

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10385 HOUSE RESOURCES

230

1 and

2 (2) may declare a moratorium of up to five years on payments on land  
3 sold under this section for land classified under AS 38.05.020(b)(6) for agricultural  
4 uses if

5 (A) the commissioner determines that the moratorium is in the  
6 best interest of the state;

7 (B) the commissioner certifies and the contract purchaser agrees  
8 to perform farm development, crop production, and harvesting, not including  
9 land clearing or related activity, requiring the expenditure of amounts  
10 equivalent to the payments that would otherwise be made during the  
11 moratorium;

12 (C) the sale of the agricultural land takes place after July 1,  
13 1979; and

14 (D) the contract purchaser is in compliance with the  
15 development plan specified in the purchase contract at the time the purchaser  
16 applies for a moratorium under this subsection and remains in compliance with  
17 the development plan during the moratorium; for the payments subject to the  
18 moratorium declared under this paragraph, interest payments are subject to the  
19 moratorium but interest continues to accrue during the moratorium.

20 \* Sec. 24. AS 38.05.069(a) is amended to read:

21 (a) After consulting with the Board of Agriculture and Conservation  
22 (AS 03.09.010), on (ON) a determination that the highest and best use of unoccupied  
23 land is for agricultural purposes and that it is in the best interests of the state to sell  
24 or lease the land, the commissioner shall grant to an Alaska [ALASKAN] resident  
25 owning and using or leasing and using land for agricultural purposes a first option at  
26 the auction to purchase or lease the unoccupied land situated adjacent to land presently  
27 held by the Alaska [ALASKAN] resident for the amount of the high bid received at  
28 public auction. If more than one Alaska [ALASKAN] resident qualifies for a first  
29 option under this section, eligibility for the first option shall be determined by lot and  
30 the option must be exercised on the conclusion of the public auction. A parcel of  
31 agricultural land sold under this section may not be less than 20 acres, and a parcel of

1 agricultural land that is acquired by exercise of the option granted in this subsection  
2 may not exceed 320 acres. Agricultural land that is acquired under this section must  
3 be used for agricultural purposes as required by law.

4 \* Sec. 25. AS 38.05.321(e) is amended to read:

5 (e) A landowner may subdivide land classified for agricultural use and for  
6 which the landowner obtained a patent under a homestead entry permit issued under  
7 AS 38.09 so long as the resulting parcels are not in violation of the minimum parcel  
8 size set out in (a) of this section. A landowner may subdivide other land classified for  
9 agricultural use as authorized under (d)(3)(C) of this section. If the subdivision  
10 involves land classified for agricultural use and for which the landowner obtained a  
11 patent under a homestead entry permit issued under AS 38.09, or if the subdivision of  
12 land authorized under (d)(3)(C) of this section results only in parcels of 640 acres or  
13 more, the landowner may subdivide without payment as required by this subsection.  
14 If subdivision of land authorized by (d)(3)(C) of this section would result in one or  
15 more parcels of less than 640 acres, the landowner may subdivide only if the  
16 landowner first tenders payment to the department for the right to construct housing  
17 in each subdivided parcel of less than 640 acres. Payments collected under this  
18 subsection shall be separately accounted for and may be appropriated to the  
19 agricultural revolving loan fund (AS 03.10.040). For purposes of this subsection,  
20 the value of the right to construct housing in a subdivided parcel

21 (1) is \$4,000 for the parcel, subject to adjustment under (h) of this  
22 section; or

23 (2) shall be determined by an appraisal made by an appraiser under  
24 contract to the landowner owning the parcel, and the appraisal must include the value,  
25 determined as of the date of subdivision, of the right to construct housing by the  
26 landowner under (d)(3) of this section.

27 \* Sec. 26. AS 38.05.035(b) is amended to read:

28 (b) The director may

29 (1) delegate the administrative duties, functions or powers imposed  
30 upon the director to a responsible employee in the division;

31 (2) grant preference rights for the lease or purchase of state land

1 without competitive bid in order to correct errors or omissions of a state or federal  
 2 administrative agency when inequitable detriment would otherwise result to a diligent  
 3 claimant or applicant due to situations over which the claimant or applicant had no  
 4 control; the exercise of this discretionary power operates only to divest the state of its  
 5 title to or interests in land and may be exercised only

6 (A) with the express approval of the commissioner; and

7 (B) if the application for the preference right is filed with the  
 8 director within three years from

9 (i) the occurrence of the error or omission;

10 (ii) the date of acquisition by the state of the land; or

11 (iii) the date of a court decision or settlement nullifying  
 12 a disposal of state land;

13 (3) grant a preference right to a claimant who shows bona fide  
 14 improvement of state land or of federal land subsequently acquired by the state and  
 15 who has in good faith sought to obtain title to the land but who, through error or  
 16 omission of others occurring within the three years before (A) the application for the  
 17 preference right, (B) the date of acquisition by the state of the land, or (C) the date of  
 18 a court decision or settlement nullifying a disposal of state land has been denied title  
 19 to it; upon a showing satisfactory to the commissioner, the claimant may lease or  
 20 purchase the land at the price set on the date of original entry on the land or, if a price  
 21 was not set at that time at a price determined by the director to fairly represent the  
 22 value of unimproved land at the time the claim was established, but in no event less  
 23 than the cost of administration including survey; the error or omission of a predecessor  
 24 in interest or an agent, administrator, or executor which has clearly prejudiced the  
 25 claimant may be the basis for granting a preference right;

26 (4) sell land by lottery for less than the appraised value when, in the  
 27 judgment of the director, past scarcity of land suitable for private ownership in any  
 28 particular area has resulted in unrealistic land values;

29 (5) when the director determines it is in the best interest of the state  
 30 and will avoid injustice to a person or the heirs or devisees of a person, dispose of  
 31 land, by direct negotiation to that person who presently uses and who used and made

1 improvements to that land before January 3, 1959, or to the heirs or devisees of the  
 2 person; the amount paid for the land shall be its fair market value on the date that the  
 3 person first entered the land, as determined by the director; a parcel of land disposed  
 4 of under this paragraph shall be of a size consistent with the person's prior use, but  
 5 may not exceed five acres;

6 (6) after consulting with the Board of Agriculture and Conservation  
 7 (AS 03.09.010), dispose of an interest in land limited to use for agricultural purposes  
 8 by lottery;

9 (7) convey to an adjoining landowner for its fair market value a  
 10 remnant of land that the director considers unmanageable or a parcel of land created  
 11 by a highway right-of-way alignment or realignment, or a parcel created by the  
 12 vacation of a state-owned right-of-way if

13 (A) the director determines that it is in the best interests of the  
 14 state;

15 (B) the parcel does not exceed the minimum lot size under an  
 16 applicable zoning code; and

17 (C) the director and the platting authority having land use  
 18 planning jurisdiction agree that conveyance of the parcel to the adjoining  
 19 landowner will result in boundaries that are convenient for the use of the land  
 20 by the landowner and compatible with municipal land use plans;

21 (8) for good cause extend for up to 90 days the time for rental or  
 22 installment payments by a lessee or purchaser of state land under this chapter if  
 23 reasonable penalties and interest set by the director are paid;

24 (9) quitclaim land or an interest in land to the federal government on  
 25 a determination that the land or the interest in land was wrongfully or erroneously  
 26 conveyed by the federal government to the state;

27 (10) negotiate the sale or lease of state land at fair market value to a  
 28 person who acquired by contract, purchase, or lease rights to improvements on the land  
 29 from another state agency or who leased the land from another state agency [

30 (11) REPEALED].

31 \* Sec. 27. AS 38.07.010(b) is amended to read:

Chapter 81

1 (b) The land ~~that is~~ [THUS] cleared or drained ~~under (a) of this section~~ shall  
2 be put up for competitive lease in lots of not less than 320 acres each. Lease  
3 payments shall be separately accounted for and may be appropriated to the  
4 agricultural revolving loan fund (AS 03.10.040).

5 \* Sec. 28. AS 38.09.010(a) is amended to read:

6 (a) The commissioner shall designate and make available for homestead entry  
7 state land, including, after consulting with the Board of Agriculture and  
8 Conservation (AS 03.09.010), land classified for agricultural use. State land made  
9 available for homestead entry under this chapter shall be distributed throughout the  
10 state.

11 \* Sec. 29. AS 39.50.200(b) is amended by adding a new paragraph to read:

12 (56) Board of Agriculture and Conservation (AS 03.09.010).

13 \* Sec. 30. AS 03.10.050(d), 03.10.052; and AS 39.50.200(b)(1) are repealed.

14 \* Sec. 31. The uncodified law of the State of Alaska is amended by adding a new section  
15 to read:

16 TRANSITION. (a) Notwithstanding AS 03.09.010(b), enacted in sec. 1 of this Act,  
17 two initial members of the Board of Agriculture and Conservation shall be appointed to one-  
18 year terms and two initial members of the board shall be appointed to two-year terms.

19 (b) Notwithstanding AS 03.09.040, enacted in sec. 1 of this Act, AS 03.10.020(a), as  
20 amended in sec. 2 of this Act, AS 03.10.030(h), as amended in sec. 8 of this Act, and  
21 AS 03.10.033(a), as amended in sec. 9 of this Act, regulations that apply to the agricultural  
22 revolving loan fund and to loans from the fund remain in effect until amended or repealed by  
23 the Board of Agriculture and Conservation.

24 \* Sec. 32. This Act takes effect July 1, 2000.

# ALASKA STATE LEGISLATURE

REPRESENTATIVE  
JEANNETTE JAMES  
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While in Juneau  
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House of Representatives  
House District 34

## Sponsor Statement

### HB 249

April 20, 2001

This bill corrects an oversight in last year's HB 116 which created the Board of Agriculture and Conservation. In September 2000 the board was selected and has been meeting on a monthly basis ever since.

The Board and its attorney from the Department of Law were in the second phase of drafting regulations authorized by the new statute, when they discovered a glitch:

HB 116 contained numerous sections indicating where the new Board was to take over duties of the DNR Commissioner, but one was overlooked!

HB 249 corrects that oversight and allows the new Board of Agriculture and Conservation to continue functioning in accordance with original legislative intent.

Alaska State Legislature

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House of Representatives  
House District 34

APR 19 2001

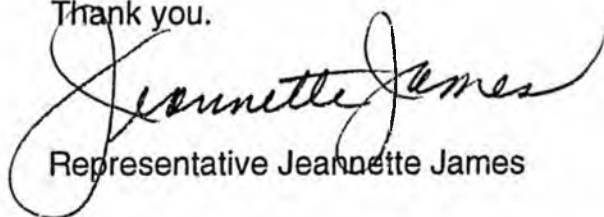
DATE: April 20, 2001  
TO: Representative Masek, Co-Chair of House Resources  
RE: Request to hear HB 249

Please schedule the following bill for a hearing in the House Resources Committee at your earliest convenience:

HB 249, "An Act relating to disposal of certain property acquired by the agricultural revolving loan fund."

Background material is attached.

Thank you.

  
Representative Jeannette James

# ALASKA STATE LEGISLATURE

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**HB**

**263**

# FISCAL NOTE

**STATE OF ALASKA**  
**2001 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HB-263  
 (H) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DEC  
 Title: REGULATION OF HOT SPRINGS BRU: Div of Env. Health  
 Sponsor: Representative Fate Component: \_\_\_\_\_  
 Requester: Representative Fate Component Number: \_\_\_\_\_

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

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2001) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

With this legislation the department will experience a lighter regulation load. This indicates an undetermined positive fiscal note.

Prepared by: Jennifer Yuhas, Committee Aide - House Resources Phone 465-3715

Representative Beverly Masek Date 1/18/2002  
 Committee Chair

REPRESENTATIVE  
**HUGH "BUD" FATE**

Mailing Address:  
119 N. Cushman, Suite 101  
Fairbanks, AK 99701  
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## Alaska State Legislature



House Of Representatives

# SPONSOR STATEMENT

HB 263

### Regulation of Hot Springs Water

Part of the enjoyment inherent in Hot Springs Resorts and mineral waters is how natural they are. To heavily chlorinate or otherwise treat the water seriously diminishes the experience and the possible medicinal benefits. House Bill 263 eliminates the need for a constantly recycling hot springs to be chemically treated so long as the coliform load remains low.

In one situation with a flow through hot springs outdoor rock lake, a resort recently settled with the Department of Environmental Conservation. This bill is attempting to be similar to that settlement so that other resorts don't have to experience the legal battles and subsequent expenses that went along with it.

While in session:

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House District 33

# STATE OF ALASKA

## DEPT. OF ENVIRONMENTAL CONSERVATION

TONY KNOWLES, GOVERNOR

RECEIVED  
MAY 04 2001

DIVISION OF ENVIRONMENTAL HEALTH  
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Telephone: (907) 269-7644  
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e-mail: Janice\_Adair@envircon.state.ak.us

May 3, 2001

The Honorable Gene Therriault  
Alaska State Senate  
Room 121, Capitol Building  
Juneau, AK 99801

The Honorable Hugh Fate  
Alaska House of Representatives  
Room 416, Capitol Building  
Juneau, AK 99801

Re: SB 214; HB 263: Flow Through Hot Spring Pools

Dear Senator Therriault and Representative Fate:

The purpose of this letter is to share with you problems our department has identified with the above-referenced legislation in the hopes that we may be able to come to an agreement on how it should be amended.

The primary problem is with the definition of a "flow-through hot spring pool." As written, the definition would include any pool – even one that is constructed from man-made materials such as concrete or plastic – that uses hot springs water as its water source. As drafted, our ability to require that pools constructed of man-made materials be chlorinated or filtered is unclear. When water is insufficiently treated, other disease-causing pathogens such as *Psuedomonas*, *Cryptosporidium*, Legionnaires' disease, *Giardia*, or *E. coli* will thrive because there are little or no competing bacteria to keep them in check. That is why chlorination and filtration of these pools is so important. Enclosed you will find the pertinent sections from a report by the Centers for Disease Control and Prevention on Waterborne Outbreaks that discuss the types of outbreaks it investigated between 1997 and 1998. It explains problems found both in treated and fresh contact recreational waters and how they might be avoided.

The second problem we see is that the bill places the current water quality standard for these waters in statute. While we don't disagree with the fecal coliform standard, if the water quality standard changes for other contact recreational waters, it should change for these types of facilities also. We would prefer to have the department's water quality standard for contact recreational waters cross-referenced.

Following is how we'd suggest the referenced bills be amended:

The Honorable Gene Therriault  
The Honorable Hugh Fate  
May 3, 2001  
Page 2

**Sec. 44.46.028. Flow-through hot springs pools.** (a) A flow-through hot springs pool, whether natural or modified, that is being operated as part of a commercial establishment, is exempt from further water quality regulation by the Department of Environmental Conservation while the fecal coliform count in the pool meets the water quality standards for contact recreational waters adopted by the department under AS 46.03.070 and AS 46.03.080 is maintained at 100 colonies or less per 100 milliliters and the pool is free from dangerous levels of disease-causing pathogens.

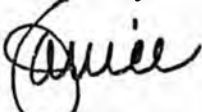
(b) In this section, "natural hot spring" means a naturally occurring impoundment into which geothermal water flows, seeps, or is otherwise held. The naturally occurring impoundment may have minor modifications to support access and bather comfort such as steps and benches.

"Modified hot spring" means a man-made impoundment constructed of natural materials or a naturally occurring impoundment into which geothermal water is directed or piped by human involvement from a geothermal source. A modified hot spring may have a semi-permeable liner in order to control erosion however, the liner may not leach chemicals into the water or create a substrate for the growth and survival of disease-causing microorganisms. flow-through hot springs pool" means a pool in which the water from a naturally occurring hot spring constantly enters the pool to replace an equal amount of water constantly being drained from the pool.

I understand the desire to ensure that facilities such as Chena Hot Springs Resorts (CHSR) are not regulated like man-made pools. Certainly our pool and spa regulations do not fit the type of pool at CHSR that was created from its natural hot springs. This "pool," which we refer to as the "Rock Lake," cannot be chlorinated. Also, the regulatory construction requirements for pools would likely not work for a modified hot springs that attempts to be in a natural setting. Recognizing these problems, we entered into an operating agreement with CHSR that was tailored to that operation specifically. Our research of other states' regulation of these types of facilities indicated those that had the best success, such as Colorado, had individual operating agreements. With that approach, any hot spring pool can retain its unique characteristics and still be protective of public health, not just from the water quality standpoint, but also from physical hazards that can cause injuries to users. We plan to revise our pool and spa regulations late this summer or early fall, and to propose such an approach for commercially operated natural and modified hot springs.

Don't hesitate to call if you'd like to discuss this further.

Sincerely,



Janice Adair  
Director

Enclosures:

◆ Surveillance for Waterborne-Disease Outbreaks – United States, 1997 – 1998 by the CDC

cc: Lori Backes, Office of Representative Whitaker (w/encl)

# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

## DEPT. OF ENVIRONMENTAL CONSERVATION

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July 28, 2000

Mr. Bernie Karl  
Chena Hot Springs Resort  
Post Office Box 73440  
Fairbanks, Alaska 99701

Dear Mr. Karl:

In a continuing effort to find a mutually satisfactory resolution to the issues surrounding the rock lake at Chena Hot Springs Resort (CHSR), this letter will outline a proposal that will allow the lake to reopen should you agree to its terms.

Two (2) of our environmental health officers spent nearly twelve (12) hours at CHSR recently to view first hand the operation of the rock lake. From that visit, we know the following:

- 1) The water in the lake cannot be effectively disinfected or filtered because it is in part fed from the bottom;
- 2) It takes nine to ten (9-10) hours for the lake to refill after being drained, indicating two (2) turnovers of the water every twenty-four (24) hours; and
- 3) There are many areas where the water does not circulate, particularly around the boulders surrounding the lake. This was evidenced by algae growth.

Because of item number one (1) above, the rock lake cannot meet the vast majority of the regulations adopted for public swimming pools even though the Department of Law has advised that the rock lake falls within the regulatory definition. Therefore, under the authority in our regulations to grant waivers for specific requirements, I'd like to have an agreement – signed by both of us – regarding our joint approach to the rock lake. This agreement will stay in effect until either:

- 1) Alaska statutes are enacted regarding the sanitation requirements for hot springs, or
- 2) The department adopts sanitation regulations specific to hot springs, whichever occurs first. You will have the opportunity to review and comment on any and all regulations we may draft on this topic.

*Safe Food, Safe Water, Healthy Communities*

Page 2  
Bernie Karl  
July 28, 2000

By entering into this agreement with the department, you are not agreeing that the rock lake is a public swimming pool and thus subject to the regulations we've adopted for public swimming pools.

Likewise, the department will not require that you follow the regulations for public swimming pools or take any action against you or CHSR for failing to follow the requirements of those regulations with respect to the rock lake. Rather, this written agreement will direct the relationship between us relative to the rock lake.

You have told me that you are willing to limit your bather load in order to reopen the rock lake to the public. Doing so will help -- at least in part -- to alleviate some of the public health concerns we have, provided that limitation is coupled with a few other things. You also told me that you would be willing to work with us on some of our other concerns after we clear the hurdle of getting the rock lake reopened. Therefore, I would like each of us to agree to the following:

1. In order to limit the potential for bacterial contamination, limit the bather load in the rock lake to twenty (20) people per hour and no more than sixty (60) people in a twenty-four (24)-hour period.
2. Ensure that users of the rock lake shower before using the rock lake as well as after using it and before entering the concrete pool, jacuzzi, or hot tub in order to limit the potential for cross-contamination.

In order that the users of the rock lake are both informed and can help maintain water quality, post the rock lake with signage that is easy for patrons to see and that says or clearly indicates:

1. the water is not disinfected or filtered, that bacteria is present, and they should use at their own risk;
2. people with a communicable disease, open lesions, or mouth, nose or ear discharges may not use the rock lake;
3. the limits on the number of users as outlined in (1) above; and
4. the requirements to shower before using the other vessels at CHSR as outlined in (2) above.

In addition, you must also post the signage you have at the concrete pool that says no one may urinate, spit, blow their nose, or deposit any foreign matter into the lake, that tobacco, food, and drink are prohibited and only persons dressed for bathing may use the lake.

This information can be displayed on however many signs you'd like so long as the message on each sign is easily visible to the users of the lake before they enter it.

So that we can determine if the bather load has been properly set, at least once every thirty (30) days, test the water of the rock lake for compliance with the fecal coliform standard in the state's Water Quality Standards for contact recreational waters. That standard is 100 FC/100 ml of water

Page 3  
Bernie Karl  
July 28, 2000

and can be found at 18 AAC 70.020(b)(1)(B)(i). A laboratory certified by the department, such as Northern Test Labs must do the testing. The samples must be collected and tested in accordance with the American Public Health Association's Standard Methods for the Examination and Water and Wastewater, 1985 edition. Copies of the test results will need to be faxed to Cory as soon as you receive them from the lab.

If the fecal coliform levels exceed the water quality standards, the rock lake must be closed to the public until the fecal coliform levels come down. Should that happen, we will work with you to try to figure out the source of the bacteria, or we may need to reduce the bather load.

On the other hand, if the samples consistently come back well below the water quality standards level, we will work with you to incrementally increase the bather load.

I should note that those areas in the lake where water does not circulate well provide an excellent place for bacteria to grow. You may need to consider ways to increase the circulation of the water, which will in turn reduce the overall bacteria levels.

Also, it is critically important that the chlorine levels in the concrete pool, hot tubs and jacuzzi be carefully maintained. Any bacteria that might get in there from users of the rock lake (if they don't shower well enough), will grow exponentially unless there is enough chlorine to kill the pathogens.

You have today faxed us the text of the sign you intend to post. It meets the requirements of this agreement. You have also provided us with the test results from the samples collected on July 17, 2000 which show acceptable coliform levels. Therefore, the closure notice for the rock lake is lifted upon your signing this agreement. The next water sample must be collected on August 17, 2000.

As I mentioned to you during one of our telephone conversations, there are also some safety issues we believe need to be addressed as soon as possible after the rock lake is reopened. Addressing these issues will protect you as well as your patrons. Those items are:

1. Somehow indicate the depth of the rock lake, however you feel best fits the aesthetics of the area. Our only concern is that it be done in a fashion that's permanent and clearly visible to the users.
2. While it's hard to imagine someone trying, you should also post a No Diving sign. You never know what people might do.
3. There are sharp edges on at least some of the granite boulders that surround the lake, sharp enough that people can cut themselves. Each boulder needs to be carefully examined for sharp edges, and then somehow smoothed so they will not cut skin. You should also keep people from climbing out of the lake onto the boulders and then getting back into the lake.
4. The lifesaving equipment you have for your concrete pool should be located in an area where it can be easily accessed for both the pool and the rock lake. You probably already do this; we haven't discussed it before. But, I wanted to be sure to mention it, as it is important.

Page 4  
Bernie Karl  
July 28, 2000

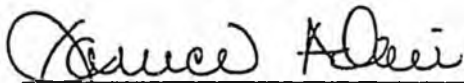
Upon signing this agreement, we both agree to follow the terms outlined above. In addition, Chena Hot Springs Resort and you agree to indemnify and hold the state, its agents and assignees harmless from any claims arising from public use of the rock lake.

Nothing in this agreement shall be construed as preventing the department from issuing a closure notice if there is a public health emergency associated with the rock lake as determined by the Section of Epidemiology in the Division of Public Health, Department of Health and Social Services. Of course, at that point, I know you would want to keep the public out of the lake, too. And, should this happen, we will work with you to try to find the source of the problem including how it can be prevented from reoccurring which may require an amendment to this agreement.

I am looking forward to continuing to work with you on the rock lake as I believe that the more we learn about it, the better job we can do in developing regulations specific to hot springs. I'm glad you've found Cory good to deal with. As I previously told you, he is our "resident expert" on pools and spas, and soon with your help, hot springs.

I am faxing this agreement to you today; please fax me back the signature page. I'll also put two (2) copies in the mail to you. Please keep one for your files and return the second one to me with your original signature.

Sincerely,



\_\_\_\_\_  
Janice Adair  
Director  
(Signature indicates agreement to terms set out above)

7.28.00  
\_\_\_\_\_  
Date

Agree to the terms set out above:

\_\_\_\_\_  
Bernie Karl  
Chena Hot Springs Resort  
(Signature indicates agreement to terms set out above)

\_\_\_\_\_  
Date

cc: Michele Brown, Commissioner  
Interior Delegation

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES



STATE OF ALASKA  
DEPARTMENT  
OF  
ENVIRONMENTAL CONSERVATION

FACSIMILE TRANSMITTAL COVER SHEET

DIVISION OF STATEWIDE PUBLIC SERVICES

410 Willoughby Avenue, Suite 303

Juneau AK 99801-1795

Phone: (907) 465-5337

Fax: (907) 465-5362

Date: 1-28-02

To: Honorable Beverly Masek Phone: 465-2679  
Fax: 465-4822

From: Mary Siroky Phone: 465-5337  
Fax: 465-5362

Subject: HB 263

Total number of pages, including cover sheet: 4

Comments:

# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

## DEPT. OF ENVIRONMENTAL CONSERVATION

**DIVISION OF ENVIRONMENTAL HEALTH  
DIRECTOR'S OFFICE  
555 CORDOVA STREET  
ANCHORAGE, ALASKA 99501  
http://www.state.ak.us/dec/deh**

Telephone: (907) 269-7644  
Fax: (907) 269-7654  
e-mail: Janice\_Adair@envircon.state.ak.us

January 24, 2002

The Honorable Beverly Masek  
Co-Chairman, House Resources Committee  
Room 128, Capitol Building  
Juneau, AK 99801

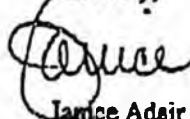
Re: HB 263, an act relating to hot springs

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Attached is a version of HB 263 that was prepared by Representative Fate to address the concerns the department expressed at the House Resources Committee hearing on this bill yesterday. This language works for us.

I want to thank you, the other committee members, and Representative Fate for being sensitive to our concerns and so willing to work with us to resolve them.

Sincerely,



Janice Adair  
Director

Attachment: HB 263 Work Draft drafted by Jay Hardenbrook

- cc: The Honorable Hugh Fate
- The Honorable Drew Salzi, Co-Chairman
- The Honorable Joe Green
- The Honorable Lesil McGuire
- The Honorable Gary Stevens
- The Honorable Mike Chenault
- The Honorable Mary Kapsner
- The Honorable Beth Kerttula
- (all with attachment as noted)

Post #	Fax Note	7671	Date	1/25	10:00 AM '02
To	117044				
From	Janice				
Co./Dept.	OSPS				
Co.	DEC EH				
Phone #	465-5355				
Phone #	269-7644				
Fax #	465-5362				
Fax #	269-7654				

The Honorable Beverly Masek  
January 24, 2002  
Page 2

Bc: Mary Siroky w/attachments

drafted by Jay Hardenbrook in Rep. Fata's office:

WORK DRAFT -- WORK DRAFT -- WORK DRAFT -- WORK DRAFT -- WORK DRAFT

**HOUSE BILL NO. 263**

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

**TWENTY-SECOND LEGISLATURE - FIRST SESSION**

**BY REPRESENTATIVE FATE**

Introduced: ---  
Referred: Resources

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to water quality standards applicable to flow-through hot springs  
2 pools"

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12 which naturally occurring geothermal water enters the body of water to replace  
13 ~~and~~ equal amount of water constantly being drained from the body of water.

HB0178b

New Text Underlined .1. (DELETED TEXT BRACKETED)

HB 263

Thursday, January 24, 2002

# Legislator to redraw hot springs measure

By SEAN COCKERHAM  
News-Miner Juneau Bureau

JUNEAU—Fairbanks Rep. Hugh Fate said he simply wants to keep the state from demanding that hot springs operators use chlorine unless the level of bacteria requires it.

But, as often happens in the Legislature, others felt that Fate's bill was not quite so simple.

The Department of Environmental Conservation asserted that the bill would interfere with its ability to ensure public health in concrete swimming pools fed with hot springs water.

A debate over the bill

stretched almost two hours Wednesday in the House Resources Committee. By the end Fate said he would work with DEC and see if the bill can be adjusted in a fashion that does not wreck its intent—which he said has nothing to do with concrete swimming pools.

"There is no intent to rewrite legislation concerning true swimming pools," he said. "The intent is to allow natural medicinal hot springs to go ahead and be developed."

Fate said requirements regarding chlorine use in developed hot springs have hurt attempts to

See HOT SPRINGS, Page A-8

## HOT SPRINGS

Continued from Page A-1

commercialize them in the past. Chlorine is expensive and people do not like it, he said.

"People do not go to hot springs to bathe in chlorinated waters," said the Fairbanks Republican, who believes commercial hot springs development could help stimulate the economy in some rural Alaska areas.

Fate's bill would exempt hot springs pools from additional water quality regulation by the DEC so long as the fecal coliform level is maintained at 100 colonies or less per 100 milliliters and the pool is "free from dangerous levels of disease-causing pathogens."

"These are standards set by the state," Fate said. "As long as those standards are met ... then there is no reason to be putting chlorine in there to make it safer."

Operators of developed hot springs do self-monitoring tests for a variety of pathogens and the state checks up on them.

Language in Fate's bill, which applies only to hot springs pools where water is constantly flowing in and out, is largely modeled on a settlement that the DEC reached with Chena Hot Springs Resort last year.

Chena Hot Springs created from its hot springs an outside rock lake that cannot be effectively chlorinated. "This bill is attempting to be similar to that settlement so that other resorts don't have to experience the legal battles and subsequent expenses that went along with it," according to Fate's sponsor statement.

But Janice Adair, environmental health director for the DEC, brought up the issue of concrete pools fed with hot

springs water. "As the bill is currently written it would cover all types of pools," she said.

She argued that natural pools can stand a higher level of fecal coliform than a concrete swimming pool because of competing natural bacteria that help with cleansing.

The state does not allow any fecal coliform in concrete swimming pools, Adair said, whether fed by a hot springs or not.

"(Under Fate's bill) such a pool would be able to have fecal coliform of 100 colonies or less and there is no competing bacteria because it is a cement body," she said. "And you would have a public health problem."

Fate argues that other regulations cover swimming pools, but said he was willing to talk with DEC about a possible clarification.

Several people who testified on Fate's bill on Wednesday offered an enthusiastic endorsement of it.

Tom DeLong, who operates Tolovana Hot Springs about 100 miles north of Fairbanks, said the bill would clear up the regulations. The state currently does not regulate that remote hot springs, which lies 11 miles off the highway.

But DeLong said that he wants to know the standards he would have to meet as he looks at further development of Tolovana Hot Springs to avoid chlorination requirements.

"It is extremely important to me that a bill like this passes," DeLong said. "I have no interest in bathing in chlorinated water and my clients have no interest in traveling 11 miles off the highway to bathe in chlorinated water."

Thursday, January 24, 2002  
Fairbanks, News-Miner

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See HOT SPRINGS, Page A-6

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Thursday, January 24, 2002  
Fairbanks, News-Miner

22-LS0985\C  
Lauterbach  
1/25/02

**CS FOR HOUSE BILL NO. 263( )**

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

**TWENTY-SECOND LEGISLATURE - SECOND SESSION**

**BY**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVE FATE**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to water quality standards applicable to flow-through hot springs."**

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

3 **\* Section 1.** AS 44.46 is amended by adding a new section to read:

4 **Sec. 44.46.028. Flow-through hot springs.** (a) A flow-through hot springs,  
5 whether natural or modified, when used for perceived medicinal or esthetic purposes,  
6 is exempt from further water quality regulation by the Department of Environmental  
7 Conservation while the fecal coliform count is maintained at 100 colonies or less per  
8 100 milliliters and the body of water is free from dangerous levels of disease-causing  
9 pathogens or chemicals.

10 (b) In this section, "flow-through hot springs" means a body of water in which  
11 naturally occurring geothermal water enters the body of water to replace an equal  
12 amount of water constantly being drained from the body of water.

*Jantce*

drafted by Jay Hardenbrook in Rep. Fate's office:

WORK DRAFT --- WORK DRAFT --- WORK DRAFT --- WORK DRAFT --- WORK DRAFT

**HOUSE BILL NO. 263**

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE FATE

Introduced: -----  
Referred: Resources

**A BILL**

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9 free from dangerous levels of disease-causing pathogens.

10 (b) In this section, "natural hot spring" means a naturally occurring  
11 impoundment into which geothermal water flows, seeps, or is otherwise held.  
12 The naturally occurring impoundment may have minor modifications to support  
13 access and bather comfort such as steps and benches.

14 (c) In this section, "modified hot spring" means a man-made impoundment  
15 constructed of natural materials or a naturally occurring impoundment into which

*Unnecessary*

1 geothermal water is directed or piped by human involvement from a geothermal  
2 source. A modified hot spring may have a semi-permeable liner in order to  
3 control erosion, however, the liner may not leach chemicals into the water or  
4 create a substrate for the growth and survival of disease-causing microorganisms.

Fate

drafted by Jay Hardenbrook in Rep. Fate's office:

WORK DRAFT --- WORK DRAFT --- WORK DRAFT --- WORK DRAFT --- WORK DRAFT

**HOUSE BILL NO. 263**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE FATE

Introduced: -----  
Referred: Resources

**A BILL**

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STATE OF ALASKA  
DEPARTMENT  
OF  
ENVIRONMENTAL CONSERVATION

FACSIMILE TRANSMITTAL COVER SHEET

DIVISION OF STATEWIDE PUBLIC SERVICES

410 Willoughby Avenue, Suite 303

Juneau AK 99801-1795

Phone: (907) 465-5337

Fax: (907) 465-5362

Date: 1-28-02

To: Honorable Beverly Masek Phone: 465-2679  
Fax: 465-4822

From: Mary Siroky Phone: 465-5337  
Fax: 465-5362

Subject: HB 263

Total number of pages, including cover sheet: 4

Comments:

# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

## DEPT. OF ENVIRONMENTAL CONSERVATION

**DIVISION OF ENVIRONMENTAL HEALTH  
DIRECTOR'S OFFICE  
555 CORDOVA STREET  
ANCHORAGE, ALASKA 99501  
<http://www.state.ak.us/dec/deh>**

Telephone: (907) 269-7644  
Fax: (907) 269-7654  
e-mail: [Janice\\_Adair@envirecon.state.ak.us](mailto:Janice_Adair@envirecon.state.ak.us)

January 24, 2002

The Honorable Beverly Masek  
Co-Chairman, House Resources Committee  
Room 128, Capitol Building  
Juneau, AK 99801

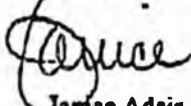
Re: HB 263, an act relating to hot springs

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cc: The Honorable Hugh Fate  
The Honorable Drew Salzi, Co-Chairman  
The Honorable Joe Green  
The Honorable Leril McGuire  
The Honorable Gary Stevens  
The Honorable Mike Chenault  
The Honorable Mary Kapner  
The Honorable Beth Kerttula  
(all with attachment as noted)

Post-It® Fax Note	7671	Date	1/25	Page	5
To	Memo	From	Janice		
Co./Dept.	OSPS	Co.	DEC	EH	
Phone #	465-5855	Phone #	269-7644		
Fax #	465-5862	Fax #	269-7654		

The Honorable Beverly Masek  
January 24, 2002  
Page 2

Bc: Mary Siroky w/attachments

drafted by Jay Hardenbrook in Rep. Fatz's office:

WORK DRAFT -- WORK DRAFT -- WORK DRAFT -- WORK DRAFT -- WORK DRAFT

**HOUSE BILL NO. 263**

**IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SECOND LEGISLATURE -- FIRST SESSION**

**BY REPRESENTATIVE FATZ**

Introduced: ---  
Referred: Resources

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HB01736

New Text Underlined .1.  
(DELETED TEXT BRACKETED)

HB 263

Prev: [Chapter 601 §2660-H](#)  
Next: [Chapter 602 §2662](#)

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[Maine Legislature](#)

**Title 22: HEALTH AND WELFARE**

**Subtitle 2: HEALTH**

**Part 5: FOODS AND DRUGS**

**Chapter 602: PUBLIC SWIMMING POOLS AND SPAS**

**§2661. Purpose**

The purpose of this chapter is to provide minimum requirements and standards for the protection of the public health, safety and welfare of persons using public swimming pools or spas. [1985, c. 150 (new).]

The Revisor's Office cannot provide legal advice or interpretation of Maine law to the public. If you need legal advice, please consult a qualified attorney.

Office of the Revisor of Statutes  
7 State House Station  
State House Room 108  
Augusta, Maine 04333-0007

This page created on: 2002-01-08

Maine

## Title 22, Chapter 602, PUBLIC SWIMMING POOLS AND SPAS

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### Chapter 602: PUBLIC SWIMMING POOLS AND SPAS

#### §2661. Purpose

The purpose of this chapter is to provide minimum requirements and standards for the protection of the public health, safety and welfare of persons using public swimming pools or spas. [1985, c. 150 (new).]

#### §2662. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1985, c. 150 (new).]

1. **Communicable disease.** "Communicable disease" is a disease capable of being transmitted from one person to another. [1985, c. 150 (new).]
2. **Department.** "Department" means the Department of Human Services. [1985, c. 150 (new).]
3. **Pool depth.** "Pool depth" means the distance between the floor of the pool and the maximum operating water level. [1985, c. 150 (new).]
4. **Private spa.** "Private spa" means any constructed spa which is used in connection with a single or multifamily residence and available only to the residents and private guests. [1985, c. 150 (new).]
5. **Private swimming pool.** "Private swimming pool" means any constructed pool which is used as a swimming pool in connection with a single or multifamily residence and available only to the residents and private guests. [1985, c. 150 (new).]
6. **Public spa.** "Public spa" means any constructed spa other than a private spa. [1985, c. 150 (new).]
7. **Public swimming pool.** "Public swimming pool" means any constructed or prefabricated pool other than a private swimming pool. [1985, c. 150 (new).]
8. **Spa.** "Spa" means a unit containing water primarily designed for nontherapeutic use which is not drained, cleaned or refilled for each individual. It may include, but is not limited to, hydrojet circulation, hot water, cold water, mineral baths, air induction bubbles or any combination thereof. The term spa includes, but is not limited to, hot tubs. [1985, c. 150 (new).]
9. **Swimming pool.** "Swimming pool" means any basin, chamber or tank constructed of impervious material, located either indoors or outdoors containing an artificial body of water for swimming or recreational bathing and having a depth of 2 feet or more at any point. This includes any related equipment, structures, areas and enclosures that are intended for the use of persons using or operating the

## Title 22, Chapter 602, PUBLIC SWIMMING POOLS AND SPAS

swimming pool such as equipment, dressing lockers, showers and toilet rooms. [1985, c. 150 (new) .]

### §2663. Existing installations

**1. Public pool or spa; existing use.** Any public swimming pool or spa installed prior to the effective date of this chapter may have its existing use, maintenance or repair continued if the use, maintenance or repair is in accordance with the original design and location and no hazard to the public health, safety or welfare has been created by the installation. [1985, c. 150 (new) .]

**2. Public pool or spa; maintenance.** The owner or his designated agent shall be responsible for the maintenance of the public swimming pool or spa in a safe and sanitary condition. [1985, c. 150 (new) .]

### §2664. Rules

The department may promulgate and enforce rules necessary to protect public health and safety and carry out the provisions of this chapter relating directly to the safe and sanitary design, construction and operation of public swimming pools and spas. [1985, c. 150 (new) .]

### §2665. Submission of plans

No person may begin construction of a public swimming pool or spa or substantially alter or reconstruct any public swimming pool or spa without first having submitted plans and specifications to the department for review and approval. The department review shall be limited to matters relating directly to safety and sanitation. [1985, c. 150 (new) .]

The design criteria to be followed by the department in the review and approval is the minimum standard for public swimming pools and the minimum standard for public spas published by the National Swimming Pool Institute. [1985, c. 150 (new) .]

### §2666. Health and safety

**1. Employment; communicable disease.** No person having a communicable disease may be employed or work at a public swimming pool or spa. [1985, c. 150 (new) .]

**2. Nuisance.** Any public swimming pool or spa found to be unsanitary, as defined by the department's rules, is declared to be a nuisance. [1985, c. 150 (new) .]

**3. Supervision.** Every public swimming pool or spa shall be under the supervision of a capable individual who shall assume the responsibility for compliance with this chapter relating to the safe and sanitary operation and maintenance of a public swimming pool or spa. Nothing in this chapter may be construed to require a lifeguard to be on duty when a public swimming pool or spa is open to the public. [1985, c. 150 (new) .]

### §2667. Inspections

The department may conduct the inspections as it deems necessary to insure compliance with the provisions of this chapter and shall have right of entry at any reasonable hour to public swimming pools or spas for this purpose. [1985, c. 150 (new) .]

### §2668. Closure

The department may close any public swimming pool or spa for failure to comply with the provisions of this chapter. [1985, c. 150 (new) .]

Before closing a public swimming pool or spa, the department shall issue a notice in writing enumerating instances of failure to comply with the law or rules. The owner shall have an opportunity to request a fair hearing before the department pursuant to Title 5, sections 9052 to 9064. [1985, c. 150 (new) .]

Closed public swimming pools and spas shall be reopened upon presentation of evidence that the deficiencies causing the closing have been corrected. [1985, c. 150 (new) .]

### §2669. Penalties

The department may seek injunctive or other appropriate judicial relief for violations of any provisions of this chapter. [1985, c. 150 (new) .]



# Minnesota Statutes

## Minnesota Statutes 2001 Display Document 72 of 107



### Chapter Title: WATER POLLUTION CONTROL; SANITARY DISTRICTS

### Section: 115.44

Text:

*More about pollution but may contain same language*

115.44 Classification of **waters**; standards of **quality** and purity.

Subdivision 1. Variable factors. It is recognized that, due to variable factors, no single standard of **quality** and purity of the **waters** is applicable to all **waters** of the state or to different segments of the same **waters**.

Subd. 2. Classification and standards. In order to attain the objectives of sections 115.41 to 115.54, the agency after proper study, and after conducting public hearing upon due notice, shall, as soon as practicable, group the designated **waters** of the state into classes, and adopt classifications and standards of purity and **quality** therefor. Such classification shall be made in accordance with considerations of best usage in the interest of the public and with regard to the considerations mentioned in subdivision 3 hereof.

Subd. 3. Adoption of classification. In adopting the classification of **waters** and the standards of purity and **quality** above mentioned, the agency shall give consideration to:

(a) The size, depth, surface area covered, volume, direction and rate of flow, stream gradient and temperature of the **water**;

(b) The character of the district bordering said **waters** and its peculiar suitability for the particular uses, and with a view to conserving the value of the same and encouraging the most appropriate use of lands bordering said **waters**, for residential, agricultural, industrial, or recreational purposes;

(c) The uses which have been made, are being made, or may be made of said **waters** for transportation, domestic and industrial consumption, bathing, fishing and fish culture, fire prevention, the disposal of sewage, industrial wastes and other wastes or other uses within this state, and, at the discretion of the agency, any such uses in another state on interstate **waters** flowing through or originating in this state;

(d) The extent of present defilement or fouling of said **waters** which has already occurred or resulted from past discharges therein;

(e) The need for standards for effluent from disposal systems entering **waters** of the state;

(f) Such other considerations as the agency deems proper.

Subd. 4. Standards. The agency, after proper study, and in accordance with chapter 14, shall adopt and design standards of quality and purity for each classification necessary for the public use or benefit contemplated by the classification. The standards shall prescribe what **qualities** and properties of **water** indicate a polluted condition of the **waters** of the state which is actually or potentially deleterious, harmful, detrimental, or injurious to the public health, safety, or welfare; to terrestrial or aquatic life or to its growth and propagation; or to the use of the **waters** for domestic, commercial and industrial, agricultural, recreational, or other reasonable purposes, with respect to the various classes established pursuant to subdivision 2. The standards may also contain other provisions that the agency deems proper. Wherever practicable and advisable, the agency shall establish standards for effluent of disposal systems entering classified waters.

Subd. 5. Factors. In establishing such standards, consideration should be given to the following factors:

(a) The extent, if any, to which floating solids may be permitted in the water;

(b) The extent to which suspended solids, colloids or a combination of solids with other substances suspended in water, may be permitted;

(c) The extent to which organism of the coliform group (intestinal bacilli) or any other bacteriological organisms may be permitted in the water;

(d) The extent of the oxygen demand which may be permitted in the receiving waters;

(e) Such other chemical or biological properties necessary for the attainment of the objectives of this chapter and, with respect to pollution of the waters of the state, chapter 116.

[...More](#)

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# Minnesota Statutes

## Minnesota Statutes 2001 Display Document 72 of 107



### Section: 115.44 continued...

(f) Wherever deemed practicable and advisable by the agency, standards specifying the **quality** and purity, or maximum permissible pollutional content, of effluent entering **waters** of the state may be established without respect to **water** **quality** standards; provided, however, that whenever the owner or operator of any point source, after opportunity for public hearing, can demonstrate to the satisfaction of the agency that any effluent limitation proposed for the control of the heat component of any discharge from such source will require effluent limitations more stringent than necessary to assure the protection and propagation of a balanced, indigenous population of fish and wildlife in and on the body of **water** into which the discharge is to be made, the agency may impose an effluent limitation for such plan, with respect to the heat component of such discharge, taking into account the interaction of such heat component with other pollutants, that will assure the protection and propagation of a balanced, indigenous population of fish and wildlife in and on that body of **water**; and provided further that notwithstanding any other provision of this chapter and, with respect to the pollution of the **waters** of the state, chapter 116, any point source of a discharge having a heat component, the modification of which point source is commenced after May 20, 1973, and which, as modified, meets applicable effluent limitations, and which effluent limitations will assure protection and propagation of a balanced, indigenous population of fish and wildlife in or on the **water** into which the discharge is made, shall not be subject to any more stringent effluent limitation with respect to the heat component of its discharge during a ten year period beginning on the date of completion of such modification or during the period of depreciation or amortization of such facility for the purpose of section 167 or 169, or both, of the Internal Revenue Code of 1954, whichever period ends first.

Subd. 6. Modification of standards. The adoption, alteration, or modification of the standards of quality and purity in subdivision 4 shall be made by the agency in accordance with chapter 14.

Subd. 7. Rule notices. For rules authorized under this section, the notices required to be mailed under sections 14.14, subdivision 1a, and 14.22 must also be mailed to the governing body of each municipality bordering or through which the waters for which standards are sought to be adopted flow.

Subd. 8. Waiver. If the agency finds in order to

comply with the Federal Water Pollution Control Act or any other federal law or rule or regulation promulgated thereunder that it is impracticable to comply with the requirements of this section in classifying waters or adopting standards or in meeting any of the requirements thereof, compliance with the requirements of such section are waived to the extent necessary to enable the agency to comply with federal laws and rules and regulations promulgated thereunder. The agency may classify waters and adopt criteria and standards in such form and based upon such evidence as it may deem necessary and sufficient for the purposes of meeting requirements of such federal laws, notwithstanding any provisions in this chapter or any other state law to the contrary. In the event waters are classified and criteria and standards are adopted to meet the requirements of federal law, the agency shall thereafter proceed to otherwise comply with the provisions of this section which were waived as rapidly as is practicable. This authority shall extend to proceedings pending before the agency on May 20, 1973.

Notwithstanding the provisions of subdivision 4, wherever advisable and practicable the agency may establish standards for effluent or disposal systems discharging into waters of the state regardless of whether such waters are or are not classified.

HIST: 1963 c 874 s 6; 1967 c 203 s 1; 1969 c 9 s 21; 1969 c 931 s 8,9; 1973 c 374 s 15,16; 1993 c 180 s 1-3; 1994 c 465 art 1 s 9



**Subject: RE: [Fwd: House Bill 263]**

**Date:** Thu, 24 Jan 2002 14:56:58 -0900

**From:** "Adair, Janice" <Janice\_Adair@envircon.state.ak.us>

**To:** "Jennifer Yuhas" <Jennifer\_Yuhas@Legis.state.ak.us>, Jay Hardenbrook <Jay\_hardenbrook@Legis.state.ak.us>

My secretary is standing at the fax as I write sending the letter so you should have it momentarily. I'm copying the whole committee so everyone knows.

-----Original Message-----

From: Jennifer Yuhas [mailto:Jennifer\_Yuhas@Legis.state.ak.us]

Sent: Thursday, January 24, 2002 2:40 PM

To: Jay Hardenbrook; Janice\_adair@envircon.state.ak.us

Subject: Re: [Fwd: House Bill 263]

Thanks Jay,

Beverly will need that if we are to actually hear the bill. She will pull it if we do not get that fax.

Jenn

Jay Hardenbrook wrote:

> -----  
>  
> Subject: RE: House Bill 263  
> Date: Thu, 24 Jan 2002 14:11:55 -0900  
> From: "Adair, Janice" <Janice\_Adair@envircon.state.ak.us>  
> To: "'Jay Hardenbrook'" <Jay\_hardenbrook@legis.state.ak.us>  
>  
> I will get it out of here today, promise.  
>  
> -----Original Message-----  
> From: Jay Hardenbrook [mailto:Jay\_hardenbrook@legis.state.ak.us]  
> Sent: Thursday, January 24, 2002 2:07 PM  
> To: janice\_adair@envircon.state.ak.us  
> Subject: House Bill 263  
>  
> Janice,  
> The Resources Committee has tentatively scheduled House Bill 263 for  
> Monday, January 28th. All that they are waiting for to schedule it  
> finally is your letter of approval. If you could please fax that to  
> Jennifer Yuhas, Committee Aide for Representative Masek at 907/465-4822  
> it would help a lot.  
>  
> Thank you again,  
> Jay Hardenbrook



## The National Fair Access Coalition on Testing

### Hot Springs, Arkansas

January 25<sup>th</sup>, 1997

[FACT Home Page](#)  
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[About FACT](#)  
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### Steering Committee Agenda, 1:30—3:00 p.m. Apollo Conference Room

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 Fair Access Coalition  
 On Testing

Co-Chairs:  
 Thomas W.  
 Clawson  
[National Board for  
 Certified  
 Counselors, Inc.  
 \(NBCC\)](#)  
 Lorin Letendre  
[Consulting  
 Psychologists  
 Press](#)

Coordinator:  
 Wendi Schweiger  
[National Board for  
 Certified  
 Counselors, Inc.  
 \(NBCC\)](#)

1. Welcome and review of Agenda
2. Update on "Hot Spots," AATA Contribution, and CAL-FACT Permit
3. Review of Action Considerations & Priorities
4. Recommendation of Highest Priority Action Considerations
5. Identification of Roles, Responsibilities, Resources, and Timelines
6. Discussion of Next Meeting Site and Date
7. Adjournment

### Summary of National FACT Meeting

Prepared by L. Letendre

The third planning meeting of the National Fair Access Coalition on Testing (FACT) was held in conjunction with the annual meeting of the American Association of State Counseling Boards (AASCB) in Hot Springs, Arkansas on January 26, 1997. The planning meeting was preceded by a meeting on the previous day of the newly-formed Steering Committee, which is composed of coalition members that represent more than one professional organization or that are highly active in the coalition particularly in state-level efforts.

The co-chair of FACT, Dr. Tom Clawson, Executive Director of the National Board for Certified Counselors, opened the meeting by welcoming the 67 participants from 23 member organizations representing 520,000 professionals. Dr. Clawson summarized the main purpose of FACT, which is to ensure that competent and qualified professionals are not unfairly restricted from using assessment instruments.

Dr. Clawson then led a series of reports and discussions of the status of

cases or legislation or regulatory actions involving restriction of access to tests in Florida, Georgia, Indiana, Louisiana, Ohio, Oklahoma, Washington, and California. Of particular note were the successes of the coalition or member organizations in Ohio, Florida, and California. The Ohio Attorney General's opinion was a landmark victory, as it gave non-psychologists the right to use the term "psychological" in describing certain of their activities such as psychological testing and assessment.

One of the primary benefits of the coalition to its members is its clearinghouse function in storing and disseminating to all members information on its successes and effective activities and efforts (such as Ohio) that can serve as a model for all coalition members. Members can then build on those successes and apply what they have learned to other settings. Dr. Clawson and Lorin Letendre, Co-chair of FACT and the FACT liaison to the Association of Test Publishers, announced that FACT will be setting up a Web Page to advance the clearinghouse function such that members can access information supplied by coalition members on a variety of pertinent topics and from every state in which FACT members are actively engaged in coalition efforts. For each state there will be a listing of the member organizations' state contact person(s) and legislative advocacy teams that can rapidly be mobilized when the situation requires.

Dr. Clawson also announced that the national FACT was to be incorporated as a non-profit organization to receive contributions from members and disburse funds to support coalition activities.

Representatives of two of the newer participant organizations in FACT - Dr. Douglas Smith of the National Association of School Psychologists (NASP) and Dr. Logan Wright of the Northamerican Association of Master's Psychologists (NAMP) and past-president of the American Psychological Association (APA) - were invited to address the group with regard to the interests and concerns of their professional members. Drs. Smith and Wright were optimistic that their organizations' members would be supportive of FACT's policy statement and as coalition members or strategic partners could work collaboratively with FACT to Advance their mutual interests.

Mr. Letendre then summarized some of the coalition's accomplishments since the previous meeting in Washington DC. Among those were a face-to-face meeting with the head of the APA Practice Directorate, Dr. Russ Newman that made some progress in understanding each other's positions and exploring possibilities for a continuing dialogue; a meeting with the APA Committee on Psychological Testing and Assessment to share FACT's perspectives and hear that Committee's thoughts on the issues around fair access to testing (the Committee expressed its support for basing access on competence rather than degree or licensure); the many state efforts that FACT supported; and the convening of the first FACT Steering Committee teleconference

meeting to discuss action priorities.

Among those action considerations receiving the highest priority from the Steering Committee members were

- (1) Model legislation, clearinghouse of legislation and legislative language;
- (2) Develop standards of practice for mental health assessment, persuade managed health care firms to reimburse qualified providers;
- (3) Obtain legal definitions of "psychological activities" in every state;
- (4) Work with test publishers to clarify qualifications in test manuals for each test use;
- (5) Establish a core set of statements about FACT, educate newcomers about goals. There was considerable support by meeting attendees for placing highest priority on legislative or regulatory arenas. Strong support was also expressed for preventive measures rather than just reacting or responding to hostile moves by state psychological associations.

The attendees then split into four "task force" groups to discuss what needs to be done by the coalition members in the areas of

- (1) legislative advocacy,
- (2) managed care,
- (3) model codes of ethics and standards of practice, and
- (4) membership growth and support. Recorders for each group then reported their conclusions and recommendations to the full group. The need for model legislative language, licensure provisions, codes of ethics on testing, and managed care assessment practices was strongly endorsed by the three task force groups addressing these areas. The task forces will continue their work through regular communications and web page forums.

Finally, the date and site for the next national meeting was agreed on; it will be held at the American Society of Association Executives (ASAE) headquarters office in Washington DC, on Monday, May 19, during the national conference of the American Society for Training and Development (ASTD). Mr. Letendre concluded the meeting by thanking Dr. Clawson and Mr. Thomas Dodson of NBCC for handling the conference arrangements, and thanking the leadership of AASCB for hosting this meeting.

#### WHAT WE NEED FROM MEMBERS:

- ➡ COPY OF FACT POLICY STATEMENT & NAME(S) OF FACT LIAISON(S)
- ➡ COPY OF CODE OF ETHICS RE TESTING & ASSESSMENT

- COPY OF STANDARDS OF PRACTICE RE TESTING AND ASSESSMENT
- LIST OF STATE CONTACT PERSON(S)
- \$\$\$ CONTRIBUTION
- OTHER

## **FACT ORGANIZATIONS REPRESENTED**

**Florida State Licensure Board  
LPC Association of Georgia  
American Academy of Pain Management AAPM  
American Association of State Counseling Boards AASCB  
American Art Therapy Association AATA  
Arkansas Board of Examiners in Counseling ABEC  
ACA Professionalization Committee ACA  
American Counseling Association ACA  
Association for Counselor Education and Supervision ACES  
American Mental Health Counselors Association AMHCA  
Association for Psychological Type APT  
Arkansas School Counselor Assoc. (ASCA) ASCA  
Art Therapy Credentials Board ATCB  
Association of Test Publishers ATP  
Council for Accreditation of Counseling & Related Educational CACREP  
Commission on Rehabilitation Counselors Certification CRCC  
Educational Testing Service ETS  
Florida Mental Health Counselors FMHC  
Louisiana Counseling Association LCA  
Louisiana Counseling Association LCA  
Northamerican Association of Masters in Psychology NAMP  
National Association of School Psychologists NASP  
National Board for Certified Counselors NBCC  
National Coalition of Arts Therapies Association NCATA  
National Career Development Association NCDA  
Riverside Publishing Company RPC**



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[MEETINGS/CONFERENCES](#) · [DIRECTORIES](#) · [FACT MEMBERS](#) · [MEMBERSHIP INFO](#) ·  
[FAQs](#) · [CONTACT FACT](#) · [NATIONAL PAGES](#)**

Fax #: 907-465-4822

Alaska State Legislature, Juneau, Alaska

To: Committee Aide Jennifer Yuhas  
Resources Committee

Re: House Bill No. 263

Session: First Session of Twenty-Second Legislature

I, Leslie D. Markham, of 2597 Hafele Ave, Fairbanks, Alaska 99709, am speaking and writing in support of House Bill No. 263.

Natural hot springs are very therapeutic and have been known to help mitigate the symptoms of many ailments.

As a massage therapist, I have worked with Eskimo Doctor Charlie Jones of Kotzebue area at several natural remote hot springs. These springs are his preferred location for helping people. He says each spring has different minerals in the water and can help cure different ailments. Charlie believes the body absorbs the minerals it needs from the water to heal itself. For this reason, natural is preferred over chemically treated water. The bill also addresses an important element: "flow through". The pool will stay healthy with adequate "flow through".

~~At~~ Chena Hot Springs Resort outside Fairbanks, presents as a unique opportunity to experience natural waters close to town. For those who prefer, chlorinated pools are also available. Information is posted so people may make an informed choice. To have such healing natural water within driving distance to Fairbanks is a gift for which I am grateful and consider a large asset. Promotion of the natural healing properties ~~possibilities~~ can benefit the community greatly.

Sincerely,

Leslie D. Markham

Leslie D. Markham



# Idaho Statutes

## TITLE 67

### STATE GOVERNMENT AND STATE AFFAIRS

#### CHAPTER 44

##### LAVA HOT SPRINGS

67-4404. SUPERINTENDENT AND EMPLOYEES -- RULES AND REGULATIONS. The said foundation shall have power to employ a superintendent of the hot springs and bathing facilities, necessary medical, surgical and other professional assistants, and to employ such other help as may be necessary, and to prescribe the duties of the said superintendent, medical, surgical and other professional assistants, and all other employees; it shall have power to remove the said superintendent, medical, surgical and other professional assistants, or other employees, at its pleasure, and shall make and ordain such rules and regulations for the conduct and administration of the said hot springs, bathing facilities and sanitarium and hospital as it shall deem necessary and proper.

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Available Reference: [Search Instructions](#).

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# ARIZONA LEG.

## 49-309. Cancellation of pesticide registration; hearing for reconsideration and continued use

A. If the director determines the pesticide which meets any of the conditions specified in section 49-308 is carcinogenic, mutagenic, teratogenic or toxic to humans in concentrations found at depths prescribed in section 49-308, subsection A and the pesticide label cannot be modified to change the approved use and application of the active ingredient to ensure that it does not threaten to pollute the groundwaters of this state, the director shall notify the chemicals division of the Arizona department of agriculture to cancel the registration of the pesticide.

B. For any other pesticide which meets any of the conditions specified in section 49-308 the registrant may request a hearing within forty-five days of notification that the director has made a determination pursuant to section 49-308, subsection B. At the same time the registrant shall submit a report and documented evidence which demonstrates either of the following:

1. The presence in the soil of any active ingredient, other specified ingredient or degradation product does not threaten to pollute the groundwaters of this state in any region in this state or that the pesticide label can be modified to change the approved use and application of the active ingredient to ensure that it does not threaten to pollute the groundwaters of this state.

2. Any active ingredient, other specified ingredient or degradation product that has been found in groundwater has not polluted, and does not threaten to pollute, the groundwater of this state in any region in this state in which the pesticide may be used according to the terms under which it is registered.

C. The director of environmental **quality**, after a public hearing and in consultation with the director of **water** resources, the director of the department of health services and the director of the Arizona department of agriculture, may allow the continued registration, sale and use of a pesticide, other than those identified in subsection A of this section, which meets any of the conditions specified in section 49-308 if the director determines any of the following:

1. Either of the conditions prescribed in subsection B of this section exist and apply to the pesticide.
2. There are no alternative products or practices that can be effectively used in substitution for the pesticide and the cancellation or modification will cause severe economic hardship on one or more segments of the agricultural industry in this state.

D. Notwithstanding subsection C of this section, the director shall not allow the continued registration, sale or use of a pesticide if it would cause a violation of **water quality** standards at the applicable point of compliance.

E. The chemicals division of the Arizona department of agriculture shall cancel the registration of any pesticide identified pursuant to section 49-308 unless continued under subsection C of this section.

# Facsimile Transmittal

**REP. JIM WHITAKER - Alaska House District 31**

(907) 465-3004

(907) 465-2070(fax)

Capitol Room 411

Juneau, AK 99801

Date:

1/24/02

Attention:

Jenn Yukas

From:

Lori

Number of pages (including this cover):

2

Comment(s):

Proposed amendments to  
HB 263

Reply requested:  Yes  No

**Search**  
MCA Search

# Montana Code Annotated 2001

## Contents Table of Contents

**50-53-115. Special requirements for flow-through hot springs pools.** In addition to the other requirements of this chapter and rules promulgated under this chapter, flow-through hot springs pools must meet the following requirements:

(1) The temperature of the pool water must be 106 degrees F or less.

(2) The water must have sufficient clarity at all times so that a black disc, 6 inches in diameter, is readily visible when placed on a white field at the deepest point of the pool.

(3) The pool water must be maintained at a pH of no less than 7.2 and not greater than 8.5.

(4) The pool must provide sufficient water volume exchange to produce an 8-hour turnover of the entire volume of pool water to waste. In addition:



(a) the pool, and all surfaces that flow into the pool, must be drained, cleaned, and sanitized every 72 hours; or

(b) the pool must be disinfected, and a chlorine residual of 1 to 3 parts per million or a bromine residual of 3 to 6 parts per million must be maintained in the pool at all times.

(5) Signs must be prominently posted that specify pool rules and special health hazards associated with swimming or bathing in flow-through hot springs pools. The contents of the signs must be determined by department rule. The department, in developing rules under this section, shall consult with flow-through hot springs pool owners.

History: En. Sec. 1, Ch. 155, L. 1995.

 **Previous**  
MCA Section

 **Help** 

Provided by Montana Legislative Services

**Next**  
MCA Section 

# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

## DEPT. OF ENVIRONMENTAL CONSERVATION

DIVISION OF ENVIRONMENTAL HEALTH  
DIRECTOR'S OFFICE  
555 CORDOVA STREET  
ANCHORAGE, ALASKA 99501  
<http://www.state.ak.us/dec/deh>

Telephone: (907) 269-7644  
Fax: (907) 269-7654  
e-mail: [Janice\\_Adair@envircon.state.ak.us](mailto:Janice_Adair@envircon.state.ak.us)

January 22, 2002

The Honorable Beverly Masek  
Co-Chairman, House Resource Committee  
Capitol Building, Room 128  
Juneau AK 99801

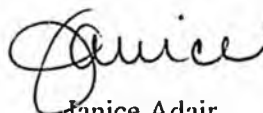
The Honorable Drew Scalzi  
Co-Chairman, House Resource Committee  
Capitol Building, Room 116  
Juneau, AK 99801

Dear Representatives Masek and Scalzi:

In preparation for the Wednesday hearing on HB 263, regarding the regulation of hot tubs, enclosed please find a copy of a letter I sent to Representative Fate last year pointing out problems with the bill as it is currently drafted.

Thank you for your consideration of these issues, and I will look forward to discussing them with the committee on Wednesday.

Sincerely,



Janice Adair  
Director

Enclosure: May 3, 2001 Letter to Representative Hugh Fate

cc: The Honorable Hugh Fate w/enc.  
The Honorable Mike Chenault w/enc.  
The Honorable Joe Green, w/enc.  
The Honorable Lesil McGuire, w/enc.  
The Honorable Gary Stevens, w/enc.  
The Honorable Mary Kapsner, w/enc.  
The Honorable Beth Kerttula, w/enc.

*Safe Food, Safe Water, Healthy Communities*

# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

## DEPT. OF ENVIRONMENTAL CONSERVATION

DIVISION OF ENVIRONMENTAL HEALTH  
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e-mail: [Janice\\_Adair@envircon.state.ak.us](mailto:Janice_Adair@envircon.state.ak.us)

May 3, 2001

The Honorable Gene Therriault  
Alaska State Senate  
Room 121, Capitol Building  
Juneau, AK 99801

The Honorable Hugh Fate  
Alaska House of Representatives  
Room 416, Capitol Building  
Juneau, AK 99801

Re: SB 214; HB 263: Flow Through Hot Spring Pools

Dear Senator Therriault and Representative Fate:

The purpose of this letter is to share with you problems our department has identified with the above-referenced legislation in the hopes that we may be able to come to an agreement on how it should be amended.

The primary problem is with the definition of a "flow-through hot spring pool." As written, the definition would include any pool – even one that is constructed from man-made materials such as concrete or plastic – that uses hot springs water as its water source. As drafted, our ability to require that pools constructed of man-made materials be chlorinated or filtered is unclear. When water is insufficiently treated, other disease-causing pathogens such as *Psuedomonas*, *Cryptosporidium*, Legionnaires' disease, *Giardia*, or *E. coli* will thrive because there are little or no competing bacteria to keep them in check. That is why chlorination and filtration of these pools is so important. Enclosed you will find the pertinent sections from a report by the Centers for Disease Control and Prevention on Waterborne Outbreaks that discuss the types of outbreaks it investigated between 1997 and 1998. It explains problems found both in treated and fresh contact recreational waters and how they might be avoided.

The second problem we see is that the bill places the current water quality standard for these waters in statute. While we don't disagree with the fecal coliform standard, if the water quality standard changes for other contact recreational waters, it should change for these types of facilities also. We would prefer to have the department's water quality standard for contact recreational waters cross-referenced.

Following is how we'd suggest the referenced bills be amended:

The Honorable Gene Therriault  
The Honorable Hugh Fate  
May 3, 2001  
Page 2

**Sec. 44.46.028. Flow-through hot springs pools.** (a) A ~~flow-through~~ hot springs pool, whether natural or modified, that is being operated as part of a commercial establishment, is exempt from further water quality regulation by the Department of Environmental Conservation while the fecal coliform count in the pool meets the water quality standards for contact recreational waters adopted by the department under AS 46.03.070 and AS 46.03.080 is maintained at 100 colonies or less per 100 milliliters and the pool is free from dangerous levels of disease-causing pathogens.

(b) In this section, "natural hot spring" means a naturally occurring impoundment into which geothermal water flows, seeps, or is otherwise held. The naturally occurring impoundment may have minor modifications to support access and bather comfort such as steps and benches.

"Modified hot spring" means a man-made impoundment constructed of natural materials or a naturally occurring impoundment into which geothermal water is directed or piped by human involvement from a geothermal source. A modified hot spring may have a semi-permeable liner in order to control erosion however, the liner may not leach chemicals into the water or create a substrate for the growth and survival of disease-causing microorganisms. ~~flow-through hot springs pool" means a pool in which the water from a naturally occurring hot spring constantly enters the pool to replace an equal amount of water constantly being drained from the pool.~~

I understand the desire to ensure that facilities such as Chena Hot Springs Resorts (CHSR) are not regulated like man-made pools. Certainly our pool and spa regulations do not fit the type of pool at CHSR that was created from its natural hot springs. This "pool," which we refer to as the "Rock Lake," cannot be chlorinated. Also, the regulatory construction requirements for pools would likely not work for a modified hot springs that attempts to be in a natural setting. Recognizing these problems, we entered into an operating agreement with CHSR that was tailored to that operation specifically. Our research of other states' regulation of these types of facilities indicated those that had the best success, such as Colorado, had individual operating agreements. With that approach, any hot spring pool can retain its unique characteristics and still be protective of public health, not just from the water quality standpoint, but also from physical hazards that can cause injuries to users. We plan to revise our pool and spa regulations late this summer or early fall, and to propose such an approach for commercially operated natural and modified hot springs.

Don't hesitate to call if you'd like to discuss this further.

Sincerely,

  
Janice Adair  
Director

Enclosures:

◆ Surveillance for Waterborne-Disease Outbreaks – United States, 1997 – 1998 by the CDC

cc: Lori Backes, Office of Representative Whitaker (w/encl)

State of Alaska

DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
Northern Regional Office

Post-It® Fax Note	7671	Date	6/25	# of pages	2
To	LORI BACKES	From	Carol Linksoiler		
Co./Dept.		Co.	ADEC/EH		
Phone #		Phone #	451-2111		
Fax #	452-1146	Fax #	451-5120		

DATE: Approx 4/10/93

FILE NO:

TELEPHONE NO: 451-2360

FROM:

Hot Springs Dept

SUBJECT: Waiver of regulations for certain hot springs

POLICY STATEMENT  
(DRAFT)

Within Alaska there are a wide range of hot springs facilities, ranging from minimally developed holes in the ground to full-sized swimming pools with associated hotels and restaurants. A need has arisen to determine which, if any, of these facilities might reasonably apply for a waiver of the swimming pool regulations (18 AAC 30.500. Applicability.).

The following criteria may be considered in evaluating a hot spring facility for a waiver of the regulations:

- Vessel configuration: if the containment for the hot spring pool is a natural vessel or one with minor modifications. such as a hole in the ground or a rock fissure, a waiver of the regulations will be granted. Minor modifications would include such items as curbing to channel overflow, steps, or surrounding decks and/or structures for changing clothes. A structure over the hot spring vessel to provide privacy or protect bathers from the elements is also acceptable. Minor modifications would not include piping the water to a vessel.
- Remote location: if the use of a hot spring is limited because it is off a maintained road system (eg. accessible only by dog team, snowmachine, or boat) and lacks nearby development such as lodges and restaurants that would encourage ongoing rather than occasional use, a waiver may be granted.
- Drain and fill: if a small hot spring vessel is operated like a bathtub, ie. cleaned, and sanitized between each use by one or more persons, a waiver maybe granted, in which case it will be inspected for compliance with 18 AAC 30.600, Public Toilets, Showers, and Laundromats.



Turnover rate: if hot spring water in a vessel is completely exchanged at the minimum turnover rate of three turnovers in 24 hours (18 AAC 30.535(b)) for a pool, or one turnover every 30 minutes (18 AAC 30.580(a)) for a spa,

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a waiver of circulation and disinfection requirements (18 AAC 30.535, 18 AAC 30.540) may be granted, provided that inlets and outlets are located to ensure complete circulation. (A crystal violet dye test or its equivalent may be required to verify turnover rate and complete circulation).

A condition of any of the above waivers would be that the water quality meets the standards of 18 AAC 70 for Recreational Waters (contact recreation). The hot spring only needs to be sampled once for compliance with these standards, during a peak use period, unless the spring is subject to annual fluctuations, or there are complaints.

# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

## DEPT. OF ENVIRONMENTAL CONSERVATION

DIVISION OF ENVIRONMENTAL HEALTH  
DIRECTOR'S OFFICE  
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January 23, 2002

The Honorable Hugh Fate  
Alaska House of Representatives  
Room 416, Capitol Building  
Juneau, AK 99801

Dear Representative Fate:

Joe Hardenbrook from your office called this afternoon after the House Resources Committee hearing to set up a time for us to meet to discuss HB 263 tomorrow at 8 a.m. I thought it might be helpful to set down in writing for your consideration what our primary concern is with the bill.

As the term "flow-through hot springs pool" is defined, any pool that has as its water source hot springs water would have to meet the fecal coliform level established in the bill. We do not use this level for man-made concrete pools. In fact, the water quality standard for fecal coliforms has been established for recreational waters that are cool, like rivers and lakes. It was not established for hot springs waters, but we did choose to use it for the agreement with Chena for two reasons: first, it is the only fecal coliform standard that we had to refer to and second, we would not expect a hot spring at its source to have much in the way of fecal contamination because the water is likely too hot. Fecals grow best around body temperature.

Having said that, fecal coliforms are indicator organisms of fecal contamination. In a natural setting such as the rock lake at Chena Hot Springs, these could originate from water fowl and mammals, such as beaver and moose. They don't necessarily indicate human fecal contamination. Human pathogens that may be introduced into a natural environment don't compete well with other normal flora in the hot spring lake and may not survive and flourish.

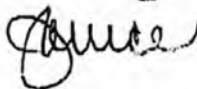
Fecal coliforms in a man-made pool are indicative of human fecal contamination because humans would be the only source for the fecal coliforms. With fecal contamination, you can have a variety of human pathogens. These could include bacteria such as *E. coli* and *Salmonella*, viruses such as Norwalk, and protozoa such as cryptosporidium. Even though the source of the water may be a hot spring, once in a man-made pool, you do not have competing normal flora to effect the growth and survival of pathogens. In fact, with water temperatures associated with man-made pools (100°F), you have water temperatures close to body temperature (98.6°) that would actually encourage their growth and survival. This is why the fecal coliform standard for a man-made pool is zero, whatever the source of water.

The Honorable Hugh Fate  
January 23, 2002  
Page Two

The proposed amendment in my letter to you of May 3, 2001 that would change the types of facilities covered by this bill from "flow through hot springs pool" to "natural hot springs" and "modified hot springs" covers all the hot springs in the state that you stated you wanted to help develop but does not cover man-made pools, which are what we are concerned about from a public health perspective.

I hope this information helps to explain our concern. I look forward to talking with you in the morning.

Sincerely,



Janice Adair  
Director

cc: House Resources Committee members

Oregon Revised Statutes

Note: Please scroll down below the section descriptions to access full text of each section.

Chapter 468B

1999 EDITION

Water Quality

WATER POLLUTION CONTROL

468B.093 General permit for discharge of geothermal spring water to surface water. (1) The Director of the Department of Environmental Quality shall issue a general permit for the discharge of geothermal spring water to surface water. The general permit shall cover any activity with the following characteristics:

- (a) The chemical nature of the water is not changed;
  - (b) The temperature of the water remains unchanged or is reduced; and
  - (c) The surface water into which the geothermal spring water is discharged is the naturally occurring junction of the geothermal spring water and surface water.
- (2) Nothing in subsection (1) of this section shall be construed to preclude the director from issuing a general permit for any other activity involving the discharge of geothermal spring water.
- (3) As used in this section, "geothermal spring water" means water that emerges naturally from the earth as a result of gravity flow or artesian pressure and that is capable of being used for heating as a result of the naturally occurring thermal characteristics of the water. [1997 c.547 s.2]

69th OREGON LEGISLATIVE ASSEMBLY--1997 Regular Session

NOTE: Matter within { + braces and plus signs + } in an amended section is new. Matter within { - braces and minus signs - } is existing law to be omitted. New sections are within { + braces and plus signs + } .

LC 1767

A-Engrossed

House Bill 2413

Ordered by the House May 28

Including House Amendments dated May 28

Sponsored by Representative JONES; Senator TIMMS

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

{ - Exempts certain water used for geothermal heating purposes from requirement to obtain discharge permit. - }  
{ + Requires Director of Department of Environmental Quality to issue general permit for discharge of geothermal spring water into surface water if certain conditions are met. + }

A BILL FOR AN ACT

Relating to water used for geothermal heating.

Be It Enacted by the People of the State of Oregon:

SECTION 1. { + Section 2 of this Act is added to and made a part of ORS chapter 468B. + }

SECTION 2. { + (1) The Director of the Department of Environmental Quality shall issue a general permit for the discharge of geothermal spring water to surface water. The general permit shall cover any activity with the following characteristics:

(a) The chemical nature of the water is not changed;

(b) The temperature of the water remains unchanged or is reduced; and

(c) The surface water into which the geothermal spring water is discharged is the naturally occurring junction of the geothermal spring water and surface water.

(2) Nothing in subsection (1) of this section shall be construed to preclude the director from issuing a general permit for any other activity involving the discharge of geothermal spring water.

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Oregon Revised Statutes

Note: Please scroll down below the section descriptions to access full text of each section.

Chapter 468B

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ORS 536.220 to

536.540

**HB**

**266**

# ALASKA STATE LEGISLATURE

## CONFLICTS CONCERNING TITLE TO SUBMERGED LANDS IN ALASKA

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

Updated: 03/04/02

### Statehood Entitlement – Submerged Lands

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

### Issues of State Ownership of Submerged Lands

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

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

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

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

*White Paper*

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

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

### Navigable Waters Jurisdictional Issues

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

### Navigability Criteria Conflicts

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

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

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

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

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

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

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

### Difficulties Quieting Title to Submerged Lands

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

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

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

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

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

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

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

### Solutions Through Federal Legislation

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

### Examples of Navigability Complexities & Additional Information

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

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

Appendix C contains a copy of Senate Bill No. 219 introduced by Senate President Rick Halford on May 2, 2001. House Bill No. 266 introduced by House Speaker Brian Porter is identical.

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

# STATE OF ALASKA

## DEPARTMENT OF LAW

### OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

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FAX: (907) 463-5295

August 27, 1992

*Appendix  
A*

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 Nuka 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 Aniuk River  
Mouth of Selawik River to Kugarak River  
Shaktoolik River  
Throat River  
Ungalik River  
Mouth of Unalakleet River to Termile Creek

Koyukuk River Region

Mouth of Hogatza 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

*See - also  
water issues*

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 Chunilna 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  
 Bonasila 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 Atnautluak  
 Kisaralik River ✓  
 Mouth of Kuguklik River to Kipnuk  
 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 Minchumina 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  
Chikuminuk 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 Chavekuktuli  
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  
Qigmy 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

Lowie 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

# 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:

- 1031 WEST 4TH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE (907)269-5100  
FAX: (907)276-3697
- KEY BANK BUILDING  
100 CUSHMAN ST., SUITE 400  
FAIRBANKS, ALASKA 99701-4679  
PHONE: (907)451-2811  
FAX: (907)451-2846
- P.O. BOX 110300-DIMOND COURT HOI  
JUNEAU, ALASKA 99811-0300  
PHONE: (907)465-3600  
FAX: (907)465-6735

**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

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 266  
 ( ) Publish Date: \_\_\_\_\_

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

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

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

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

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

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

**FUND SOURCE** (Thousands of Dollars)

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

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

Prepared by: Legislative Finance Division Phone 465-3795  
 Division \_\_\_\_\_ Date/Time 3/28/02 9:44 AM  
 Approved by: \_\_\_\_\_ Date 3/28/2002  
 Agency \_\_\_\_\_

22-LS0966\C  
Cook  
3/27/02

**CS FOR HOUSE BILL NO. 266( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-SECOND LEGISLATURE - SECOND SESSION**

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVE PORTER

**A BILL**

**FOR AN ACT ENTITLED**

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

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

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

6 STATE POLICY. The legislature determines that the efficient and orderly  
7 development of the state will be better achieved if the state and the federal governments join  
8 together in a carefully coordinated approach to land and water use planning and management.  
9 The legislature recognizes that, although the state is the primary trustee of public trust  
10 resources, it is in the best interest of the citizens if the state and federal governments, as  
11 designated stewards of these resources, cooperate to the maximum extent possible in  
12 determining their uses. The state is particularly blessed with abundant water resources that  
13 are invaluable in numerous ways to state residents and all citizens of the United States.  
14 Because of the massive numbers of navigable waterways and bodies of water in the state, the

1 task of resolving submerged land ownership and navigable water determinations has been  
2 painfully slow, counter-productive from an orderly resource management standpoint, and  
3 costly as the state, private landowners, and the federal government attempt to initiate long-  
4 range planning processes. For this reason, it is determined by the legislature that the State of  
5 Alaska and the United States should cooperate in establishing a joint commission to proceed  
6 efficiently and effectively to

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

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

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

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

16 JOINT FEDERAL AND STATE NAVIGABLE WATERS COMMISSION FOR  
17 ALASKA. (a) A Joint Federal and State Navigable Waters Commission for Alaska is  
18 established as authorized by federal law.

19 (b) The governor or the governor's designee and the member appointed by the  
20 President of the United States shall serve as co-chairs of the commission. The initial meeting  
21 of the commission shall be called by the co-chairs.

22 (c) Three state and three federal members of the commission constitute a quorum. All  
23 decisions of the commission shall require concurrence by at least three state and three federal  
24 members of the commission.

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

27 (e) Subject to procedures adopted by the commission, the co-chairs, in accordance  
28 with applicable state and federal laws, may

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

31 (2) procure temporary and intermittent services.

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

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

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

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

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

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

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

20 DUTIES OF THE COMMISSION. The Joint Federal and State Navigable Waters  
21 Commission for Alaska shall

22 (1) establish a process for researching navigability determinations that affect  
23 land title;

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

26 (3) undertake a process of navigable waters identification under criteria  
27 established in law;

28 (4) make recommendations to improve coordination and consultation between  
29 the state and federal governments in making water use and navigability decisions and  
30 decisions concerning title to submerged lands.

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

1 read:

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

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

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

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

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

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

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

25 TERMINATION OF THE COMMISSION. The Joint Federal and State Navigable  
26 Waters Commission for Alaska is terminated two years after the effective date of this Act.

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

29 REVISOR'S NOTIFICATION. The Attorney General shall notify the revisor of  
30 statutes of the effective date specified in sec. 11 of this Act.

31 \* Sec. 11. This Act takes effect on the date that formation of a Joint Federal and State

1 Navigable Waters Commission for Alaska is authorized by federal law.



# ALASKA STATE LEGISLATURE

SPEAKER OF THE HOUSE BRIAN PORTER

## SPONSOR STATEMENT

### HOUSE BILL NO. 266 ESTABLISHING A JOINT FEDERAL AND STATE NAVIGABLE WATERS COMMISSION FOR ALASKA

House Bill No. 266 is designed to highlight a major long-term crisis facing the state and to provide a public forum to discuss possible solutions. This legislation promotes the establishment of a Joint Federal and State Navigable Waters Commission for Alaska by creating the state portion of the Commission. The Commission will become a reality only if Congress provides the same authorization in federal law.

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

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

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

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

Despite the fact that no one contested the state's claim that these streams met the federal courts criteria for determining navigability, this case took nine years and millions of state and federal dollars to litigate, eventually resulting in the state winning two of the three cases and achieving no solution on the third. Alaska contains over 22,000 potentially navigable rivers and well over 1,000,000 lakes that could qualify as navigable. If, however, the federal government continues to oppose every assertion of title to

submerged lands by the state, final determinations of this magnitude will never be resolved in anyone's favor.

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

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

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