

Calendar No. 648

107TH CONGRESS
2D SESSION

S. 2587

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

IN THE SENATE OF THE UNITED STATES

JUNE 5, 2002

Mr. MURKOWSKI (for himself and Mr. STEVENS) introduced the following bill;
which was read twice and referred to the Committee on Energy and Nat-
ural Resources

OCTOBER 8, 2002

Reported by Mr. BINGAMAN, with amendments

[Omit the part struck through and insert the part printed in *italic*]

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. FINDINGS AND PURPOSES.**

4 (a) FINDINGS.—Congress finds the following:

5 (1) The efficient and orderly development of the
6 State of Alaska will be better achieved if the Federal

1 Government joins the State of Alaska in a carefully
2 coordinated approach to identify ownership and ju-
3 risdictional interests in land and waters.

4 (2) Alaska has abundant water resources that
5 are invaluable to State residents and all citizens of
6 the United States.

7 (3) Because of the massive number of navigable
8 waterways and other bodies of water in the State of
9 Alaska, the task of resolving submerged land owner-
10 ship and navigable water determinations has been
11 very slow, counter-productive from an orderly re-
12 source management standpoint, and costly as the
13 State, private landowners, and the Federal Govern-
14 ment attempt to initiate long-range planning proc-
15 esses.

16 (b) PURPOSES.—The purposes of this Act are:

17 (1) To expedite the process of quieting legiti-
18 mate title to the submerged lands in the State of
19 Alaska;

20 (2) To facilitate determinations for purposes of
21 the Submerged Lands Act (43 U.S.C. 1301 et seq.),
22 to the extent possible, which bodies of water in Alas-
23 ka are navigable waters and which such bodies of
24 water are not navigable waters; and

1 (3) To recommend to the State of Alaska and
2 the Federal Government—

3 (A) ways to improve the process of making
4 water use and navigability decisions; and

5 (B) ways to fairly and expeditiously quiet
6 title to the State’s submerged ~~lands~~. *lands and*
7 *assist in the determination of the specifically re-*
8 *served lands that will remain in Federal owner-*
9 *ship.*

10 **SEC. 2. SHORT TITLE.**

11 This Act may be cited as the “Joint Federal and
12 State Navigable Waters Commission for Alaska Act”.

13 **SEC. 3. ESTABLISHMENT.**

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

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

18 The Commission shall—

19 (1) make recommendations to the Secretary of
20 the Interior and the State of Alaska regarding deter-
21 minations of bodies of water in the State that are
22 navigable waters for purposes of the Submerged
23 Lands Act (43 U.S.C. 1301 et seq.);

1 (2) establish a process for employing estab-
2 lished standards to facilitate making such rec-
3 ommendations and determinations;

4 (3) develop procedures for involving private
5 landowners, including Alaska Native corporations
6 and the general public, in that process;

7 (4) for purposes of making such recommenda-
8 tions, undertake a process to identify navigable wa-
9 ters in Alaska pursuant to established standards and
10 criteria; and

11 (5) make recommendations to improve coordi-
12 nation and consultation between the government of
13 the State of Alaska and the Federal Government re-
14 garding navigability determinations and decisions
15 concerning title to submerged lands.

16 **SEC. 5. MEMBERSHIP.**

17 (a) NUMBER AND APPOINTMENT.—

18 (1) IN GENERAL.—The Commission shall be
19 composed of 14 members, of which 7 shall be Fed-
20 eral members appointed under subsection (b) and 7
21 shall be State members appointed under subsection
22 (c).

23 (2) APPOINTMENT DEADLINE.—Initial appoint-
24 ments under this section shall be made not later

1 than 60 days after the date of enactment of this
 2 Act.

3 (b) FEDERAL MEMBERS.—The 7 Federal members
 4 shall consist of—

5 (1) 2 members appointed by the President of
 6 the United States, one of which shall be designated
 7 as the President’s appointee for the position of Fed-
 8 eral co-chair under subsection (e);

9 (2) 1 member appointed by each of the three
 10 members of the Congress who represent the State of
 11 Alaska;

12 (3) 1 member appointed by the Secretary of the
 13 Interior; and

14 (4) 1 member appointed by the Secretary of
 15 Agriculture.

16 (c) STATE MEMBERS.—The 7 State members shall
 17 *be appointed in accordance with the requirements of state*
 18 *law.*

19 consist of—

20 ~~(1) the Governor of the State of Alaska or the~~
 21 ~~Governor’s designee;~~

22 ~~(2) 2 members appointed by the Governor of~~
 23 ~~the State of Alaska, of whom 1 shall be an Alaska~~
 24 ~~Native (as that term is defined in the Alaska Native~~
 25 ~~Claims Settlement Act (43 U.S.C. 1601 et seq.));~~

1 ~~(3) 2 members appointed by the President of~~
2 ~~the Alaska Senate; and~~

3 ~~(4) 2 members appointed by the Speaker of the~~
4 ~~Alaska House of Representatives.~~

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

7 (d) INELIGIBILITY FOR APPOINTMENT.—Members of
8 Congress shall not be eligible for appointment to the Com-
9 mission.

10 (e) CO-CHAIRS.—One of the members appointed by
11 the President of the United States and the Governor or
12 Governor's designee shall serve as co-chairs of the Com-
13 mission.

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

16 (g) TERM OF APPOINTMENT.—

17 (1) IN GENERAL.—Subject to paragraph (2),
18 members of the Commission shall be appointed for
19 the life of the Commission.

20 (2) EARLY TERMINATION OF APPOINTMENT.—

21 (A) Membership of a member of the Com-
22 mission shall terminate if the member is an in-
23 dividual who is an officer or employee of a gov-
24 ernment body and who ceases to serve as such
25 an officer or employee, or if the member is an

1 individual who is not an officer or employee of
2 a government and who becomes an officer or
3 employee of a government.

4 (B) Termination of an individual's mem-
5 bership pursuant to paragraph (A) shall take
6 effect on the expiration of the 90-day period be-
7 ginning on the date such member ceases to be
8 such an officer or employee of such government,
9 or becomes an officer or employee of a govern-
10 ment, respectively.

11 (h) QUORUM.—4 Federal members and 4 State mem-
12 bers of the Commission shall constitute a quorum, but a
13 lesser number may conduct meetings. All decisions of the
14 Commission shall require concurrence by at least 4 State
15 members and 4 Federal members of the Commission.

16 (i) VACANCY.—A vacancy in the membership of the
17 Commission—

18 (1) shall not affect the powers of the Commis-
19 sion to meet or conduct business, subject to sub-
20 section (h); and

21 (2) shall be filled in the same manner in which
22 the original appointment was made, by the same ap-
23 pointing authority.

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

2 (a) PAY FOR FEDERAL MEMBERS OF THE COMMIS-
3 SION.—

4 (1) NON-GOVERNMENT EMPLOYEES.—Each
5 Federal member of the Commission who is not oth-
6 erwise an officer or employee of the Federal Govern-
7 ment shall be entitled to receive the daily equivalent
8 of the annual rate of basic pay payable for Level IV
9 of the Executive Schedule under section 5315 of title
10 5, United States Code, as in effect from time to
11 time, for each day (including travel time) during
12 which such member is engaged in the actual per-
13 formance of duties of the Commission.

14 (2) GOVERNMENT EMPLOYEES.—A member of
15 the Commission who is an officer or employee of ei-
16 ther the government of the State of Alaska or the
17 Federal Government shall serve without additional
18 pay or benefits for service as a member of the Com-
19 mission.

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

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

2 (a) **HEARINGS AND MEETINGS.**—The Commission or,
3 on the authorization of the Commission, any subcommittee
4 or member of the Commission may, for the purposes of
5 carrying out its duties, hold hearings, take testimony, re-
6 ceive evidence, print or otherwise reproduce and distribute
7 all or part of commission proceedings and reports, and sit
8 and act at those times and places as the Commission, sub-
9 committee, or members consider desirable.

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

18 (c) **POWERS OF MEMBERS AND AGENTS.**—Any mem-
19 ber or agent of the Commission may, if authorized by the
20 Commission, take any action which the Commission is au-
21 thorized to take by this section.

22 (d) **VOLUNTEER SERVICES.**—The Commission may
23 accept volunteer services for the purpose of aiding or fa-
24 cilitating the work of the Commission.

25 (e) **MAILS.**—The Commission may use the United
26 States mails in the same manner and under the same con-

1 ditions as other departments and agencies of the United
2 States.

3 (f) ADMINISTRATIVE SUPPORT SERVICES.—Upon the
4 request of the Commission, the Administrator of General
5 Services shall provide to the Commission, on a reimburs-
6 able basis, the administrative support services necessary
7 for the Commission to carry out its responsibilities under
8 this Act.

9 (g) CONTRACT AUTHORITY.—To the extent or in the
10 amounts provided in advance in appropriation Acts, the
11 Commission may contract with and compensate govern-
12 ment and private agencies or persons for property or serv-
13 ices, without regard to section 3709 of the Revised Stat-
14 utes (41 U.S.C. 5).

15 **SEC. 8. STAFF OF COMMISSION; EXPERTS AND CONSULT-**
16 **ANTS.**

17 (a) STAFF.—Subject to rules prescribed by the Com-
18 mission, the co-chairs may appoint and fix the pay of per-
19 sonnel as they consider appropriate.

20 (b) APPLICABILITY OF CERTAIN CIVIL SERVICE
21 LAWS.—The staff of the Commission may be appointed
22 without regard to the provisions of title 5, United States
23 Code, governing appointments in the competitive service,
24 and may be paid without regard to the provisions of chap-
25 ter 51 and subchapter III of chapter 53 of that title relat-

1 ing to classification and General Schedule pay rates, ex-
2 cept that an individual so appointed may not receive pay
3 in excess of the annual rate of basic pay for GS-15 of
4 the General Schedule.

5 (c) EXPERTS AND CONSULTANTS.—Subject to rules
6 prescribed by the Commission, the co-chairs may procure
7 temporary and intermittent services under section 3109(b)
8 of title 5, United States Code, but at rates for individuals
9 not to exceed the daily equivalent of the maximum annual
10 rate of basic pay for GS-15 of the General Schedule.

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

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

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

19 **SEC. 10. REPORTS.**

20 (a) ANNUAL REPORT.—Not later than January 31
21 of each year, the Commission shall submit to the President
22 of the United States, the Committee on Energy and Nat-
23 ural Resources of the United States Senate, the Com-
24 mittee on Resources of the House of Representatives, the
25 Governor of the State of Alaska, and the legislature of

1 the State of Alaska a written report describing its activi-
2 ties during the preceding year.

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

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

8 The Commission is terminated 2 years after the date
9 of completion of appointment of all members of the Com-
10 mission.

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