

Sponsor Statement
House Bill No. 266 or Senate Bill No. 219

**Establishing a Joint Federal and State
Navigable Waters Commission for Alaska**

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

[Senate Bill No. 219](#) ([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.