigable waterbody located in Utah. The suit sought a declaratory judgement that Utah, rather than the United States, holds

the lands under navigable waters in the territories in trust for future states, and, absent a prior conveyance by the federal government to third parties, a state acquires title to such land upon entering the Union on an "equal footing" with the original 13 states.

The Supreme Court held that title did pass to the state upon Utah's admission to the Union. They held that there is a strong presumption against finding congressional intent to defeat a state's title, and, that in light of the longstanding policy of the federal government's holding land under navigable waters for the ultimate benefit of future state absent exceptional circumstances, an intent to defeat a state's equal footing entitlement could not be inferred from the mere act of the reservation itself. The United States would not merely be required to establish that Congress clearly intended to include land under navigable waters within the federal reservation, but would additionally have to establish that Congress affirmatively intended to defeat the future state's title to such land.

This decision has significant ramifications within Alaska, since over 95 million acres - more than 25% of the total area of the state - was enclosed within various federal withdrawals and reservations at the time Alaska became a state.

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NAVIGABLE WATERS WITHIN ANILCA CONSERVATION SYSTEM UNITS

On December 2, 1980, the Alaska National Interest Lands Conservation Act became law. This act created or added 104.3 million acres to various federal conservation system units. Because these "withdrawals" occurred after the date of statehood, there is no disagreement between the state and federal governments that navigable waters within the various CSU's are owned by the state. However, there is some disagreement on the amount of authority the federal land managers may have to regulate these state owned submerged lands.

The U.S. Constitution gives Congress certain limited powers to control uses on state owned submerged land. These are known as the Property Clause, Navigational Servitude and the Commerce Clause. The extent of these powers involves complex legal questions. However, even assuming that Congress has the power to regulate state-owned submerged lands in Alaska, the United States Supreme Court has ruled that Congress may choose not to exercise that power, thus leaving regulation totally up to the state. *Esplanada Co. v. Chicago*, 107 U.S. (17 Otto.) 678 (1883). Whether Congress has done that can only be determined by examining the federal laws passed by Congress dealing with Alaska lands. Another possibility is that the state and federal governments have concurrent jurisdiction, sharing the authority to regulate submerged lands.

In ANILCA, Congress did not take away the state's power to regulate state-owned submerged lands within federal CSU's in Alaska. Numerous

provisions in ANILCA recognize and respect the state's authority over state-owned land. In some cases, however, Congress may have attempted to give the federal land managers some concurrent authority to regulate navigable waters within CSU's.

The state, where possible, cooperates with rather than confronts the federal land managers. This cooperation often takes the form of a memorandum of understanding that discusses management issues and how they will be resolved. Differences do occur, however, over issues such as column management and restrictions on mining.

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II. LEGAL AND POLICY GUIDELINES GOVERNING MANAGEMENT OF SUBMERGED LANDS AND PUBLIC WATERS

PUBLIC TRUST DOCTRINE

The state has special duties and management constraints with respect to state-owned land underlying navigable waters. These special duties and management constraints arise from the Alaska Constitution. The Alaska Constitution contains numerous provisions embracing the principles commonly known as the public trust doctrine. The public trust doctrine is remarkable both for its age and for its vigor. Rooted in the customs of the seafaring Greeks and Romans, it has evolved to become one of the most effective safeguards of public rights. Basically, the trust reflects an understanding of the ancient concept that navigable waters, their beds and their banks, should be enjoyed by all the people because they are too important to be reserved for private use.

In America, the concept of public rights to public waters was recognized since the early days of the Massachusetts Bay Colony where the great Pond Ordinance of 1641 guaranteed the right to fish and fowl in ponds greater than 10 acres, along with the freedom to pass through private property to do so.

By 1821, American courts were pronouncing the law of public trust as we know it today. This does not mean that no water-related development can take place. The public trust doctrine permits states to improve waterways by constructing ports, docks and wharves, thus furthering the purposes of the trust. Generally speaking, the people's trust rights may be alienated only in ways that further overall trust uses, and in relatively small parcels.

Illinois Central Railroad Company v. Illinois, 146 U.S. 387, 452 (1892), involved a grant by the State of Illinois of one thousand acres of the bed of Lake Michigan, constituting the entire harbor of the City of Chicago, to the Illinois Central Railroad. The U.S. Supreme Court held

that the grant was revocable, that the state held the land in trust for the public, and that it was powerless to relinquish its rights as trustee.

The court went on to say that land underlying navigable waters is much more than a simple property right.

[I]t is a title different in character from that which the state holds in lands intended for sale. It is different from the title which the United States holds in the public lands which are open to preemption and sale. It is a title held in trust for the people of the state that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein freed from the obstruction or interference of private parties... The trust devolving upon the state for the public, and which can only be discharged by the management and control of property in which the public has an interest, cannot be relinquished by a transfer of the property.

In the 19th century the purposes of the trust were generally described as "commerce, navigation and fishery." This was logical because the major waterways were essential highways of commerce. But as other values became increasingly important, courts began to recognize recreation and environmental protection among the purposes for which the trust exists. As a California court said in 1971, "with our ever increasing leisure time...and the ever increasing need for recreational areas it is extremely important that the public need not be denied use of recreational water...the rule is that a navigable stream may be used by the public for boating, swimming, fishing, hunting and all recreational purposes." *People ex rel. Baker v. Mack*, 19 Cal. App. 3d 1040, 1044 (1971).

The Alaska constitution provides protections similar to the public trust doctrine protections that cannot be disregarded by the legislature or overruled by the courts. Article VIII, Sec. 3 provides; "Wherever occurring in their natural state, fish, wildlife and waters are reserved to the people for common use." After reviewing the public trust doctrine in *Owsichek v. State, Guide Licensing*, 763 P.2d 488 (Alaska 1988), the Alaska Supreme Court explained that "the common use clause was intended to engraft in our constitution certain trust principles guaranteeing access to the fish, wildlife and water resources of the state."

In *CWC Fisheries, Inc. v. Bunker*, 755 P.2d 1115 (Alaska 1988), the Alaska Supreme Court applied the public trust doctrine to tidelands, holding that, even after conveyance, the title remains subject to continuing public easements for purposes of navigation, commerce and fishery.

The 1985 Alaska legislature recognized the constitution application of public trust doctrine principles in Alaska. In an Act relating to the public or navigable waters of the state, the legislature found that "the people of the state have a constitutional right to free access to the navigable or public waters of the state" and that the state "holds

and controls all navigable or public waters in trust for the use of the people of the state". 85 SLA Ch. 82. In the same act, the legislature ruled that submerged lands are "subject to the rights of the people of the state to use and have access to the water for recreational purposes or any other public purpose for which the water is used or capable of being used consistent with the public trust."

Courts in other states over the years have defined in somewhat different ways the public uses that are permitted and protected by the public trust as it applies to submerged lands. In reviewing these other cases, it can clearly be seen that through time an ever expanding definition of the public uses protected by the public trust doctrine is being adopted. The California Supreme Court recently held that:

Although early cases had expressed the scope of the public's right in (lands subject to the public trust) as encompassing navigation, commerce and fishing, the permissible range of public uses is far broader, including the right to hunt, bathe or swim, and the right to preserve the (public trust) lands in their natural state as ecological units for scientific study. *City of Berkeley v. Superior Court of Alameda*, 606 P.2d 362, 365 (Cal. 1980)

It is clear under the Alaska Constitution that the State of Alaska has the responsibilities of a trustee with respect to management of land underlying navigable waters. Moreover, the Alaska legislature has adopted a broad view of the public uses protected or permitted by the public trust. Accordingly, the Alaska Attorney General's Office has determined that, until the Alaska Supreme Court rules on the question, the state should assume that a broad definition of public rights protected by the Alaska Constitution and the public trust doctrine applies in Alaska, similar to the one adopted by the California Supreme Court. 1982 Atty. Gen. Op. No. 3 (June 10, 1982).

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PUBLIC WATERS

It is not only the beds of navigable waters in Alaska that are reserved in public ownership for public use. Under article VIII, Section 3 of the Alaska Constitution, all waters occurring in their natural state are reserved to the people for common use. Article VIII, Section 14 of the Alaska Constitution also provides for the broadest possible access to and use of state waters by the general public.

Section 14. Access to Navigable Waters. Free access to the navigable or public waters of the state, as defined by the legislature, shall not be denied any citizen of the United States or resident of the state, except that the legislature may by general law regulate and limit such access for other beneficial uses or public purposes.

Pursuant to this grant of authority, the Alaska State Legislature, in

AS 38.05.365(12), defined "navigable waters" as follows:

"navigable waters" means any water of the state forming a river, stream, lake, pond, slough, creek, bay, sound, estuary, inlet, strait, passage, canal sea or ocean, or any other body of water or waterway within the territorial limits of the state or subject to its jurisdiction, that is navigable in fact for any useful public purpose, including but not limited to water suitable for commercial navigation, floating of logs, landing and takeoff of aircraft, and public boating, trapping, hunting waterfowl and aquatic animals, fishing, or other public recreational purposes.

This definition of navigable waters does not define state ownership of submerged land in Alaska. The definition of navigability for ownership purposes was discussed earlier in this paper. This definition, however, does define what types of waterbodies in Alaska are available for public use under the Alaska statutes.

The Alaska State Legislature has broadly construed the constitutional protections for public use of the waters of the state. In an Act (85 SLA chap. 82, codified as AS 38.05.128) relating to the navigable or public waters of the state, the state legislature found:

(a) The people of the state have a constitutional right to free access to the navigable or public waters of the state.

(b) Subject to the federal navigational servitude, the state has full power and control of all of the navigable or public waters of the state, both meandered and unmeandered, and it holds and controls all navigable or public waters in trust for the use of the people of the state.

(c) Ownership of land bordering navigable or public waters does not grant an exclusive right to the use of the water and any rights of title to the land below the ordinary high water mark or subject to the rights of the people of the state to use and have access to the water for recreational purposes or any other public purposes for which the water is used or capable of being used consistent with the public trust.

(d) This Act may not be construed to affect or abridge valid existing rights or create any right or privilege of the public to cross or enter private land.

AS 38.05.128 provides:

OBSTRUCTIONS TO NAVIGABLE WATER

(a) A person may not obstruct or interfere with the free passage by a member of the public on any navigable water as defined in AS 38.05.965 unless the obstruction or interference is:

- (1) authorized by a federal or state agency;
- (2) authorized under a federal or state law or permit;

- (3) exempt under 33 U.S.C. 1344(f) (Clean Water Act);
- (4) caused by the normal operation of freight barging that is or consistent with law; or
- (5) authorized by the commissioner after reasonable public notice

(b) A violation of (a) of this section is a class B misdemeanor.

(c) An unauthorized obstruction or interference is a public nuisance and is subject to abatement. The cost of abatement shall be borne by the violator and is in addition to any penalty imposed by the court.

(d) This section may not be construed to affect or abridge valid existing rights.

Thus, under the Alaska Constitution and this statute, any surface waters capable of use by the public defined in AS 38.05.365(12) are available to the public, irrespective of streambed ownership. Further, such public use is not considered a taking and is not subject to inverse condemnation action. Private ownership is subject to the public rights that are protected by the public trust.

In two Montana Supreme Court cases involving the nature of public rights where the submerged lands are privately owned, the court rules that public portaging, anchoring, and other uses incidental to the use of the water are allowed. The court also found that if travel on the water or streambed is obstructed, the public is allowed to use the adjacent private land to portage around the barrier in the least intrusive way possible, avoiding damage to the property holder's rights. However, the public does not have the right to enter into or trespass across private property in order to enjoy the recreational use of state-owned waters. The State of Alaska agrees with this ruling and believes a similar ruling would be made by our state courts.

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BOUNDARIES OF NAVIGABLE WATERS

The state is often asked where public ownership of water bodies ends and private ownership begins. There are two types of water body boundaries to address: 1) non-tidal water boundaries and 2) tidal water boundaries. Non-tidal boundaries are boundaries of lakes, rivers, and streams. Tidal boundaries are the boundaries along any body of water which is influenced by the rise and fall of the tides.

1. Non-tidal Water Boundaries

The boundary between public and private ownership is the "Ordinary High Water Mark" which is defined in 11 AAC 53.900(23) as being - The mark along the bank or shore up to which the presence and action of the non-tidal water are so common and usual, and so long continued in all ordinary years, as to leave a natural line impressed on the bank or shore and indicated by erosion, shelving, vegetation, or other

distinctive physical characteristics. Also see the Alaska State Supreme Court definition in Department of Natural Resources v. Pankrantz 538 P.2d 984, 988-89 (Alaska 1975). The ordinary high water line can usually be observed by the laymen simply by noting the vegetation line or well defined stream banks.

2. Tidal Water Boundaries

The boundary between tidal water bodies and private/public owned uplands is the Mean High Water Line. Mean high water line as defined by 11 AAC 53.900(15) is: The tidal datum plane of the average of all the high tides, as would be established by the National Geodetic Survey, at any place subject to tidal influence.

This line is not readily observable because it is a line of known elevation which intersects the land surface. The mean high water line can be a considerable distance below the vegetation line because extreme high water will denude the beach above the line of mean high water. The only way that the location of mean high water line can be accurately determined is by differential leveling from known bench marks or by operating a tide gauge for a sufficient period of time to determine the mean high water elevation. The line of mean high water line can be approximated by time coordinated observations of the daily predictions for high and low waters, predicted by NOAA, as they relate to the published mean high water elevation. This method can be highly unreliable because small errors in the predictions or observations can transform into large errors in the horizontal location; this is especially true in areas where the beach gradient is very flat.

It is important to note that in some areas, such as Prince William Sound, the mean high water line boundary is considerably higher than the current mean high water line because the boundary became fixed at the 1964 pre-quake location. In this instance the boundary between state-owned tidelands and the uplands would be established at an elevation which equals the sum of the mean high water elevation plus the published amount of uplift or, in some cases, submergence.

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CONCLUSION

This paper describes the state's policies and procedures for managing and protecting state submerged lands and public waters. As further legal and practical developments occur in this area, these policies and procedures will be reexamined by the state and, if necessary, appropriate changes will be made.

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SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 2/6/04

FURTHER: Finance

Date of 5-Day Notice: 2/12/04
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 2-19-04

Resources Committee considered SENATE BILL NO. 305

SB 305 ASSERTING STATE TITLE TO SUBMERGED LAND

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

and recommends:

be replaced with _____ CS _____ (_____)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to _____ Committee

Senate Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
House Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
NOR	7/7/04	✓			1

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
Seckins <i>Ralph Seckins</i>	✓			
B. Seckins <i>Ben Seckins</i>			/	
Wagoner <i>Wagoner</i>	✓			
Dyson <i>Dyson</i>	✓			
Elton <i>Elton</i>			✓	
Ogden CHAIR: <i>Scott Ogden</i>	✓			

SB

306

SFIN

FILE

REPORTED OUT
 APR 27 2004
 SENATE FINANCE
 COMMITTEE

SENATE FINANCE COMMITTEE REPORT

DATE: 2/27/04

FURTHER:

DATE TURNED
 IN TO OFFICE: 4/28/04

Finance Committee considered SENATE BILL NO. 306

SB 306 NATUROPATHIC MEDICINE

"An Act relating to the practice of naturopathic medicine; and providing for an effective date."

and recommends:

- be replaced with _____ CS SB 306 (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 Change
 New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero.	FN#
DCED	4/28/04			✓	

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
<i>Paul Duff</i>	✓			
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
<i>[Signature]</i>				✓
<i>[Signature]</i>	+			
COCHAIR:				
COCHAIR: <i>[Signature]</i>	X			

APR 27 2004

SENATE FINANCE
COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSSB 306(FIN)
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
Title Naturopathic Medicine RDU Occupational Licensing (117)
Component Occupational Licensing
Sponsor Senators Seekins, Dyson, Green
Requester Senate Finance Component No. 2360

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------------	------------	------------	------------	------------	------------	------------

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)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

CSSB 306(FIN) makes amendments to the Naturopathic licensing statutes. Section 9 provides for the creation of an annual naturopathic peer review committee on which committee members serve without compensation for their work. Therefore, no new funds are required to implement the changes in this bill.

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144
Division Occupational Licensing Date/Time 4/28/04 2:55 PM
Approved by: Edgar Blatchford, Commissioner Date 4/28/2004
Agency Department of Community and Economic Development

improvement;

(6) impose limitations or conditions on the practice of the licensee.

* Sec. 8. AS 08.45.080 is amended to read:

Sec. 08.45.080. Unlicensed practice or use of title a misdemeanor. A person who violates [PRACTICES NATUROPATHY IN THE STATE WITHOUT A LICENSE IN VIOLATION OF] AS 08.45.010 is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000, or by imprisonment for not more than a year, or by both.

* Sec. 9. AS 08.45.100 is amended by adding new subsections to read:

(b) After consideration of draft regulations, if any, prepared by the division in collaboration with a qualified trade association of naturopathic physicians, the department may adopt regulations to

(1) establish the standards the division will use to approve naturopathic medical colleges or programs for satisfaction of the requirements of AS 08.45.030(2)(A), 08.45.120(a)(4), 08.45.120(a)(6), and 08.45.120(a)(8); the standards must require, at a minimum, that the college or program include a four-year, full-time resident program of academic and clinical study of naturopathic medicine;

(2) implement the peer review process under (c) of this section;

(3) implement the continuing education requirement of AS 08.45.110;

and

(4) establish the standards under which the division may issue certificates of specialty practice for a person licensed under this chapter.

(c) The division shall establish a naturopathic peer review committee consisting of three members appointed annually from a list of nominees presented to the division by an approved qualified trade association for naturopathic physicians.

The committee members serve without compensation for their work on the committee

~~but are entitled to the travel and per diem expenses authorized for boards and commissions under AS 39.20.180.~~ The committee shall meet ~~quarterly~~ to review

complaints filed with the division under this chapter. The committee shall make written recommendations to the division as to whether grounds for disciplinary action exist under AS 08.45.060 and as to appropriate disciplinary sanctions under

SENATE FINANCE COMMITTEE
4/27/2005 COMMITTEE ACTION

Bill Number	SB 306		
Amendment	#2		
Motion	to adopt		
<u>Motion by</u>	Wilken		
<u>Objection by</u>			
<u>Removed</u>	No objection		
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Hoffman			
Senator Olson			
Senator Stevens			
Senator Bunde			
Senator Dyson			
Co-Chair Green			
Co-Chair Wilken			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	ADOPTED		

ADOPTED

1 improvement;

2 (6) impose limitations or conditions on the practice of the licensee.

3 * Sec. 8. AS 08.45.080 is amended to read:

4 Sec. 08.45.080. Unlicensed practice or use of title a misdemeanor. A
5 person who violates [PRACTICES NATUROPATHY IN THE STATE WITHOUT A
6 LICENSE IN VIOLATION OF] AS 08.45.010 is guilty of a misdemeanor and upon
7 conviction is punishable by a fine of not more than \$1,000, or by imprisonment for not
8 more than a year, or by both.

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11 collaboration with a qualified trade association of naturopathic physicians, the
12 department may adopt regulations to

13 (1) establish the standards the division will use to approve naturopathic
14 medical colleges or programs for satisfaction of the requirements of
15 AS 08.45.030(2)(A), 08.45.120(a)(4), 08.45.120(a)(6), and 08.45.120(a)(8); the
16 standards must require, at a minimum, that the college or program include a four-year,
17 full-time resident program of academic and clinical study of naturopathic medicine;

18 (2) implement the peer review process under (c) of this section;

19 (3) implement the continuing education requirement of AS 08.45.110;
20 and

21 (4) establish the standards under which the division may issue
22 certificates of specialty practice for a person licensed under this chapter.

23 (c) The division shall establish a naturopathic peer review committee
24 consisting of three members appointed annually from a list of nominees presented to
25 the division by an approved qualified trade association for naturopathic physicians.
26 The committee members serve without compensation for their work on the committee
27 but are entitled to the travel and per diem expenses authorized for boards and
28 commissions under AS 39.20.180. The committee shall meet quarterly to review
29 complaints filed with the division under this chapter. The committee shall make
30 written recommendations to the division as to whether grounds for disciplinary action
31 exist under AS 08.45.060 and as to appropriate disciplinary sanctions under

Amend to specify that the peer review
committee can meet via

two-way conference
or teleconference

SENATE FINANCE COMMITTEE
4/27/2004 COMMITTEE ACTION

Bill Number	SB 306		
Amendment	#3		
Motion	to adopt		
<u>Motion by</u>	Green		
<u>Objection by</u>	No Objection		
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	<u>Y</u>	<u>Vote</u>	<u>N</u>
Senator Olson			
Senator Stevens			
Senator Bunde			
Senator Dyson			
Senator Hoffman			
Co-Chair Green			
Co-Chair Wilken			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	ADOPTED		

Attention: Traci
Of Senator Green's office
RE: CS SB 306 (FIN)
Date: 4/28/04 Time: 8:30am

The attached Senate Finance CS incorporates the amendment(s) your boss sponsored. Please review and approve so the bill can be forwarded to the Senate Secretary.

The CS is your copy.

Thanks,
Senate Finance Secretary
Mindy #4935
Robin #2618

*Conceptual
Amendment
3*

*Let Sheila
proof
pls.*

Approved: _____
(please initial)

*per
Traci*

Return ASAP

Attention: Sheila
Of Senator Wilken's office
RE: CS SB 306 (FIN)
Date: 4/28/04 Time: 8:30am

The attached Senate Finance CS incorporates the amendment(s) your boss sponsored. Please review and approve so the bill can be forwarded to the Senate Secretary.

The CS is your copy.

Thanks,
Senate Finance Secretary
Mindy #4935
Robin #2618

Approved: _____
(please initial)

Return ASAP

Amendment #2

*As... check #3 too
Traci missed it*

*deletion
OK JP*

Proof

23-LS1572U

CS FOR SENATE BILL NO. 306(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): SENATORS SEEKINS, Dyson, Green

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the practice of naturopathic medicine; and providing for an effective
2 date."

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

4 * Section 1. AS 08.01.010(26) is amended to read:

5 (26) regulation of the practice of naturopathic medicine
6 [NATUROPATHY] under AS 08.45;

7 * Sec. 2. AS 08.45.010 is amended to read:

8 Sec. 08.45.010. Practice of naturopathic medicine [NATUROPATHY]
9 without license prohibited. A person who does not hold a license issued under this
10 chapter may not

11 (1) practice naturopathic medicine [NATUROPATHY] in the state;

12 or

13 (2) use any of the following titles: "doctor of naturopathy,"
14 "naturopath," or "naturopathic physician" [WITHOUT A LICENSE].

1 * **Sec. 3.** AS 08.45.020 is amended to read:

2 **Sec. 08.45.020. Application for license.** A person desiring to practice
3 **naturopathic medicine** [NATUROPATHY] shall apply in writing to the division of
4 occupational licensing of the Department of Community and Economic Development.

5 * **Sec. 4.** AS 08.45.030 is repealed and reenacted to read:

6 **Sec. 08.45.030. Issuance of license.** The division shall issue a license to
7 practice naturopathic medicine on receipt of

8 (1) an application on a form acceptable to the division;

9 (2) documentation satisfactory to the division that the applicant

10 (A) is a graduate of an approved naturopathic medical college
11 or program; and

12 (B) has passed the naturopathic physicians licensing
13 examination approved by the division with a score that meets the requirements
14 established in regulation; and

15 (3) all applicable fees.

16 * **Sec. 5.** AS 08.45.050 is repealed and reenacted to read:

17 **Sec. 08.45.050. Restrictions on practice of naturopathic medicine.** (a) A
18 person who practices naturopathic medicine may not engage in surgery except that a
19 person who practices naturopathic medicine may perform minor surgery under
20 AS 08.45.120(a)(6).

21 (b) Notwithstanding that a specific act is within the definition of "naturopathic
22 medicine" or is described as an activity authorized under AS 08.45.120, a person
23 licensed under this chapter may not perform the act if the person lacks appropriate
24 education or training related to the act.

25 * **Sec. 6.** AS 08.45.060 is amended to read:

26 **Sec. 08.45.060. Grounds for suspension, revocation, or refusal to issue a**
27 **license.** The division may **deny a license to an applicant under this chapter or,**
28 after a hearing, impose a disciplinary sanction **authorized under AS 08.45.070** on a
29 person licensed under this chapter when the division finds that the **applicant or**
30 licensee

31 (1) **secured, or attempted to secure,** a license through deceit, fraud, or

1 intentional misrepresentation;

2 (2) engaged in deceit, fraud, or intentional misrepresentation in the
3 course of providing professional services or engaging in professional activities;

4 (3) advertised professional services in a false or misleading manner;

5 (4) has been convicted of a felony or other crime that affects the
6 applicant's or licensee's ability [TO CONTINUE] to practice competently and safely;

7 (5) failed to comply with this chapter, with a regulation adopted under
8 this chapter, or with an order of the division;

9 (6) is [CONTINUED TO PRACTICE AFTER BECOMING] unfit to
10 practice naturopathic medicine due to

11 (A) professional incompetence;

12 (B) addiction or severe dependency on alcohol or a drug that
13 impairs the applicant's or licensee's ability to practice safely; or

14 (C) physical or mental disability; or

15 (7) engaged in lewd or immoral conduct in connection with the
16 delivery of professional service to patients.

17 * Sec. 7. AS 08.45 070(a) is amended to read:

18 (a) When it finds that a licensee under this chapter has violated AS 08.45.050
19 or 08.45.120 [AS 08.45.040 - 08.45.050] or is guilty of an offense under
20 AS 08.45.060, the division may impose the following sanctions singly or in
21 combination:

22 (1) permanently revoke the license to practice;

23 (2) suspend the license for a determinate period of time;

24 (3) censure the licensee;

25 (4) issue a letter of reprimand to the licensee;

26 (5) place the licensee on probationary status and require the licensee to

27 (A) report regularly to the division upon matters involving the
28 basis of probation;

29 (B) limit practice to those areas prescribed;

30 (C) continue professional education until a satisfactory degree
31 of skill has been attained in areas determined by the division to need

1 improvement;

2 (6) impose limitations or conditions on the practice of the licensee.

3 * Sec. 8. AS 08.45.080 is amended to read:

4 **Sec. 08.45.080. Unlicensed practice or use of title a misdemeanor.** A
5 person who violates [PRACTICES NATUROPATHY IN THE STATE WITHOUT A
6 LICENSE IN VIOLATION OF] AS 08.45.010 is guilty of a misdemeanor and upon
7 conviction is punishable by a fine of not more than \$1,000, or by imprisonment for not
8 more than a year, or by both.

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14 medical colleges or programs for satisfaction of the requirements of
15 AS 08.45.030(2)(A), 08.45.120(a)(4), 08.45.120(a)(6), and 08.45.120(a)(8); the
16 standards must require, at a minimum, that the college or program include a four-year,
17 full-time resident program of academic and clinical study of naturopathic medicine;

18 (2) implement the peer review process under (c) of this section;

19 (3) implement the continuing education requirement of AS 08.45.110;

20 and

21 (4) establish the standards under which the division may issue
22 certificates of specialty practice for a person licensed under this chapter.

23 (c) The division shall establish a naturopathic peer review committee
24 consisting of three members appointed annually from a list of nominees presented to
25 the division by an approved qualified trade association for naturopathic physicians.
26 The committee members serve without compensation for their work on the committee.
27 The committee shall meet to review complaints filed with the division under this
28 chapter. Attendance and participation at meetings of the committee may be by
29 teleconferencing or other two-way communication method. The committee shall
30 make written recommendations to the division as to whether grounds for disciplinary
31 action exist under AS 08.45.060 and as to appropriate disciplinary sanctions under

#2 -
Language
omitted
#3

1 AS 08.45.070 in each case under review. If the division approves the
 2 recommendations of the committee, the licensee may either accept the
 3 recommendations of the committee or request a hearing before the division.

4 * **Sec. 10.** AS 08.45 is amended by adding new sections to read:

5 **Sec. 08.45.110. Continuing education requirement.** Before a license may
 6 be renewed, the licensee shall document to the division's satisfaction that the licensee
 7 has received at least 45 hours of continuing education in naturopathic medicine in the
 8 previous two years, at least 15 hours of which was instruction in pharmacology or
 9 pharmacotherapeutics presented by a licensed pharmacist or another professional
 10 approved by the division.

11 **Sec. 08.45.120. Authorized activities; use of titles.** (a) A person licensed
 12 under this chapter may

13 (1) prescribe or administer for preventive and therapeutic purposes the
 14 following: food, extracts of food, vitamins, minerals, enzymes, whole gland
 15 substances, botanical medicines, and homeopathic preparations;

16 (2) prescribe or administer intravenous botanicals, substances,
 17 vitamins, and minerals;

18 (3) administer health care counseling, nutritional counseling and
 19 dietary therapy, naturopathic physical applications, therapeutic devices, and
 20 nonprescription drugs;

21 (4) if authorized under regulations of the department, prescribe
 22 schedules IIIA, IVA, and VA controlled substances as described under AS 11.71.160,
 23 11.71.170, and 11.71.180 if the person has

24 (A) registered with the federal Drug Enforcement
 25 Administration;

26 (B) successfully completed pharmacology training from an
 27 approved naturopathic medical college; and

28 (C) entered into a collaborative agreement as described under
 29 AS 08.45.125 with a person or persons licensed to practice medicine under
 30 AS 08.64;

31 (5) prescribe and implement barrier devices for contraception;

1 (6) perform minor surgery after providing proof satisfactory to the
2 division of successful completion of training in minor surgery from an approved
3 naturopathic medical college;

4 (7) perform or order for diagnostic purposes a physical or orificial
5 examination, ultrasound, phlebotomy, clinical laboratory test or examination,
6 physiological function test, and other diagnostic procedures commonly used by a
7 person licensed to practice medicine under AS 08.64.230(a); and

8 (8) if authorized under regulations of the department, prescribe legend
9 drugs or prescription drugs if the person has

10 (A) successfully completed pharmacology training from an
11 approved naturopathic medical college; and

12 (B) entered into a collaborative agreement as described under
13 AS 08.45.125 with a person or persons licensed to practice medicine under
14 AS 08.64; and

15 (9) use the title of "doctor of naturopathy," "naturopath," "naturopathic
16 physician," or their abbreviations.

17 (b) In this section, "legend drug" and "prescription drug" have the meanings
18 given in AS 08.80.480.

19 **Sec. 08.45.125. Collaborative agreements for drugs.** (a) A collaborative
20 agreement required under AS 08.45.120(a)(4) and (a)(8) must be in writing in a form
21 approved by the department and include

22 (1) a commitment of at least one collaborating physician licensed to
23 practice medicine under AS 08.64 able to comply with the terms of the agreement;

24 (2) a formulary of controlled substances and legend drugs or
25 prescription drugs that

26 (A) are authorized under AS 08.45.120(a)(4) and (a)(8) and
27 regulations adopted under that section that describes the standard protocols and
28 practices that must be used;

29 (B) are approved by the collaborating physician to be
30 prescribed or dispensed by the person licensed under this chapter; and

31 (C) include standard protocols and practices that describe the

1 circumstances under which each drug on the formulary may be prescribed or
 2 dispensed, the extent of supervision required of the collaborating physician, if
 3 any, and a periodic review of the licensee's competence and standard practices;

4 (3) a requirement that the licensee consult with and have a patient
 5 protocol approved by a collaborating physician before prescribing a schedule IIIA
 6 controlled substance for each patient; and

7 (4) a requirement that the licensee review the formulary, including the
 8 standard practices under (2) of this subsection, with a collaborating physician before
 9 executing a collaborative agreement, six months after executing the agreement, and
 10 every 12 months thereafter.

11 (b) A collaborating physician licensed under AS 08.54 and a person licensed
 12 to practice naturopathic medicine under this chapter are not liable for the actions or
 13 inactions of the other as a result of a collaborative agreement entered into under this
 14 section.

15 (c) The licensee shall post the name of the collaborating physician under (a) of
 16 this section in a conspicuous location visible to patients of the licensee.

17 (d) Upon request, the licensee shall provide a copy of the standard practices
 18 under (a)(2) of this section to a pharmacist licensed in the state.

19 (e) The licensee shall include the name of the collaborating physician under
 20 (a) of this section on each prescription written under AS 08.45.120(a)(4) or (a)(8) by
 21 the licensee.

22 **Sec. 08.45.130. Fees.** The division shall set fees under AS 08.01.065 for each
 23 of the following:

24 (1) a license issued under this chapter;

25 (2) renewal of a license issued under this chapter.

26 * **Sec. 11.** AS 08.45.200(3) is amended to read:

27 (3) **"naturopathic medicine"** ["NATUROPATHY"] means the use of
 28 hydrotherapy, dietetics, electrotherapy, sanitation, suggestion, mechanical and manual
 29 manipulation for the stimulation of physiological and psychological action to establish
 30 a normal condition of mind and body; in this paragraph, "dietetics" includes herbal
 31 and homeopathic remedies.

1 * **Sec. 12.** AS 08.45.200 is amended by adding new paragraphs to read:

2 (4) "approved naturopathic medical college or program" means a
3 college or program that grants a degree of doctor of naturopathy or doctor of
4 naturopathic medicine and that

5 (A) is accredited by the Council on Naturopathic Medical
6 Education or another accrediting agency recognized by the United States
7 Department of Education;

8 (B) has the status of candidate for accreditation by an entity
9 described in (A) of this paragraph; or

10 (C) has been approved under a regulation adopted by the
11 department under this chapter;

12 (5) "department" means the Department of Community and Economic
13 Development;

14 (6) "minor surgery"

15 (A) means the use of

16 (i) operative, electrical, or other methods for surgical
17 repair and care incidental to superficial lacerations and abrasions or
18 superficial lesions, and the removal of foreign bodies located in
19 superficial tissues; and

20 (ii) antiseptics and local anesthetics in connection with
21 methods authorized under (i) of this subparagraph;

22 (B) does not include use of general or spinal anesthetics, major
23 surgery, surgery of the body cavities, or specialized surgery, such as plastic
24 surgery, surgery involving the eyes, or surgery involving tendons, ligaments,
25 nerves, or blood vessels.

26 * **Sec. 13.** AS 47.08.050 is amended to read:

27 **Sec. 47.08.050. Services excluded from coverage.** Annually, the committee
28 shall determine in light of appropriated funds and expected need the medical expenses
29 reimbursable under AS 47.08.010 - 47.08.140, except that the following are not
30 reimbursable:

31 (1) dentistry and optometry unless prescribed by a licensed dentist or

1 physician as medically necessary as the result of the injury or illness;

2 (2) elective medical or surgical procedures;

3 (3) drugs and medications not prescribed by a licensed physician;

4 (4) services received as a result of a pregnancy or birth without
5 unusual complications;

6 (5) private psychological or psychiatric treatment or private alcoholism
7 treatment, unless not available from public agencies or programs;

8 (6) chiropractic services and services provided by a person who
9 practices naturopathic medicine [NATUROPATHY];

10 (7) services not of a medical nature;

11 (8) medical services currently provided to persons in the custody of the
12 Department of Corrections;

13 (9) costs incurred before July 1976.

14 * **Sec. 14.** AS 08.45.035 and 08.45.040 are repealed.

15 * **Sec. 15.** AS 08.45.120(a)(4)(C), 08.45.120(a)(8)(B), and 08.45.125, as enacted by sec. 10
16 of this Act, are repealed July 1, 2009.

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

19 LICENSE TO PRACTICE NATUROPATHY; TRANSITIONAL PROVISIONS. A
20 license to practice naturopathy issued under AS 08.45, including a temporary license, that is
21 in effect on February 28, 2005, remains in effect for the period for which the license was
22 issued and is considered to be a license to practice naturopathic medicine under AS 08.45, as
23 amended by this Act. However, a person who holds a license issued under AS 08.45 that is in
24 effect on February 28, 2005, is subject to the authority of the department in regard to acts of
25 the licensee that occurred on or before February 28, 2005, to impose a disciplinary sanction
26 under AS 08.45.070.

27 * **Sec. 17.** AS 08.45.110, as enacted by sec. 10 of this Act, takes effect January 1, 2007.

28 * **Sec. 18.** Except as provided in sec. 17 of this Act, this Act takes effect March 1, 2005.



Official Business

Alaska State Senate

Senate Finance Committee

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

FAX COVER SHEET

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FROM: ROBIN PAUL
SENATE FINANCE CMTE. ASST. SECRETARY
PHONE: 465-2618
FAX: 465-2187

NOTES: CS SB 306 (FIN)
FINAL Please

23-LS1572\5 with 2
attached amendments.

Amend #2
2 Conceptual Amendment #3

(Call if you have any questions.)

Thanks!
Robin

ADOPTED

WORK DRAFT

WORK DRAFT

WORK DRAFT

23-LS1572S
Mischel
4/23/04

CS FOR SENATE BILL NO. 306()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS SEEKINS, Dyson, Green

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to the practice of naturopathic medicine; and providing for an effective
2 date."

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

4 * Section 1. AS 08.01.010(26) is amended to read:
5 (26) regulation of the practice of naturopathic medicine
6 [NATUROPATHY] under AS 08.45;

7 * Sec. 2. AS 08.45.010 is amended to read:
8 Sec. 08.45.010. Practice of naturopathic medicine [NATUROPATHY]
9 without license prohibited. A person who does not hold a license issued under this
10 chapter may not

11 (1) practice naturopathic medicine [NATUROPATHY] in the state;
12 or
13 (2) use any of the following titles: "doctor of naturopathy,"
14 "naturopath," or "naturopathic physician" [WITHOUT A LICENSE].

L

1 * **Sec. 3.** AS 08.45.020 is amended to read:

2 **Sec. 08.45.020. Application for license.** A person desiring to practice
3 **naturopathic medicine** [NATUROPATHY] shall apply in writing to the division of
4 occupational licensing of the Department of Community and Economic Development.

5 * **Sec. 4.** AS 08 45.030 is repealed and reenacted to read:

6 **Sec. 08.45.030. Issuance of license.** The division shall issue a license to
7 practice naturopathic medicine on receipt of

8 (1) an application on a form acceptable to the division;

9 (2) documentation satisfactory to the division that the applicant

10 (A) is a graduate of an approved naturopathic medical college
11 or program; and

12 (B) has passed the naturopathic physicians licensing
13 examination approved by the division with a score that meets the requirements
14 established in regulation; and

15 (3) all applicable fees.

16 * **Sec. 5.** AS 08.45.050 is repealed and reenacted to read:

17 **Sec. 08.45.050. Restrictions on practice of naturopathic medicine.** (a) A
18 person who practices naturopathic medicine may not engage in surgery except that a
19 person who practices naturopathic medicine may perform minor surgery under
20 AS 08.45.120(a)(6).

21 (b) Notwithstanding that a specific act is within the definition of "naturopathic
22 medicine" or is described as an activity authorized under AS 08.45.120, a person
23 licensed under this chapter may not perform the act if the person lacks appropriate
24 education or training related to the act.

25 * **Sec. 6.** AS 08.45.060 is amended to read:

26 **Sec. 08.45.060. Grounds for suspension, revocation, or refusal to issue a**
27 **license.** The division may **deny a license to an applicant under this chapter or,**
28 **after a hearing, impose a disciplinary sanction authorized under AS 08.45.070 on a**
29 **person licensed under this chapter when the division finds that the applicant or**
30 **licensee**

31 (1) **secured, or attempted to secure,** a license through deceit, fraud, or

1 intentional misrepresentation;

2 (2) engaged in deceit, fraud, or intentional misrepresentation in the
3 course of providing professional services or engaging in professional activities;

4 (3) advertised professional services in a false or misleading manner;

5 (4) has been convicted of a felony or other crime that affects the
6 applicant's or licensee's ability [TO CONTINUE] to practice competently and safely;

7 (5) failed to comply with this chapter, with a regulation adopted under
8 this chapter, or with an order of the division;

9 (6) is [CONTINUED TO PRACTICE AFTER BECOMING] unfit to
10 practice naturopathic medicine due to

11 (A) professional incompetence;

12 (B) addiction or severe dependency on alcohol or a drug that
13 impairs the applicant's or licensee's ability to practice safely; or

14 (C) physical or mental disability; or

15 (7) engaged in lewd or immoral conduct in connection with the
16 delivery of professional service to patients.

17 * Sec. 7. AS 08.45.070(a) is amended to read:

18 (a) When it finds that a licensee under this chapter has violated AS 08.45.050
19 or 08.45.120 [AS 08.45.040 - 08.45.050] or is guilty of an offense under
20 AS 08.45.060, the division may impose the following sanctions singly or in
21 combination:

22 (1) permanently revoke the license to practice;

23 (2) suspend the license for a determinate period of time;

24 (3) censure the licensee;

25 (4) issue a letter of reprimand to the licensee;

26 (5) place the licensee on probationary status and require the licensee to

27 (A) report regularly to the division upon matters involving the
28 basis of probation;

29 (B) limit practice to those areas prescribed;

30 (C) continue professional education until a satisfactory degree
31 of skill has been attained in areas determined by the division to need

1 improvement;

2 (6) impose limitations or conditions on the practice of the licensee.

3 * Sec. 8. AS 08.45.080 is amended to read:

4 **Sec. 08.45.080. Unlicensed practice or use of title a misdemeanor.** A
5 person who violates [PRACTICES NATUROPATHY IN THE STATE WITHOUT A
6 LICENSE IN VIOLATION OF] AS 08.45.010 is guilty of a misdemeanor and upon
7 conviction is punishable by a fine of not more than \$1,000, or by imprisonment for not
8 more than a year, or by both.

9 * Sec. 9. AS 08.45.100 is amended by adding new subsections to read:

10 (b) After consideration of draft regulations, if any, prepared by the division in
11 collaboration with a qualified trade association of naturopathic physicians, the
12 department may adopt regulations to

13 (1) establish the standards the division will use to approve naturopathic
14 medical colleges or programs for satisfaction of the requirements of
15 AS 08.45.030(2)(A), 08.45.120(a)(4), 08.45.120(a)(6), and 08.45.120(a)(8); the
16 standards must require, at a minimum, that the college or program include a four-year,
17 full-time resident program of academic and clinical study of naturopathic medicine;

18 (2) implement the peer review process under (c) of this section;

19 (3) implement the continuing education requirement of AS 08.45.110;

20 and

21 (4) establish the standards under which the division may issue
22 certificates of specialty practice for a person licensed under this chapter.

23 (c) The division shall establish a naturopathic peer review committee
24 consisting of three members appointed annually from a list of nominees presented to
25 the division by an approved qualified trade association for naturopathic physicians.
26 The committee members serve without compensation for their work on the committee
27 but are entitled to the travel and per diem expenses authorized for boards and
28 commissions under AS 39.20.180. The committee shall meet quarterly to review
29 complaints filed with the division under this chapter. The committee shall make
30 written recommendations to the division as to whether grounds for disciplinary action
31 exist under AS 08.45.060 and as to appropriate disciplinary sanctions under

1 AS 08.45.070 in each case under review. If the division approves the
2 recommendations of the committee, the licensee may either accept the
3 recommendations of the committee or request a hearing before the division.

4 * **Sec. 10.** AS 08.45 is amended by adding new sections to read:

5 **Sec. 08.45.110. Continuing education requirement.** Before a license may
6 be renewed, the licensee shall document to the division's satisfaction that the licensee
7 has received at least 45 hours of continuing education in naturopathic medicine in the
8 previous two years, at least 15 hours of which was instruction in pharmacology or
9 pharmacotherapeutics presented by a licensed pharmacist or another professional
10 approved by the division.

11 **Sec. 08.45.120. Authorized activities; use of titles.** (a) A person licensed
12 under this chapter may

13 (1) prescribe or administer for preventive and therapeutic purposes the
14 following: food, extracts of food, vitamins, minerals, enzymes, whole gland
15 substances, botanical medicines, and homeopathic preparations;

16 (2) prescribe or administer intravenous botanicals, substances,
17 vitamins, and minerals;

18 (3) administer health care counseling, nutritional counseling and
19 dietary therapy, naturopathic physical applications, therapeutic devices, and
20 nonprescription drugs;

21 (4) if authorized under regulations of the department, prescribe
22 schedules IIIA, IVA, and VA controlled substances as described under AS 11.71.160,
23 11.71.170, and 11.71.180 if the person has

24 (A) registered with the federal Drug Enforcement
25 Administration;

26 (B) successfully completed pharmacology training from an
27 approved naturopathic medical college; and

28 (C) entered into a collaborative agreement as described under
29 AS 08.45.125 with a person or persons licensed to practice medicine under
30 AS 08.64;

31 (5) prescribe and implement barrier devices for contraception;

1 (6) perform minor surgery after providing proof satisfactory to the
2 division of successful completion of training in minor surgery from an approved
3 naturopathic medical college;

4 (7) perform or order for diagnostic purposes a physical or orificial
5 examination, ultrasound, phlebotomy, clinical laboratory test or examination,
6 physiological function test, and other diagnostic procedures commonly used by a
7 person licensed to practice medicine under AS 08.64.230(a); and

8 (8) if authorized under regulations of the department, prescribe legend
9 drugs or prescription drugs if the person has

10 (A) successfully completed pharmacology training from an
11 approved naturopathic medical college; and

12 (B) entered into a collaborative agreement as described under
13 AS 08.45.125 with a person or persons licensed to practice medicine under
14 AS 08.64; and

15 (9) use the title of "doctor of naturopathy," "naturopath," "naturopathic
16 physician," or their abbreviations.

17 (b) In this section, "legend drug" and "prescription drug" have the meanings
18 given in AS 08.80.480.

19 **Sec. 08.45.125. Collaborative agreements for drugs.** (a) A collaborative
20 agreement required under AS 08.45.120(a)(4) and (a)(8) must be in writing in a form
21 approved by the department and include

22 (1) a commitment of at least one collaborating physician licensed to
23 practice medicine under AS 08.64 able to comply with the terms of the agreement;

24 (2) a formulary of controlled substances and legend drugs or
25 prescription drugs that

26 (A) are authorized under AS 08.45.120(a)(4) and (a)(8) and
27 regulations adopted under that section that describes the standard protocols and
28 practices that must be used;

29 (B) are approved by the collaborating physician to be
30 prescribed or dispensed by the person licensed under this chapter; and

31 (C) include standard protocols and practices that describe the

1 circumstances under which each drug on the formulary may be prescribed or
2 dispensed, the extent of supervision required of the collaborating physician, if
3 any, and a periodic review of the licensee's competence and standard practices;

4 (3) a requirement that the licensee consult with and have a patient
5 protocol approved by a collaborating physician before prescribing a schedule IIIA
6 controlled substance for each patient; and

7 (4) a requirement that the licensee review the formulary, including the
8 standard practices under (2) of this subsection, with a collaborating physician before
9 executing a collaborative agreement, six months after executing the agreement, and
10 every 12 months thereafter.

11 (b) A collaborating physician licensed under AS 08.64 and a person licensed
12 to practice naturopathic medicine under this chapter are not liable for the actions or
13 inactions of the other as a result of a collaborative agreement entered into under this
14 section.

15 (c) The licensee shall post the name of the collaborating physician under (a) of
16 this section in a conspicuous location visible to patients of the licensee.

17 (d) Upon request, the licensee shall provide a copy of the standard practices
18 under (a)(2) of this section to a pharmacist licensed in the state.

19 (e) The licensee shall include the name of the collaborating physician under
20 (a) of this section on each prescription written under AS 08.45.120(a)(4) or (a)(8) by
21 the licensee.

22 **Sec. 08.45.130. Fees.** The division shall set fees under AS 08.01.065 for each
23 of the following:

24 (1) a license issued under this chapter;

25 (2) renewal of a license issued under this chapter.

26 * **Sec. 11.** AS 08.45.200(3) is amended to read:

27 (3) "naturopathic medicine" ["NATUROPATHY"] means the use of
28 hydrotherapy, dietetics, electrotherapy, sanitation, suggestion, mechanical and manual
29 manipulation for the stimulation of physiological and psychological action to establish
30 a normal condition of mind and body; in this paragraph, "dietetics" includes herbal
31 and homeopathic remedies.

1 * **Sec. 12.** AS 08.45.200 is amended by adding new paragraphs to read:

2 (4) "approved naturopathic medical college or program" means a
3 college or program that grants a degree of doctor of naturopathy or doctor of
4 naturopathic medicine and that

5 (A) is accredited by the Council on Naturopathic Medical
6 Education or another accrediting agency recognized by the United States
7 Department of Education;

8 (B) has the status of candidate for accreditation by an entity
9 described in (A) of this paragraph; or

10 (C) has been approved under a regulation adopted by the
11 department under this chapter;

12 (5) "department" means the Department of Community and Economic
13 Development;

14 (6) "minor surgery"

15 (A) means the use of

16 (i) operative, electrical, or other methods for surgical
17 repair and care incidental to superficial lacerations and abrasions or
18 superficial lesions, and the removal of foreign bodies located in
19 superficial tissues; and

20 (ii) antiseptics and local anesthetics in connection with
21 methods authorized under (i) of this subparagraph;

22 (B) does not include use of general or spinal anesthetics, major
23 surgery, surgery of the body cavities, or specialized surgery, such as plastic
24 surgery, surgery involving the eyes, or surgery involving tendons, ligaments,
25 nerves, or blood vessels.

26 * **Sec. 13.** AS 47.08.050 is amended to read:

27 **Sec. 47.08.050. Services excluded from coverage.** Annually, the committee
28 shall determine in light of appropriated funds and expected need the medical expenses
29 reimbursable under AS 47.08.010 - 47.08.140, except that the following are not
30 reimbursable:

31 (1) dentistry and optometry unless prescribed by a licensed dentist or

1 physician as medically necessary as the result of the injury or illness;

2 (2) elective medical or surgical procedures;

3 (3) drugs and medications not prescribed by a licensed physician;

4 (4) services received as a result of a pregnancy or birth without
5 unusual complications;

6 (5) private psychological or psychiatric treatment or private alcoholism
7 treatment, unless not available from public agencies or programs;

8 (6) chiropractic services and services provided by a person who
9 practices naturopathic medicine [NATUROPATHY];

10 (7) services not of a medical nature;

11 (8) medical services currently provided to persons in the custody of the
12 Department of Corrections;

13 (9) costs incurred before July 1976.

14 * Sec. 14. AS 08.45.035 and 08.45.040 are repealed.

15 * Sec. 15. AS 08.45.120(a)(4)(C), 08.45.120(a)(8)(B), and 08.45.125, as enacted by sec. 10
16 of this Act, are repealed July 1, 2009.

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

19 LICENSE TO PRACTICE NATUROPATHY; TRANSITIONAL PROVISIONS. A
20 license to practice naturopathy issued under AS 08.45, including a temporary license, that is
21 in effect on February 28, 2005, remains in effect for the period for which the license was
22 issued and is considered to be a license to practice naturopathic medicine under AS 08.45, as
23 amended by this Act. However, a person who holds a license issued under AS 08.45 that is in
24 effect on February 28, 2005, is subject to the authority of the department in regard to acts of
25 the licensee that occurred on or before February 28, 2005, to impose a disciplinary sanction
26 under AS 08.45.070.

27 * Sec. 17. AS 08.45.110, as enacted by sec. 10 of this Act, takes effect January 1, 2007.

28 * Sec. 18. Except as provided in sec. 17 of this Act, this Act takes effect March 1, 2005.

NOT OFFERED

WORK DRAFT

WORK DRAFT

WORK DRAFT

23-LS1572AQ
Mischel
4/20/04

CS FOR SENATE BILL NO. 306()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS SEEKINS, Dyson, Green

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the practice of naturopathic medicine; and providing for an effective
2 date."

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

4 * Section 1. AS 08.01.010(26) is amended to read:

5 (26) regulation of the practice of naturopathic medicine
6 [NATUROPATHY] under AS 08.45;

7 * Sec. 2. AS 08.45.010 is amended to read:

8 Sec. 08.45.010. Practice of naturopathic medicine [NATUROPATHY]
9 without license prohibited. A person who does not hold a license issued under this
10 chapter may not

11 (1) practice naturopathic medicine [NATUROPATHY] in the state;

12 or

13 (2) use any of the following titles: "doctor of naturopathy,"
14 "naturopath," or "naturopathic physician" [WITHOUT A LICENSE].

1 * Sec. 3. AS 08.45.020 is amended to read:

2 **Sec. 08.45.020. Application for license.** A person desiring to practice
3 naturopathic medicine [NATUROPATHY] shall apply in writing to the division of
4 occupational licensing of the Department of Community and Economic Development.

5 * Sec. 4. AS 08.45.030 is repealed and reenacted to read:

6 **Sec. 08.45.030. Issuance of license.** The division shall issue a license to
7 practice naturopathic medicine on receipt of

8 (1) an application on a form acceptable to the division;

9 (2) documentation satisfactory to the division that the applicant

10 (A) is a graduate of an approved naturopathic medical college
11 or program; and

12 (B) has passed the naturopathic physicians licensing
13 examination approved by the division with a score that meets the requirements
14 established in regulation; and

15 (3) all applicable fees.

16 * Sec. 5. AS 08.45.050 is repealed and reenacted to read:

17 **Sec. 08.45.050. Restrictions on practice of naturopathic medicine.** (a) A
18 person who practices naturopathic medicine may not engage in surgery except that a
19 person who practices naturopathic medicine may perform minor surgery under
20 AS 08.45.120(a)(6).

21 (b) Notwithstanding that a specific act is within the definition of "naturopathic
22 medicine" or is described as an activity authorized under AS 08.45.120, a person
23 licensed under this chapter may not perform the act if the person lacks appropriate
24 education or training related to the act.

25 * Sec. 6. AS 08.45.060 is amended to read:

26 **Sec. 08.45.060. Grounds for suspension, revocation, or refusal to issue a**
27 **license.** The division may deny a license to an applicant under this chapter or,
28 after a hearing, impose a disciplinary sanction authorized under AS 08.45.070 on a
29 person licensed under this chapter when the division finds that the applicant or
30 licensee

31 (1) secured, or attempted to secure, a license through deceit, fraud, or

1 intentional misrepresentation;

2 (2) engaged in deceit, fraud, or intentional misrepresentation in the
3 course of providing professional services or engaging in professional activities;

4 (3) advertised professional services in a false or misleading manner;

5 (4) has been convicted of a felony or other crime that affects the
6 applicant's or licensee's ability [TO CONTINUE] to practice competently and safely;

7 (5) failed to comply with this chapter, with a regulation adopted under
8 this chapter, or with an order of the division;

9 (6) is [CONTINUED TO PRACTICE AFTER BECOMING] unfit to
10 practice naturopathic medicine due to

11 (A) professional incompetence;

12 (B) addiction or severe dependency on alcohol or a drug that
13 impairs the applicant's or licensee's ability to practice safely; or

14 (C) physical or mental disability; or

15 (7) engaged in lewd or immoral conduct in connection with the
16 delivery of professional service to patients.

17 * Sec. 7. AS 08.45.070(a) is amended to read:

18 (a) When it finds that a licensee under this chapter has violated AS 08.45.050
19 or 08.45.120 [AS 08.45.040 - 08.45.050] or is guilty of an offense under
20 AS 08.45.060, the division may impose the following sanctions singly or in
21 combination:

22 (1) permanently revoke the license to practice;

23 (2) suspend the license for a determinate period of time;

24 (3) censure the licensee;

25 (4) issue a letter of reprimand to the licensee;

26 (5) place the licensee on probationary status and require the licensee to

27 (A) report regularly to the division upon matters involving the
28 basis of probation;

29 (B) limit practice to those areas prescribed;

30 (C) continue professional education until a satisfactory degree
31 of skill has been attained in areas determined by the division to need

1 improvement;

2 (6) impose limitations or conditions on the practice of the licensee.

3 * **Sec. 8.** AS 08.45.080 is amended to read:

4 **Sec. 08.45.080. Unlicensed practice or use of title a misdemeanor.** A
5 person who violates [PRACTICES NATUROPATHY IN THE STATE WITHOUT A
6 LICENSE IN VIOLATION OF] AS 08.45.010 is guilty of a misdemeanor and upon
7 conviction is punishable by a fine of not more than \$1,000, or by imprisonment for not
8 more than a year, or by both.

9 * **Sec. 9.** AS 08.45.100 is amended by adding new subsection to read:

10 (b) After consideration of draft regulations, if any, prepared by the division in
11 collaboration with a qualified trade association of naturopathic physicians, the
12 department may adopt regulations to

13 (1) establish the standards the division will use to approve naturopathic
14 medical colleges or programs for satisfaction of the requirements of
15 AS 08.45.030(2)(A), 08.45.120(a)(4), and 08.45.120(a)(6); the standards must require,
16 at a minimum, that the college or program include a four-year, full-time resident
17 program of academic and clinical study of naturopathic medicine;

18 (2) implement the peer review process under (c) of this section;

19 (3) implement the continuing education requirement of AS 08.45.110;

20 and

21 (4) establish the standards under which the division may issue
22 certificates of specialty practice for a person licensed under this chapter.

23 (c) The division shall establish a naturopathic peer review committee
24 consisting of three members appointed annually from a list of nominees presented to
25 the division by an approved qualified trade association for naturopathic physicians.
26 The committee members serve without compensation for their work on the committee
27 but are entitled to the travel and per diem expenses authorized for boards and
28 commissions under AS 39.20.180. The committee shall meet quarterly to review
29 complaints filed with the division under this chapter. The committee shall make
30 written recommendations to the division as to whether grounds for disciplinary action
31 exist under AS 08.45.060 and as to appropriate disciplinary sanctions under

1 AS 08.45.070 in each case under review. If the division approves the
2 recommendations of the committee, the licensee may either accept the
3 recommendations of the committee or request a hearing before the division.

4 * **Sec. 10.** AS 08.45 is amended by adding new sections to read:

5 **Sec. 08.45.110. Continuing education requirement.** Before a license may
6 be renewed, the licensee shall document to the division's satisfaction that the licensee
7 has received at least 45 hours of continuing education in naturopathic medicine in the
8 previous two years, at least 15 hours of which was instruction in pharmacology or
9 pharmacotherapeutics presented by a licensed pharmacist or another professional
10 approved by the division.

11 **Sec. 08.45.120. Authorized activities; use of titles.** (a) A person licensed
12 under this chapter may

13 (1) prescribe or administer for preventive and therapeutic purposes the
14 following: food, extracts of food, vitamins, minerals, enzymes, whole gland
15 substances, botanical medicines, and homeopathic preparations;

16 (2) prescribe or administer intravenous botanicals, substances,
17 vitamins, and minerals;

18 (3) administer health care counseling, nutritional counseling and
19 dietary therapy, naturopathic physical applications, therapeutic devices, and
20 nonprescription drugs;

21 (4) if authorized under regulations of the department, prescribe legend
22 drugs or prescription drugs and schedules IIIA, IVA, and VA controlled substances as
23 described under AS 11.71.160, 11.71.170, and 11.71.180 if the person has

24 (A) registered with the federal Drug Enforcement
25 Administration;

26 (B) successfully completed pharmacology training from an
27 approved naturopathic medical college; and

28 (C) entered into a collaborative agreement as described under
29 AS 08.45.125 with a person or persons licensed to practice medicine under
30 AS 08.64;

31 (5) prescribe and implement barrier devices for contraception;

1 (6) perform minor surgery after providing proof satisfactory to the
2 division of successful completion of training in minor surgery from an approved
3 naturopathic medical college;

4 (7) if the person has entered into a collaborative agreement with a
5 person or persons licensed to practice medicine under AS 08.64, perform or order for
6 diagnostic purposes a physical or orificial examination, ultrasound, phlebotomy,
7 clinical laboratory test or examination, physiological function test, and other
8 diagnostic procedures commonly used by a person licensed to practice medicine under
9 AS 08.64.230(a); a collaborative agreement under this paragraph must be in a form
10 approved by the department and include a protocol for each procedure to be ordered or
11 performed and must be reviewed by the collaborating physician before
12 implementation of the agreement, six months after implementation, and every 12
13 months thereafter; and

14 (8) use the title of "doctor of naturopathy," "naturopath," "naturopathic
15 physician," or their abbreviations.

16 (b) In this section, "legend drug" and "prescription drug" have the meanings
17 given in AS 08.80.480.

18 **Sec. 08.45.125. Collaborative agreements for drugs.** (a) A collaborative
19 agreement required under AS 08.45.120(a)(4) must be in writing in a form approved
20 by the department and include

21 (1) a commitment of at least one collaborating physician licensed to
22 practice medicine under AS 08.64 able to comply with the terms of the agreement;

23 (2) a formulary of controlled substances and legend drugs or
24 prescription drugs that

25 (A) are authorized under AS 08.45.120(a)(4) and regulations
26 adopted under that section that describes the standard protocols and practices
27 that must be used;

28 (B) are approved by the collaborating physician to be
29 prescribed or dispensed by the person licensed under this chapter; and

30 (C) include standard protocols and practices that describe the
31 circumstances under which each drug on the formulary may be prescribed or

1 dispensed, the extent of supervision required of the collaborating physician, if
2 any, and a periodic review of the licensee's competence and standard practices;

3 (3) a requirement that the licensee consult with and have a patient
4 protocol approved by a collaborating physician before prescribing a schedule IIIA
5 controlled substance for each patient; and

6 (4) a requirement that the licensee review the formulary, including the
7 standard practices under (2) of this subsection, with a collaborating physician before
8 executing a collaborative agreement, six months after executing the agreement, and
9 every 12 months thereafter.

10 (b) A collaborating physician licensed under AS 08.64 and a person licensed
11 to practice naturopathic medicine under this chapter are not liable for the actions or
12 inactions of the other as a result of a collaborative agreement entered into under this
13 section.

14 (c) The licensee shall post the name of the collaborating physician under (a) of
15 this section in a conspicuous location visible to patients of the licensee.

16 (d) Upon request, the licensee shall provide a copy of the standard practices
17 under (a)(2) of this section to a pharmacist licensed in the state.

18 (e) The licensee shall include the name of the collaborating physician under
19 (a) of this section on each prescription written under AS 08.45.120(a)(4) by the
20 licensee.

21 **Sec. 08.45.130. Fees.** The division shall set fees under AS 08.01.065 for each
22 of the following:

23 (1) a license issued under this chapter;

24 (2) renewal of a license issued under this chapter.

25 * **Sec. 11.** AS 08.45.200(3) is amended to read:

26 (3) "naturopathic medicine" ["NATUROPATHY"] means the use of
27 hydrotherapy, dietetics, electrotherapy, sanitation, suggestion, mechanical and manual
28 manipulation for the stimulation of physiological and psychological action to establish
29 a normal condition of mind and body; in this paragraph, "dietetics" includes herbal
30 and homeopathic remedies.

31 * **Sec. 12.** AS 08.45.200 is amended by adding new paragraphs to read:

1 (4) "approved naturopathic medical college or program" means a
2 college or program that grants a degree of doctor of naturopathy or doctor of
3 naturopathic medicine and that

4 (A) is accredited by the Council on Naturopathic Medical
5 Education or another accrediting agency recognized by the United States
6 Department of Education;

7 (B) has the status of candidate for accreditation by an entity
8 described in (A) of this paragraph; or

9 (C) has been approved under a regulation adopted by the
10 department under this chapter;

11 (5) "department" means the Department of Community and Economic
12 Development;

13 (6) "minor surgery"

14 (A) means the use of

15 (i) operative, electrical, or other methods for surgical
16 repair and care incidental to superficial lacerations and abrasions or
17 superficial lesions, and the removal of foreign bodies located in
18 superficial tissues; and

19 (ii) antiseptics and local anesthetics in connection with
20 methods authorized under (i) of this subparagraph;

21 (B) does not include use of general or spinal anesthetics, major
22 surgery, surgery of the body cavities, or specialized surgery, such as plastic
23 surgery, surgery involving the eyes, or surgery involving tendons, ligaments,
24 nerves, or blood vessels.

25 * **Sec. 13.** AS 47.08.050 is amended to read:

26 **Sec. 47.08.050. Services excluded from coverage.** Annually, the committee
27 shall determine in light of appropriated funds and expected need the medical expenses
28 reimbursable under AS 47.08.010 - 47.08.140, except that the following are not
29 reimbursable:

30 (1) dentistry and optometry unless prescribed by a licensed dentist or
31 physician as medically necessary as the result of the injury or illness;

- 1 (2) elective medical or surgical procedures;
- 2 (3) drugs and medications not prescribed by a licensed physician;
- 3 (4) services received as a result of a pregnancy or birth without
- 4 unusual complications;
- 5 (5) private psychological or psychiatric treatment or private alcoholism
- 6 treatment, unless not available from public agencies or programs;
- 7 (6) chiropractic services and services provided by a person who
- 8 practices naturopathic medicine [NATUROPATHY];
- 9 (7) services not of a medical nature;
- 10 (8) medical services currently provided to persons in the custody of the
- 11 Department of Corrections;
- 12 (9) costs incurred before July 1976.

13 * Sec. 14. AS 08.45.035 and 08.45.040 are repealed.

14 * Sec. 15. AS 08.45.120(a)(4)(C) and 08.45.125, as enacted by sec. 10 of this Act, are
15 repealed July 1, 2009.

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

18 LICENSE TO PRACTICE NATUROPATHY; TRANSITIONAL PROVISIONS. A
19 license to practice naturopathy issued under AS 08.45, including a temporary license, that is
20 in effect on February 28, 2005, remains in effect for the period for which the license was
21 issued and is considered to be a license to practice naturopathic medicine under AS 08.45, as
22 amended by this Act. However, a person who holds a license issued under AS 08.45 that is in
23 effect on February 28, 2005, is subject to the authority of the department in regard to acts of
24 the licensee that occurred on or before February 28, 2005, to impose a disciplinary sanction
25 under AS 08.45.070.

26 * Sec. 17. AS 08.45.110, as enacted by sec. 10 of this Act, takes effect January 1, 2007.

27 * Sec. 18. Except as provided in sec. 17 of this Act, this Act takes effect March 1, 2005.

Amendment #1
adopted

Amendment

SB 306 — An Act relating to the practice of naturopathic medicine.

Page 5, line 16

(4) after becoming registered with the federal Drug Enforcement Administration,
prescribe only those controlled substances allowed under Schedules III, IV and V.

Submitted by: Senator Seekins

SENATE FINANCE COMMITTEE
3/25/2003 COMMITTEE ACTION

Bill Number	SB 306		
Amendment	#1		
Motion	adopt		
<u>Motion by</u>	Dyson		
<u>Objection by</u>	Wilken		
<u>Removed</u>	✓		
<u>Second Objection by</u>			
<u>Committee Member</u>	<u>Y</u>	<u>Vote</u>	<u>N</u>
Senator Hoffman			
Sena'tor Olson			
Senator Stevens			
Senator Bunde			
Senator Dyson			
Co-Chair Green			
Co-Chair Wilken			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	PASS		

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 306
(S) Publish Date: 2/27/04

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
Title Naturopathic Medicine RDU Occupational Licensing (117)
Component Occupational Licensing
Sponsor Senators Seekins, Dyson, Green
Requester Senate Labor & Commerce Component No. 2360

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

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)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SB 306 makes amendments to the Naturopathic licensing statutes. No new funds are required to implement the changes in this bill.

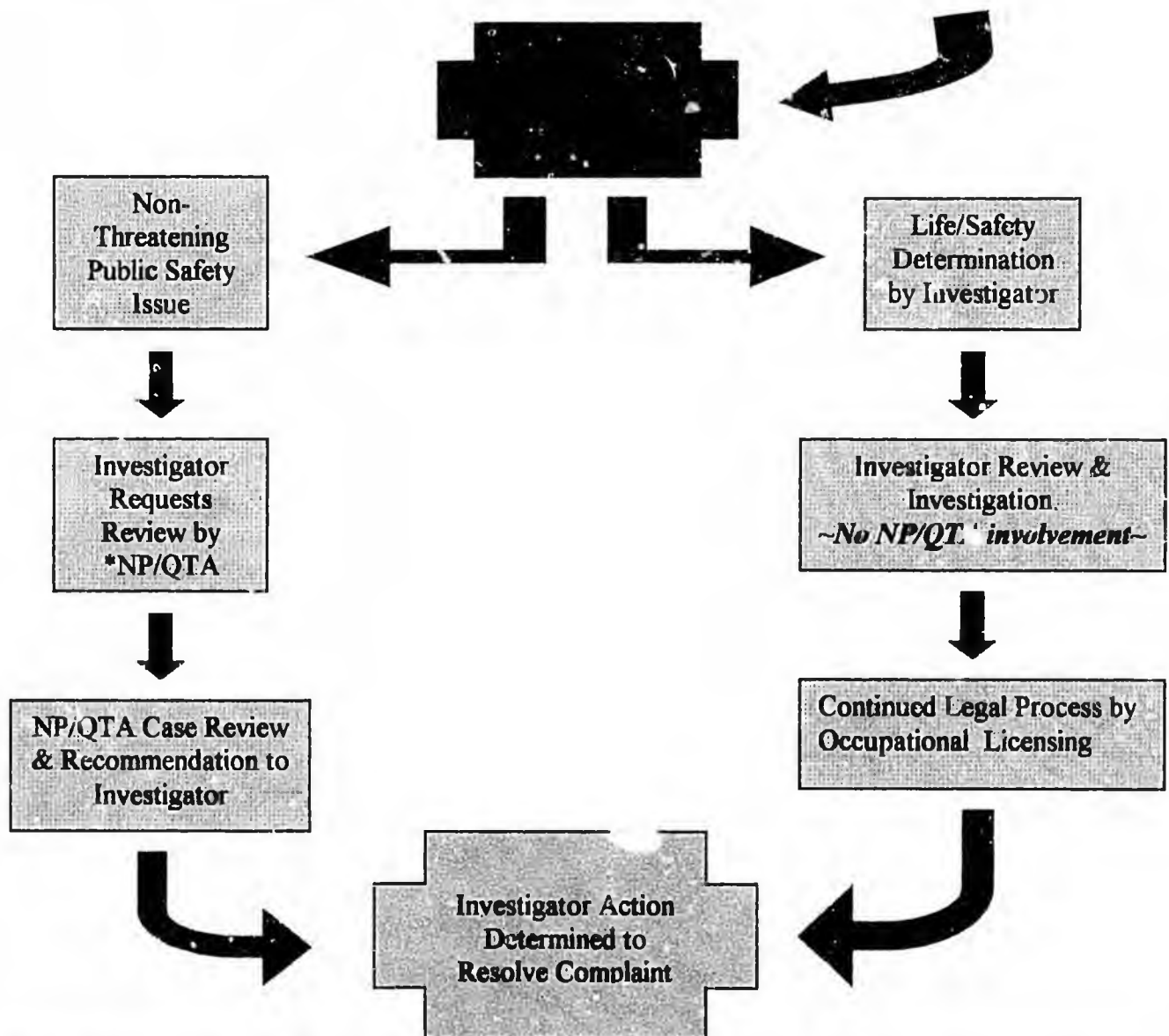
Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144
Division Occupational Licensing Date/Time 2/12/04 4:05 PM
Approved by: Edgar Blatchford, Commissioner Date 2/12/2004
Agency Department of Community & Economic Development

Implementation of CSSB306(FIN)

Authorizes **ONLY THOSE** Licensed Naturopathic Physicians Qualifying through Continuing Medical Education and Pharmacology to:

- 1) Prescribe Including Schedule III, IV & V Drugs
 - a. DEA Licensure Required for Controlled Substances
- 2) Perform Minor Surgery
 - a. Equal to Allopathic (MD) Training
- 3) Continued Oversight by Div. of Occ. Lic. *without* establishment of State Board

Complaint Brought Forward to Occupational Licensing Investigator



*NP/QTA = Qualified Trade Assn. of Naturopathic Physicians will annually appoint three practicing naturopathic physicians including two members with DEA licenses (Prescriptive authority for controlled substances) and one Naturopathic Physician who does not hold a DEA license. They will sit as a voluntary review committee to work with the Div. of Occupational



Statutes and Regulations **Naturopaths**

March 2002

Alaska

**DEPARTMENT OF COMMUNITY
AND ECONOMIC DEVELOPMENT**
Division of Occupational Licensing

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**CHAPTER 45.
NATUROPATHS.**

Section

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- 020. Application for license**
- 030. Issuance of license**
- 035. Temporary licenses**
- 040. Disclosures required by person who practices naturopathy**
- 050. Restrictions on practice of naturopathy**
- 060. Grounds for suspension, revocation or refusal to issue a license**
- 070. Disciplinary sanctions**
- 080. Unlicensed practice a misdemeanor**
- 090. Fraudulent license**
- 100. Regulations**
- 200. Definitions**

Sec. 08.45.010. Practice of naturopathy without license prohibited. A person may not practice naturopathy in the state without a license.

Sec. 08.45.020. Application for license. A person desiring to practice naturopathy shall apply in writing to the division of occupational licensing of the Department of Community and Economic Development.

Sec. 08.45.030. Issuance of license. The division shall issue a license to practice naturopathy to an applicant who provides proof satisfactory to the division that the applicant has received a degree from an accredited four-year college or university, and

(1) on or before December 31, 1987, has graduated from a school of naturopathy that required four years of attendance at the school and after graduation has received a license in another state after passing an examination for licensure in that state and is licensed by a state at the time of application; or

(2) after December 31, 1987, has

(A) graduated from a school of naturopathy that required four years of attendance at the school and at the time of graduation the school was accredited or a candidate for accreditation by the Council on Naturopathic Medical Education or a successor organization recognized by the United States Department of Education; and

(B) passed the Naturopathic Physicians Licensin Examination.

Sec. 08.45.035. Temporary licenses. (a) The division shall issue a temporary license to practice naturopathy to an applicant who has applied for and is qualified to take the next Naturopathic Physicians Licensin Examination offered after the date of application and provides proof satisfactory to the division that the applicant

(1) meets the requirements of AS 08.45.030(2)(A); and

(2) has not previously failed the Naturopathic Physicians Licensin Examination.

(b) A temporary license issued under (a) of this section terminates on the date

(1) the results of the examination the applicant agreed to take under (a) of this section are reported by the testing authority if the applicant failed the examination; or

(2) of the Naturopathic Physicians Licensin Examination that the applicant agreed to take under (a) of this section if the applicant fails to take the examination.

(c) A temporary license holder may practice only in the office of a naturopath licensed by this state.

Sec. 08.45.040. Disclosures required by person who practices naturopathy. (a) A person who practices naturopathy shall clearly disclose that the person's training and practice is in naturopathy

(1) to each patient; and

(2) on all material used in the practice of naturopathy and made available to patients or to the public.

(b) A person who practices naturopathy without being covered by malpractice insurance shall disclose to each patient that the person does not have the insurance.

Sec. 08.45.050. Restrictions on practice of naturopathy. A person who practices naturopathy may not

(1) give, prescribe, or recommend in the practice

(A) a prescription drug;

(B) a controlled substance;

(C) a poison;

(2) engage in surgery;

(3) use the word "physician" in the person's title.

Sec. 08.45.060. Grounds for suspension, revocation or refusal to issue a license. The division may, after a hearing, impose a disciplinary sanction on a person licensed under this chapter when the division finds that the licensee

- (1) secured a license through deceit, fraud, or intentional misrepresentation;
- (2) engaged in deceit, fraud, or intentional misrepresentation in the course of providing professional services or engaging in professional activities;
- (3) advertised professional services in a false or misleading manner;
- (4) has been convicted of a felony or other crime that affects the licensee's ability to continue to practice competently and safely;
- (5) failed to comply with this chapter, with a regulation adopted under this chapter, or with an order of the division;
- (6) continued to practice after becoming unfit due to
 - (A) professional incompetence;
 - (B) addiction or severe dependency on alcohol or a drug that impairs the licensee's ability to practice safely;
 - (C) physical or mental disability;
- (7) engaged in lewd or immoral conduct in connection with the delivery of professional service to patients.

Sec. 08.45.070. Disciplinary sanctions. (a) When it finds that a licensee under this chapter has violated AS 08.45.040 - 08.45.050 or is guilty of an offense under AS 08.45.060, the division may impose the following sanctions singly or in combination:

- (1) permanently revoke the license to practice;
- (2) suspend the license for a determinate period of time;
- (3) censure the licensee;
- (4) issue a letter of reprimand to the licensee;
- (5) place the licensee on probationary status and require the licensee to
 - (A) report regularly to the division upon matters involving the basis of probation;
 - (B) limit practice to those areas prescribed;
 - (C) continue professional education until a satisfactory degree of skill has been attained in areas determined by the division to need improvement;
- (6) impose limitations or conditions on the practice of the licensee.

(b) The division may withdraw probationary status of a licensee if it finds that the deficiencies that required the sanction have been remedied.

(c) The division may summarily suspend a license before final hearing or during the appeals process if the division finds that the licensee poses a clear and immediate danger to the public health and safety if the licensee continues to practice. A licensee whose license is suspended under this section is entitled to a hearing by the division no later than seven days after the effective date of the order. The licensee may appeal the suspension after a hearing to a court of competent jurisdiction.

Sec. 08.45.080. Unlicensed practice a misdemeanor. A person who practices naturopathy in the state without a license in violation of AS 08.45.010 is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$1,000, or by imprisonment for not more than a year, or by both.

Sec. 08.45.090. Fraudulent license. A person who obtains or attempts to obtain a naturopathic license by dishonest or fraudulent means, or who forges, counterfeits, or fraudulently alters a naturopathic license is punishable by a fine of not more than \$500, or by imprisonment for not more than six months, or by both.

Sec. 08.45.100. Regulations. The Department of Community and Economic Development shall adopt regulations to implement this chapter.

Sec. 08.45.200. Definitions. In this chapter,

- (1) "controlled substance" has the meaning given in AS 11.71.900;
- (2) "division" means the division of occupational licensing in the Department of Community and Economic Development;
- (3) "naturopathy" means the use of hydrotherapy, dietetics, electrotherapy, sanitation, suggestion, mechanical and manual manipulation for the stimulation of physiological and psychological action to establish a normal condition of mind and body; in this paragraph, "dietetics" includes herbal and homeopathic remedies.