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Updated 9/25/2005

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PL 105-277 42 USC 3121.**

TITLE III--DENALI COMMISSION

SEC. 301. SHORT TITLE.

This title may be cited as the ``Denali Commission Act of 1998''.

SEC. 302. PURPOSES.

The purposes of this title are as follows:

- (1) To deliver the services of the Federal Government in the most cost-effective manner practicable by reducing administrative and overhead costs.
- (2) To provide job training and other economic development services in rural communities particularly distressed communities (many of which have a rate of unemployment that exceeds 50 percent).
- (3) To promote rural development, provide power generation and transmission facilities, modern communication systems, water and sewer systems and other infrastructure needs.

SEC. 303. ESTABLISHMENT OF COMMISSION.

(a) Establishment.--There is established a commission to be known as the Denali Commission (referred to in this title as the ``Commission'').

(b) Membership.—

(1) Composition.--The Commission shall be composed of 7 members, who shall be appointed by the Secretary of Commerce (referred to in this title as the ``Secretary''), of whom—

- (A) one shall be the Governor of the State of Alaska, or an individual selected from nominations submitted by the Governor, who shall serve as the State Co-chairperson;
- (B) one shall be the President of the University of Alaska, or an individual selected from nominations submitted by the President of the University of Alaska;
- (C) one shall be the President of the Alaska Municipal League or an individual selected from nominations submitted by the President of the Alaska Municipal League;
- (D) one shall be the President of the Alaska Federation of Natives or an individual selected from nominations submitted by the President of the Alaska Federation of Natives;¹

¹ PL 106-31, SEC. 105, 1999



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(E) one shall be the Executive President of the Alaska State AFL-CIO or an individual selected from nominations submitted by the Executive President;

(F) one shall be the President of the Associated General Contractors of Alaska or an individual selected from nominations submitted by the President of the Associated General Contractors of Alaska; and

(G) one shall be the Federal Co-chairperson, who shall be selected in accordance with the requirements of paragraph (2).

(2) Federal Co-chairperson.—

(A) In general.--The President *pro tempore* of the Senate and the Speaker of the House of Representatives shall each submit a list of nominations for the position of the Federal Co-chairperson under paragraph (1)(G), including pertinent biographical information, to the Secretary.

(B) Appointment.--The Secretary shall appoint the Federal Co-chairperson from among the list of nominations submitted under subparagraph (A). The Federal Co-chairperson shall serve as an employee of the Department of Commerce, and may be removed by the Secretary for cause.

(C) Federal Co-chairperson vote.--The Federal Co-chairperson appointed under this paragraph shall break any tie in the voting of the Commission.

(4) Date.--The appointments of the members of the Commission shall be made no later than January 1, 1999.

(c) Period of Appointment; Vacancies.—The Federal Co-Chairperson shall serve for a term of four years and may be reappointed. All other members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.²

(d) Meetings.—

(1) In general.--The Commission shall meet at the call of the Federal Co-chairperson not less frequently than 2 times each year, and may, as appropriate, conduct business by telephone or other electronic means.

(2) Notification.--Not later than 2 weeks before calling a meeting under this subsection, the Federal Co-chairperson shall—

(A) notify each member of the Commission of the time, date and location of that meeting; and

(B) provide each member of the Commission with a written agenda for the meeting, including any proposals for discussion and consideration, and any appropriate background materials.

² PL 106-31, SEC. 105, 1999



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(e) Quorum.--A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

SEC. 304. DUTIES OF THE COMMISSION.

(a) Work Plan.—

(1) In general.--Not later than 1 year after the date of enactment of this Act and annually thereafter, the Commission shall develop a proposed work plan for Alaska that meets the requirements of paragraph (2) and submit that plan to the Federal Co-chairperson for review in accordance with the requirements of subsection (b).

(2) Work plan.--In developing the work plan, the Commission shall—

(A) solicit project proposals from local governments and other entities and organizations;
and

(B) provide for a comprehensive work plan for rural and infrastructure development and necessary job training in the area covered under the work plan.

(3) Report.--Upon completion of a work plan under this subsection, the Commission shall prepare, and submit to the Secretary, the Federal Co-chairperson, and the Director of the Office of Management and Budget, a report that outlines the work plan and contains recommendations for funding priorities.

(b) Review by Federal Co-chairperson.—

(1) In general.-- Upon receiving a work plan under this section, the Secretary, acting through the Federal Co-chairperson, shall publish the work plan in the Federal Register, with notice and an opportunity for public comment. The period for public review and comment shall be the 30-day period beginning on the date of publication of that notice.

(2) Criteria for review.--In conducting a review under paragraph (1), the Secretary, acting through the Federal Co-chairperson, shall—

(A) take into consideration the information, views, and comments received from interested parties through the public review and comment process specified in paragraph (1); and

(B) consult with appropriate Federal officials in Alaska including but not limited to Bureau of Indian Affairs, Economic Development Administration, and Rural Development Administration.

(3) Approval.--Not later than 30 days after the end of the period specified in paragraph (1), the Secretary acting through the Federal Co-chairperson, shall—

(A) approve, disapprove, or partially approve the work plan that is the subject of the review; and



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(B) issue to the Commission a notice of the approval, disapproval, or partial approval that—

(i) specifies the reasons for disapproving any portion of the work plan; and

(ii) if applicable, includes recommendations for revisions to the work plan to make the plan subject to approval.

(4) Review of disapproval or partial approval.--If the Secretary, acting through the Federal Co-chairperson, disapproves or partially approves a work plan, the Federal Co-chairperson shall submit that work plan to the Commission for review and revision.

SEC. 305. POWERS OF THE COMMISSION.

(a) Information From Federal Agencies.--The Commission may secure directly from any Federal department or agency such information as it considers necessary to carry out the provisions of this Act. Upon request of the Federal Co-chairperson of the Commission, the head of such department or agency shall furnish such information to the Commission. Agencies must provide the Commission with the requested information in a timely manner. Agencies are not required to provide the Commission any information that is exempt from disclosure by the Freedom of Information Act. Agencies may, upon request by the Commission, make services and personnel available to the Commission to carry out the duties of the Commission. To the maximum extent practicable, the Commission shall contract for completion of necessary work utilizing local firms and labor to minimize costs.

(b) Postal Services.--The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(c) Gifts.--The Commission may accept, use, and dispose of gifts or donations of services or property.

“(d) The Commission, acting through the Federal Co-Chairperson, is authorized to enter into contracts and cooperative agreements, award grants, and make payments necessary to carry out the purposes of the Commission. With respect to funds appropriated to the Commission for fiscal year 1999, the Commission, acting through the Federal Co-chairperson, is authorized to enter into contracts and cooperative agreements, award grants, and make payments to implement an interim work plan for fiscal year 1999 approved by the Commission.”³

SEC. 306. COMMISSION PERSONNEL MATTERS.

(a) Compensation of Members.--Each member of the Commission who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during the time such member is engaged in the performance of the duties of the Commission. The Federal Co-Chairperson shall be compensated at the annual rate prescribed for a level IV of the Executive Schedule under section 5315, of title 5, United States Code.⁴ All members of the Commission

³ PL 106-31, SEC. 105, 1999

⁴ PL 106-31, SEC. 105, 1999



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who are officers or employees of the United States shall serve without compensation that is in addition to that received for their services as officers or employees of the United States.

(b) Travel Expenses.--The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(c) Staff.—

(1) In general.--The Federal Co-chairperson of the Commission may, without regard to the civil service laws and regulations, appoint such personnel as may be necessary to enable the Commission to perform its duties.

(2) Compensation.--The Federal Co-chairperson of the Commission may fix the compensation of personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates.⁵

(d) Detail of Government Employees.--Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(e) Procurement of Temporary and Intermittent Services.--The Federal Co-chairperson of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

(f) Offices.--The principal office of the Commission shall be located in Alaska, at a location that the Commission shall select.

(g) Administrative Expenses and Records. The Commission is hereby prohibited from using more than 5 percent of the amounts appropriated under the authority of this Act or transferred pursuant to section 329 of the Department of Transportation and Related Agencies Appropriations Act, 1999 (section 101 (g) of division A of this Act) for administrative expenses. The Commission and its grantees shall maintain accurate and complete records which shall be available for audit and examination by the Comptroller General or his or her designee.

(h) Inspector General. Section 8G(a)(2) of the Inspector General Act of 1978 (5 USC App 3, Section 8G(a)(2)) is amended by inserting 'the Denali Commission,' after 'the Corporation for Public Broadcasting,'.⁶

SEC. 307. SPECIAL FUNCTIONS.

(a) Rural Utilities.--In carrying out its functions under this title, the Commission shall as appropriate, provide assistance, seek to avoid duplicating services and assistance, and complement the water and sewer wastewater programs under section 306D of the Consolidated

⁵ PL 106-31, SEC. 105, 1999

⁶ Subsections g & h derived from PL 106-31, SEC. 105, 1999



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Farm and Rural Development Act (7 U.S.C. 1926d) and section 303 of the Safe Drinking Water Act Amendments of 1996 (33 U.S.C. 1263a).

(b) Bulk Fuels.-- Funds transferred to the Commission pursuant to section 329 of the Department of Transportation and Related Agencies Act, 1999 (section 101(g) of division A of this Act) shall be available without further appropriation and until expended. The Commission, in consultation with the Commandant of the Coast Guard, shall develop a plan to provide for the repair or replacement of bulk fuel storage tanks in Alaska that are not in compliance with applicable—⁷

(1) Federal law, including the Oil Pollution Act of 1990 (104 Stat. 484); or

(2) State law

(c) Demonstration Health Projects- In order to demonstrate the value of adequate health facilities and services to the economic development of the region, the Secretary of Health and Human Services is authorized to make grants to the Denali Commission to plan, construct, and equip demonstration health, nutrition, and child care projects, including hospitals, health care clinics, and mental health facilities (including drug and alcohol treatment centers) in accordance with the Work Plan referred to under section 304 of Title III – Denali Commission of Division C – Other Matters of Public Law 105-277. No grant for construction or equipment of a demonstration project shall exceed 50 percentum of such costs, unless the project is located in a severely economically distressed community, as identified in the Work Plan referred to under section 304 of Title III – Denali Commission of Division C – Other Matters of Public Law 105-277, in which case no grant shall exceed 80 percentum of such costs. To carry out this section, there is authorized to be appropriated such sums as may be necessary.⁸

SEC. 308. EXEMPTION FROM FEDERAL ADVISORY COMMITTEE ACT.

The Federal Advisory Committee Act shall not apply to the Commission.

SEC. 309. DENALI ACCESS SYSTEM PROGRAM.⁹

(a) ESTABLISHMENT OF THE DENALI ACCESS SYSTEM PROGRAM.—Not later than 3 months after the date of enactment of the SAFETEA–LU, the Secretary of Transportation shall establish a program to pay the costs of planning, designing, engineering, and constructing road and other surface transportation infrastructure identified for the Denali access system program under this section.

(b) DENALI ACCESS SYSTEM PROGRAM ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—Not later than 3 months after the date of enactment of the SAFETEA–LU, the Denali Commission shall establish a Denali Access System Program Advisory Committee (referred to in this section as the ‘advisory committee’).

(2) MEMBERSHIP.—The advisory committee shall be composed of nine members to be appointed by the Governor of the State of Alaska as follows:

(A) The chairman of the Denali Commission.

⁷ PL 106-31, SEC. 105, 1999

⁸ PL 106-113, SEC 701, 1999

⁹ PL 109-59-Aug. 10, 2005 119 STAT. 1517



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(B) Four members who represent existing regional native corporations, native nonprofit entities, or tribal governments, including one member who is a civil engineer.

(C) Four members who represent rural Alaska regions or villages, including one member who is a civil engineer.

(3) TERMS.—

(A) IN GENERAL.—Except for the chairman of the Commission who shall remain a member of the advisory committee, members shall be appointed to serve a term of 4 years.

(B) INITIAL MEMBERS.—Except for the chairman of the Commission, of the 8 initial 11 members appointed to the advisory committee, 2 shall be appointed for a term of 1 year, 2 shall be appointed for a term of 2 years, 2 shall be appointed for a term of 3 years, and 2 shall be appointed for a term of 4 years. All subsequent appointments shall be for 4 years.

(4) RESPONSIBILITIES.—The advisory committee shall be responsible for the following activities:

(A) Advising the Commission on the surface transportation needs of Alaska Native villages and rural communities, including projects for the construction of essential access routes within remote Alaska Native villages and rural communities and for the construction of roads and facilities necessary to connect isolated rural communities to a road system.

(B) Advising the Commission on considerations for coordinated transportation planning among the Alaska Native villages, Alaska rural villages, the State of Alaska, and other government entities.

(C) Establishing a list of transportation priorities for Alaska Native village and rural community transportation projects on an annual basis, including funding recommendations.

(D) Facilitate the Commission's work on transportation projects involving more than one region.

(5) FACA EXEMPTION.—The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the advisory committee.

(c) ALLOCATION OF FUNDS.—

(1) IN GENERAL.—The Secretary shall allocate funding authorized and made available for the Denali access system program to the Commission to carry out this section.

(2) DISTRIBUTION OF FUNDING.—In distributing funds for surface transportation projects funded under the program, the Commission shall consult the list of transportation priorities developed by the advisory committee.

(d) PREFERENCE TO ALASKA MATERIALS AND PRODUCTS.—To construct a project under this section, the Commission shall encourage, to the maximum extent practicable, the use of employees and businesses that are residents of Alaska.

(e) DESIGN STANDARDS.—Each project carried out under this section shall use technology and design standards determined by the Commission to be appropriate given the location and the functionality of the project.

(f) MAINTENANCE.—Funding for a construction project under this section may include an additional amount equal to not more than 10 percent of the total cost of construction, to be retained for future maintenance of the project. All such retained funds shall be dedicated for maintenance of the project and may not be used for other purposes.



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(g) LEAD AGENCY DESIGNATION.—For purposes of projects carried out under this section, the Commission shall be designated as the lead agency for purposes of accepting Federal funds and for purposes of carrying out this project.

(h) NON-FEDERAL SHARE.—Notwithstanding any other provision of law, funds made available to carry out this section may be used to meet the non-Federal share of the cost of projects under title 23, United States Code.

(i) SURFACE TRANSPORTATION PROGRAM TRANSFERABILITY.—

(1) TRANSFERABILITY.—In any fiscal year, up to 15 percent of the amounts made available to the State of Alaska for surface transportation by section 133 of title 23, United States Code, may be transferred to the Denali access system program.

(2) NO EFFECT ON SET-ASIDE.—Paragraph (2) of section 133(d), United States Code, shall not apply to funds transferred under paragraph (1).

(j) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) to carry out this section \$15,000,000 for each of fiscal years 2006 through 2009.

(2) APPLICABILITY OF TITLE 23.—Funds made available to carry out this section shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code; except that such funds shall not be transferable and shall remain available until expended, and the Federal share of the cost of any project carried out using such funds shall be determined in accordance with section 120(b).

“(C) \$5,000,000 shall be available for each of fiscal years 2006 through 2009 for payments to the Denali Commission under the terms of section 307 (e) [Clarification: 309(e)] of the Denali Commission Act of 1998 (42 U.S.C. 3121 note) for docks, waterfront development projects , and related transportation infrastructure.

SEC. 310. AUTHORIZATION OF APPROPRIATIONS.¹⁰

(a) In General.--There are authorized to be appropriated to the Commission to carry out the duties of the Commission consistent with the purposes of this title and pursuant to the work plan approved under section 4 under this Act, \$20,000,000 for fiscal year 1999, and such sums as may be necessary for fiscal years 2000, 2001, 2002, and 2003

(b) Availability.--Any sums appropriated under the authorization contained in this section shall remain available until expended.

SECTION 310 (no title provided)¹¹

(a) The Federal Co-chairman of the Denali Commission shall appoint an Economic Development Committee to be chaired by the president of the Alaska Federation of Natives which shall include the Commissioner of community and Economic Affairs for the State of Alaska, a representative of the Alaska Bankers Association, the chairman of the Alaska Permanent Fund, a representative

¹⁰ This was originally SECTION 309 when the Act was first passed in 1998. The SAFETEA-LU Act of 2005 renumbered this to SECTION 310.

¹¹ This section number was designated in the PL 108-199, SEC. 112, 2004. It now duplicates the numbering designated in the SAFETEA-LU Act above.



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from the Alaska Chamber of Commerce, and a representative from each region. Of the regional representatives, at least two each shall be from Native regional corporations, Native non-profit corporations, tribes, and borough governments.

(b) The Economic Development Committee is authorized to consider and approve applications from Regional Advisory Committees for grants and loans to promote economic development and promote private sector investment to reduce poverty in economically distressed rural villages. The Economic Development Committee may make mini-grants to individuals applicants and may issue loans under such terms and conditions as it determines.

(c) The State Co-Chairman of the Denali Commission shall appoint a Regional Advisory Committee for each region which may include representatives from local, borough, and tribal governments, the Alaska Native non-profit corporation operating in the region, local Chambers of Commerce, and representatives of the private sector. Each Regional Advisory Committee shall develop a regional economic development plan for consideration by the Economic Development Committee.

(d) The Economic Development Committee, in consultation with the First Alaskans Institute, may develop rural development performance measures linking economic growth to poverty reduction to measure the success of its program which may include economic, educational, social, and cultural indicators. The performance measures will be tested in one region for two years and evaluated by the University of Alaska before being deployed statewide. Thereafter performance in each region shall be evaluated using the performance measures, and the Economic Development Committee shall not fund projects which do not demonstrate success.

(e) Within the amounts made available annually to the Denali commission for training, the Commission may make a grant to the First Alaskans Foundation upon submittal of an acceptable work plan to assist Alaska Natives and other rural residents in acquiring the skills and training necessary to participate fully in private sector business and economic and development opportunities through fellowships, scholarships, internships, public service programs, and other leadership initiatives.

(f) The Committee shall sponsor a statewide economic development summit in consultation with the World Bank to evaluate the best practices for economic development worldwide and how they can be incorporated into regional economic development plans.

(g) There is authorized to be appropriated such sums as may be necessary to the following agencies which shall be transferred to the Denali commission as a direct lump sum payment to implement this section:

- (1) Department of commerce, Economic Development Administration
- (2) Department of Housing and Urban Development
- (3) Department of the Interior, Bureau of Indian Affairs
- (4) Department of Agriculture, Rural Development Administration, and
- (5) Small Business Administration

Note: The following "open meetings" language is incorporated into the Commission's energy program authorizations within the *Energy Policy Act of 2005*, PL 109-190, SEC 356. The Act does not specify its insertion into the enabling legislation.



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(c) OPEN MEETINGS-

(1) IN GENERAL- Except as provided in paragraph (2), a meeting of the Commission shall be open to the public if--

(A) the Commission members take action on behalf of the Commission; or

(B) the deliberations of the Commission determine, or result in the joint conduct or disposition of, official Commission business.

(2) EXCEPTIONS- Paragraph (1) shall not apply to any portion of a Commission meeting for which the Commission, in public session, votes to close the meeting for the reasons described in paragraph (2), (4), (5), or (6) of subsection (c) of section 552b of title 5, United States Code.

(3) PUBLIC NOTICE-

(A) IN GENERAL- At least 1 week before a meeting of the Commission, the Commission shall make a public announcement of the meeting that describes--

(i) the time, place, and subject matter of the meeting;

(ii) whether the meeting is to be open or closed to the public; and

(iii) the name and telephone number of an appropriate person to respond to requests for information about the meeting.

(B) ADDITIONAL NOTICE- The Commission shall make a public announcement of any change to the information made available under subparagraph (A) at the earliest practicable time.

(4) MINUTES- The Commission shall keep, and make available to the public, a transcript, electronic recording, or minutes from each Commission meeting, except for portions of the meeting closed under paragraph (2).

