

**ALASKA STATE LEGISLATURE  
HOUSE RESOURCES STANDING COMMITTEE**

March 30, 2009

1:02 p.m.

**MEMBERS PRESENT**

Representative Craig Johnson, Co-Chair  
Representative Mark Neuman, Co-Chair  
Representative Kurt Olson  
Representative Paul Seaton  
Representative Peggy Wilson  
Representative David Guttenberg  
Representative Scott Kawasaki  
Representative Chris Tuck

**MEMBERS ABSENT**

Representative Bryce Edgmon

**COMMITTEE CALENDAR**

HOUSE JOINT RESOLUTION NO. 28

Urging the President of the United States and the United States Congress not to adopt any policy, rule, or administrative action or enact legislation that would restrict energy exploration, development, and production in federal and state waters around Alaska, the outer continental shelf within 50 miles of shore, and elsewhere in the continental United States; urging the President of the United States and the United States Congress to encourage and promote continued exploration, development, and production of domestic oil and gas resources.

- MOVED CSHJR 28(RES) OUT OF COMMITTEE

HOUSE CONCURRENT RESOLUTION NO. 10

Urging the Governor to file an action to restrain the United States Department of the Interior, National Park Service, from intruding on the sovereign right of the state to exercise jurisdiction over navigable water and submerged land and urging the Governor to allocate sufficient resources to the Department of Law, the Department of Natural Resources, and the Department of Fish and Game to defend the state's right to manage the public use of its navigable water.

- MOVED CSHCR 10(RES) OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 27  
Relating to sovereign powers of the state.

- MOVED CSHJR 27(RES) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: HJR 28

SHORT TITLE: OPPOSE RESTRICTIONS ON OIL/GAS ACTIVITIES

SPONSOR(S): REPRESENTATIVE(S) JOHNSON

03/23/09	(H)	READ THE FIRST TIME - REFERRALS
03/23/09	(H)	ENE, RES
03/27/09	(H)	ENE REFERRAL WAIVED
03/30/09	(H)	RES AT 1:00 PM BARNES 124

BILL: HCR 10

SHORT TITLE: OPPOSE FED. CONTROL OF STATE LAND & WATER

SPONSOR(S): REPRESENTATIVE(S) HAWKER

02/27/09	(H)	READ THE FIRST TIME - REFERRALS
02/27/09	(H)	RES
03/30/09	(H)	RES AT 1:00 PM BARNES 124

BILL: HJR 27

SHORT TITLE: STATE SOVEREIGNTY

SPONSOR(S): REPRESENTATIVE(S) KELLY

03/19/09	(H)	READ THE FIRST TIME - REFERRALS
03/19/09	(H)	RES
03/30/09	(H)	RES AT 1:00 PM BARNES 124

**WITNESS REGISTER**

JOHN BITTNER, Staff  
Representative Craig Johnson  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented HJR 28 on behalf of the sponsor,  
Representative Johnson.

JASON BRUNE, Executive Director  
Resource Development Council  
Anchorage, Alaska

**POSITION STATEMENT:** Supported HJR 28.

MARILYN CROCKETT, Executive Director

Alaska Oil & Gas Association  
Anchorage, Alaska  
**POSITION STATEMENT:** Supported HJR 28.

TOM LAKOSH  
Anchorage, Alaska  
**POSITION STATEMENT:** Opposed HJR 28, but suggested an amendment.

REPRESENTATIVE MIKE HAWKER  
Alaska State Legislature  
Juneau, Alaska  
**POSITION STATEMENT:** As the sponsor, introduced HCR 10.

JOHN STURGEON  
Anchorage, Alaska  
**POSITION STATEMENT:** Supported HCR 10.

ROD ARNO, Executive Director  
Alaska Outdoor Council  
Palmer, Alaska  
**POSITION STATEMENT:** Supported HCR 10.

STAN LEAPHART, Executive Director  
Citizens' Advisory Commission on Federal Areas  
Fairbanks, Alaska  
**POSITION STATEMENT:** Supported HCR 10.

SCOTT HAMANN  
Kenai, Alaska  
**POSITION STATEMENT:** Supported HCR 10.

REPRESENTATIVE MIKE KELLY  
Alaska State Legislature  
Juneau, Alaska  
**POSITION STATEMENT:** As the sponsor, introduced HJR 27.

JAMES FLOYD  
Tok, Alaska  
**POSITION STATEMENT:** Supported HJR 27.

SCOTT HAMANN  
Kenai, Alaska  
**POSITION STATEMENT:** Urged that HJR 27 be strengthened.

ROD ARNO, Executive Director  
Alaska Outdoor Council  
Palmer, Alaska

**POSITION STATEMENT:** Supported HJR 27.

**ACTION NARRATIVE**

1:02:22 PM

**CO-CHAIR CRAIG JOHNSON** called the House Resources Standing Committee meeting to order at 1:02 p.m. Representatives Johnson, Neuman, Wilson, Tuck, Seaton were present at the call to order. Representatives Olson and Guttenberg arrived as the meeting was in progress and Representative Kawasaki joined the meeting via teleconference.

HJR 28-OPPOSE RESTRICTIONS ON OIL/GAS ACTIVITIES

1:03:00 PM

CO-CHAIR JOHNSON announced that the first order of business would be, HOUSE JOINT RESOLUTION NO. 28, Urging the President of the United States and the United States Congress not to adopt any policy, rule, or administrative action or enact legislation that would restrict energy exploration, development, and production in federal and state waters around Alaska, the outer continental shelf within 50 miles of shore, and elsewhere in the continental United States; urging the President of the United States and the United States Congress to encourage and promote continued exploration, development, and production of domestic oil and gas resources.

JOHN BITTNER, Staff, Representative Craig Johnson, Alaska State Legislature, introduced HJR 28 on behalf of Representative Johnson, sponsor. He reviewed the history of oil drilling within the Outer Continental Shelf (OCS) beginning in 1953 when the U.S. Congress passed the Submerged Lands Act which granted individual states the right to natural resources on submerged lands up to three miles off of shore. The act also re-affirmed federal claims to all resources on OCS submerged lands from three miles offshore to two hundred miles, with a few exceptions, he said. Later that same year, Congress passed the Outer Continental Shelf Lands Act outlining the federal responsibilities over these lands and authorizing the Secretary of Interior to lease those lands for resource development. Environmental activism in the 1960s and 1970s resulted in passage of the National Environmental Policy Act and the Clean Air Act, and creation of the Environmental Protection Agency. He said these and other regulatory bills created the core of the

regulatory framework currently applicable to all extractive industries.

MR. BITTNER noted that in the 1980s Congress passed various area-specific moratoriums on OCS drilling and during this time petroleum revenues dropped markedly for a variety of reasons. By 1990 the bans on drilling had encompassed so much of the U.S. Exclusive Economic Zone that a blanket moratorium on most areas was enacted by the president. In 2008, President Bush rescinded this moratorium and Congress followed suit by rescinding the ban on OCS leasing. This allowed the U.S. Minerals Management Service (MMS) to start the process of offering OCS lands for lease. He related that the MMS estimates that 574 million acres of the U.S. OCS are currently off limits and these banned areas contain an estimated 17.8 billion barrels of oil and 76.5 trillion cubic feet (TCF) of natural gas.

MR. BITTNER stated that a recently released economic report, commissioned by Shell Oil on the economic impacts of OCS development in Alaska, projects that roughly 35,000 jobs will be created in the state over the 50-year period of OCS development and exploration, with those jobs representing a combined payroll of \$72 billion. Direct petroleum revenue to the state is estimated at \$5.8 billion, the majority of which will directly impact local governments through property taxes.

MR. BITTNER said President Obama is delaying the lifting of the OCS drilling moratorium and Interior Secretary Salazar is expressing interest in closing or severely limiting OCS exploration and drilling in the Lower 48 in favor of an as yet uncrafted comprehensive energy plan. He noted that this kind of uncertainty adversely affects potential exploration and development in these areas because companies cannot afford to risk huge sums of capital to develop a resource unless there is a reasonable guarantee that their investment will be secure. To this effect, he said HJR 28 sends a clear message to the President, Secretary of the Interior, and Congress that no laws or administrative orders should be passed that would restrict OCS drilling and exploration in Alaska or the continental U.S. The resolution further urges that offshore exploration and drilling be encouraged.

[1:07:09 PM](#)

CO-CHAIR NEUMAN asked whether other states have come up with resolutions similar to HJR 28.

MR. BITTNER answered that there has been a pretty broad support among several states for OCS drilling. It took hold during the recent energy crisis when oil and gas was expensive and alternative sources of petroleum were being looked for. He said he does not have any specific resolutions from states, but that Congress has passed a resolution urging President Obama to support OCS drilling.

REPRESENTATIVE SEATON inquired why HJR 28 only addresses submerged lands as far out as 50 miles rather than the 200-mile OCS limit.

MR. BITTNER understood that this is because HJR 28 only looks at the resources in Alaska and most of Alaska's OCS resources currently being considered for development are within the 50-mile range.

CO-CHAIR JOHNSON agreed with Mr. Bittner. Alaska is not a signator on the Law of the Sea Treaty, he added, so the decision was to keep the distance close.

REPRESENTATIVE SEATON asked whether there is a separate designation of a 50-mile zone.

CO-CHAIR JOHNSON said there is not, but that 50 miles is what is being looked at by Shell Oil in the Chukchi and Beaufort seas; thus, this is the area that he would like to address when Interior Secretary Salazar visits Alaska in April 2009.

[1:10:02 PM](#)

CO-CHAIR NEUMAN related that representatives from the Aleutian Chain and Bristol Bay offered their support for off-shore development while visiting Juneau earlier this year because such development would create jobs and be safe.

REPRESENTATIVE TUCK noted that beginning on page 2, line 31, the resolution reads: "in federal and state waters around Alaska, the outer continental shelf within 50 miles of shore, and elsewhere in the continental United States...." He inquired whether "elsewhere in the continental United States" expands the resolution beyond Alaska's interests.

MR. BITTNER replied that HJR 28 specifically focuses on Alaska, but does include provisions in support of outer-continental drilling off the rest of the continental United States.

CO-CHAIR JOHNSON added that the hope is other states will support and include Alaska when they pass their own resolutions.

REPRESENTATIVE TUCK expressed his concern that Alaska's interests not be tied to a conglomerate of other state's interests and that Alaska speak for itself.

[1:12:13 PM](#)

REPRESENTATIVE WILSON noted that the other states might want to address 200 miles offshore rather than 50 miles, given that 200 miles is what is included in the Law of the Sea Treaty.

CO-CHAIR JOHNSON responded he would not oppose amending HJR 28 to 200 miles, even though the resolution was designed to encompass the lease sales that are happening in Alaska right now. He said he does not want to have Canada or Russia oppose the resolution given that Alaska is not a signator on the treaty and technically does not have jurisdiction over the 200 miles.

REPRESENTATIVE GUTTENBERG asked whether there are any reasons where it might not be in the state's best interest to develop, such as geoducks or specific places.

MR. BITTNER said he is sure there are, but he does not know about any specific sites since he does not know the combination of biology and potential petroleum reserves. He pointed out that before a lease can be issued, and even after it is issued, significant environmental and biological impact studies must be performed, which is taken into account.

[1:15:12 PM](#)

REPRESENTATIVE TUCK inquired whether HJR 28 would override the wishes of local communities participating in the Coastal Zone Management Plan.

MR. BITTNER answered that he understands the resolution would not because it deals only with the views on OCS drilling of the President, Secretary of the Interior, and Congress.

CO-CHAIR JOHNSON interjected that a resolution only indicates the legislature's wishes; it has no legal standing and would not affect the Coastal Zone Management Plan.

CO-CHAIR JOHNSON opened public testimony.

1:16:28 PM

JASON BRUNE, Executive Director, Resource Development Council (RDC), supported HJR 28 on behalf of the RDC. He testified from the following written statement [original punctuation provided]:

RDC is a statewide, non-profit, membership-funded organization founded in 1975. The RDC membership is comprised of individuals and companies from Alaska's oil and gas, mining, timber, tourism, and fisheries industries, as well as Alaska Native corporations, local communities, organized labor, and industry support firms. RDC's purpose is to link these diverse interests together to encourage a strong, diversified private sector in Alaska and expand the state's economic base through the responsible development of our natural resources.

Oil and gas resources located in the Outer Continental Shelf out to 200 miles are vital to the economic viability of a gas pipeline to the Lower 48 and the continued operation of the Trans Alaska Pipeline System [TAPS]. Indeed, an additional 15 TCF of natural gas must be discovered for either the Trans-Canada or Denali pipeline projects to be economically viable over the long term. In addition, throughput in TAPS continues its decline from 2.1 million barrels of oil per day in the late 80s to one-third of that today. This trend can be reversed with production from the OCS where we should be encouraging development, not hampering it.

No one has more care for the environment than Alaskans, and OCS development has a strong track record. It has coexisted with other industries including fishing, in Cook Inlet, the North Sea, and the Gulf of Mexico. Energy exploration, development, and production in federal and state waters around Alaska will occur in an environmentally-sensitive and responsible manner overseen by the strongest of regulatory regimes. When necessary, seasonal operating restrictions and mitigation measures to avoid conflicts with other resource users will be employed.

Given the nation will remain heavily reliant on oil and gas development for decades, America must harness

the significant energy resources beneath its most promising onshore and offshore oil and gas basins. It is important to take into consideration, when formulating public policy, that for every barrel of oil America refuses to develop domestically, it will have little choice but to import an equal amount from overseas - where weaker environmental regulations often apply.

With the impact high-energy prices have on Americans and their economy, the U.S. has a moral obligation to develop domestic energy sources, and the OCS is the ideal location. The resources located in the OCS will buy us the time we need to develop the alternative and renewable energy resources that will someday break our reliance on foreign oil.

MR. BRUNE, in regard to earlier discussion, stated that leases currently held in the Chukchi Sea are located between 60 and 120 miles offshore, in the Beaufort Sea they are up to 25 miles, and in the North Aleutian Basin the prospective areas are out to 25 miles.

CO-CHAIR JOHNSON asked whether Mr. Brune would support changing the 50 miles to 200 miles.

MR. BRUNE supported the 200 miles.

[1:21:06 PM](#)

MARILYN CROCKETT, Executive Director, Alaska Oil & Gas Association (AOGA), stated that AOGA is the trade association for Alaska's oil and gas industry and it supports HJR 28. She testified as follows:

Passage of this resolution will send an important message to the President and lawmakers in the nation's capital that Alaska recognizes the role that this state can play in securing critical domestic energy supplies. An energy plan for the nation will absolutely need to include Alaska since this state has over 30 percent of the nation's technically recoverable resources. In the offshore alone, the MMS estimates that Alaska's OCS contains an estimated 27 billion barrels of oil and 132 trillion cubic feet of natural gas resources. Furthermore, ... the Chukchi Sea Basin ... has been characterized as the most

promising and materially undeveloped offshore petroleum base in the U.S. So, clearly, Alaska can play a very, very critical role in terms of the nation's energy supply.

MS. CROCKETT noted that in addition to the jobs and payroll that would result within Alaska from OCS development, \$1.3 trillion would be generated by OCS development in the Lower 48 for federal, state, and local government, as well as 160,000 jobs. She said the oil and gas industry has already spent billions of dollars for the rights to explore and develop these OCS resources offshore of Alaska. While harsh climate and remote locations are challenges to OCS development, HJR 28 is a step toward mitigating other types of challenges, such as access restriction.

1:23:30 PM

TOM LAKOSH stated that he is a victim of the Exxon Valdez oil spill and while he does not have a problem with offshore gas exploration and development, he does have grave concerns about Alaska's inadequate oil spill prevention and response, particularly in Alaska's ice-bearing waters and extreme sea states. He said he has researched oil spill prevention and response technology and when he presented that technology at a 2003 conference, experts agreed that the technology would be effective in Alaska's waters. He related, however, that a "BP" representative told him the company did not need better spill response because the Department of Environmental Conservation gives an exemption from the oil spill response planning standards when there is more than 10 percent ice on the water. This seems very irresponsible, he said.

MR. LAKOSH contended that Alaska is 10 years behind in the standard for evaluating oil spill response effectiveness. He said he must therefore oppose HJR 28 if it promotes continuation of this ineffective oil spill response. He requested that the resolution's language be amended to exclude improved oil spill prevention and response from any restrictions that the state or federal government may impose on offshore development. He said he does not like to think that committee members would violate the constitutional right to reasonable concurrent use of Alaska's resources, of which subsistence has the highest priority and would be adversely affected by the present oil spill regulation which is totally ineffective at preventing damage to subsistence resources.

[1:27:45 PM](#)

CO-CHAIR JOHNSON said that HJR 28 does say safe and responsible exploration. He explained that since it is a resolution, not a bill, it does not exempt anyone from oil spill requirements. He said he will follow up on the 10 percent ice exemption.

REPRESENTATIVE SEATON inquired whether Mr. Lakosh had written testimony.

MR. LAKOSH said he does not, but that he would like to follow up with Representative Seaton directly to further explain the exact impediments to effective oil spill recovery in both arctic conditions and high seas that are not being properly addressed by the Department of Environmental Conservation, the MMS, or the U.S. Coast Guard.

CO-CHAIR JOHNSON urged Mr. Lakosh to get with Representative Seaton or himself because if there is technology to do it right, then that should be implemented.

[1:29:13 PM](#)

REPRESENTATIVE SEATON asked whether eliminating the term 50 miles from page 2, line 21, would satisfy Mr. Brune in regard to not restricting OCS development.

MR. BRUNE responded that it would be the aforementioned location as well as on page 1, line 4, and that it could be changed to say up to the 200 mile Exclusive Economic Zone. He said it is correct that there are areas in which Alaska's jurisdiction does not extend that far, given other nations that border the state.

CO-CHAIR JOHNSON said the committee will probably look at some kind of an amendment on this. He closed public testimony after ascertaining that no one else wished to testify.

CO-CHAIR NEUMAN moved that the committee adopt Conceptual Amendment 1 as follows:

Page 1, line 4, following "within":  
Delete "50"  
Insert "200"

Page 2, line 21, following "within":  
Delete "50"  
Insert "200"

Page 2, line 31, following "within":

Delete "50"

Insert "200"

1:32:12 PM

REPRESENTATIVE SEATON objected for discussion purposes. He asked whether the co-chair wishes to restrict the distance to 200 miles or would it be better to say "the Outer Continental Shelf controlled by the U.S." He noted there is a bill before Congress that would extend U.S. jurisdiction beyond 200 miles.

CO-CHAIR JOHNSON said it is not his intention to limit the distance and perhaps the amendment could state 200 miles or whichever is greater. He asked whether the Law of the Sea Treaty would go potentially 150 miles beyond the Outer Continental Shelf or if the Outer Continental Shelf extended more than 200 miles.

REPRESENTATIVE SEATON answered that if the Outer Continental Shelf extends beyond 200 miles, then under the Law of the Sea Treaty the U.S. could extend its jurisdiction beyond 200 miles, but only as far as the U.S. Outer Continental Shelf.

REPRESENTATIVE GUTTENBERG commented that he would like to have someone with offshore expertise tell the committee the difference between the jurisdictions and what the result would be if the language is changed to that being suggested by Representative Seaton.

1:34:56 PM

REPRESENTATIVE SEATON said he agrees with the 200 miles and is only bringing this up because of discussions about the jurisdiction possibly being extended beyond 200 miles.

CO-CHAIR JOHNSON said the resolution should not be based on what may happen in the future, given that the Law of the Sea Treaty has not yet been ratified.

CO-CHAIR NEUMAN said the committee should deal with the way things are today.

CO-CHAIR JOHNSON concurred.

REPRESENTATIVE SEATON pointed out that he objected for discussion and is not offering an amendment to Conceptual Amendment 1, but he just wanted the discussion for legislative history to show that the intent is not to restrict the distance to 200 miles should U.S. control of the Outer Continental Shelf be extended beyond that distance. He withdrew his objection.

CO-CHAIR JOHNSON, after ascertaining there was no further objection, announced that Conceptual Amendment 1 has passed.

1:37:16 PM

CO-CHAIR NEUMAN moved to report HJR 28, as amended, out of committee with individual recommendations and the accompanying zero fiscal note.

REPRESENTATIVE TUCK objected and expressed his concern with the language "and elsewhere in the continental United States" that appears on page 1, line 4, as well as several other places in the resolution. He said it is not in Alaska's interest to impose something on other states and trying to exercise control over other states could create a backlash. Because he does not like it when other states pass resolutions about Alaskan issues, he said it concerns him when Alaska does this to other states.

CO-CHAIR JOHNSON said the term imposed is wishful thinking because this is only a resolution and a communication to the President and others asking them to take Alaska's wishes into consideration. He said that because the resolution supports something rather than opposes something, each state can use the resolution as it wishes.

1:39:23 PM

REPRESENTATIVE TUCK withdrew his objection and reiterated that he would not want another state doing this to Alaska.

CO-CHAIR JOHNSON offered his assurance that he would not try to impose the committee's will on any other state.

REPRESENTATIVE GUTTENBERG stated that even if the resolution is successful in prompting action, that action might be prevented by the current policies and regulations such that no leases could occur. He urged caution in what is being asked for.

CO-CHAIR JOHNSON said he is clear in what he is asking for.

CO-CHAIR NEUMAN again moved to report HJR 28, as amended, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHJR 28(RES) was reported from the House Resources Standing Committee.

HCR 10-OPPOSE FED. CONTROL OF STATE LAND & WATER

[1:42:03 PM](#)

CO-CHAIR JOHNSON announced that the next order of business would be, HOUSE CONCURRENT RESOLUTION NO. 10, Urging the Governor to file an action to restrain the United States Department of the Interior, National Park Service, from intruding on the sovereign right of the state to exercise jurisdiction over navigable water and submerged land and urging the Governor to allocate sufficient resources to the Department of Law, the Department of Natural Resources, and the Department of Fish and Game to defend the state's right to manage the public use of its navigable water.

[1:43:09 PM](#)

REPRESENTATIVE MIKE HAWKER, Alaska State Legislature, noted that the issue addressed by HCR 10 - protecting Alaska's jurisdiction over navigable water and submerged land - was brought to his attention by a constituent. He said his research of Alaska's statehood rights found that the ownership of submerged lands and navigable waters is guaranteed to the state and the state has the providence over these; however, the federal government has consistently tried to usurp those rights. It is incumbent upon legislators to defend the state's land rights and land claims process from federal government actions that have been infringing upon the right to manage those lands, he said.

REPRESENTATIVE HAWKER drew attention to a February 13, 2009, letter from the Citizens' Advisory Commission on Federal Areas to the state's acting attorney general. He read the first sentence of the letter: "In 1996, over the strong objections of the State of Alaska and others, the National Park Service adopted regulations which improperly extended its management and enforcement authorities over state owned navigable waters within units of the National Park System." This federal encroachment on Alaska's sovereign right to manage its land resources is the problem, he argued.

REPRESENTATIVE HAWKER said that while the State of Alaska has been pursuing its title to submerged lands and navigable waters,

it has not been quite as diligent in protecting its right to those submerged lands and navigable waters. Thus, HCR 10 urges the governor to take legal action now to stop this preemption of Alaska's rights. He pointed out that there is a technical amendment that would urge the governor to take any and all appropriate legal actions, including legal status, he added.

[1:46:41 PM](#)

CO-CHAIR NEUMAN understood people were using submerged lands on the Yukon River for float planes, boat launching, and driving four-wheelers were issued citations by the National Park Service. He asked Representative Hawker to expand on this point of contention.

REPRESENTATIVE HAWKER deferred to John Sturgeon, the constituent who brought this issue to his attention and who is on line to testify.

REPRESENTATIVE TUCK inquired about the zero fiscal note given that HCR 10 asks for action to be taken.

REPRESENTATIVE HAWKER replied that there is a budget allocation inside the Department of Law for an entire section called "Statehood Defense"; therefore it is already funded through the annual appropriations process. He said the resolution will remind the staff in this section of how important this is to the legislature and to continue to pursue their work.

[1:49:13 PM](#)

CO-CHAIR JOHNSON opened public testimony on HCR 10.

JOHN STURGEON said he is a business owner and has been in Alaska's forest products industry for the last 39 years. He spoke in support of HCR 10 on behalf of himself as an outdoors sportsman. He testified as follows:

The State of Alaska is incrementally losing one of its most cherished and valuable sovereign rights - the right to manage its navigable waters. Management of portions of rivers, such as the Yukon River, are being taken away by the federal government. The State of Alaska must take strong and decisive action immediately or watch while it loses forever hundreds of miles of rivers, thousands of lakes, and thousands of miles of tideland.

Under equal footing doctrine, the statehood act, and a submerged land act, the state assumed ownership at statehood of submerged lands of navigable waters between ordinary high water marks and below mean high tide. The state acquired the full power and control over navigable waters of the state regardless of the ownership for watercraft use, mining, recreation, commerce, et cetera, except for when Congress specifically reduces a state's authority. An example of that would be the Coast Guard when it comes to a boating regulation for safety purposes. The state's constitution, statutes, and regulations clearly say the state owns and manages these submerged lands and navigable waters and its citizens have free and unrestricted access, unless restricted under regulations authorized by the state legislature. Alaska's law could not be clearer on this issue.

In addition, ANILCA [Alaska National Interest Lands Conservation Act], under section 103(c), states that regulations adopted for national parks only apply to the federal lands and not state or private lands within those designated areas, and navigable waters are considered ... state lands within those ANILCA-designated areas. Beginning in 1996, the ... National Park Service placed another layer of regulation over the State of Alaska's management on these navigable waters.

MR. STURGEON cited several examples of federal regulation that he personally knows about on the Yukon River. He said the actions of the National Park Service are, in effect, voiding the state's legitimate jurisdiction on its navigable waters, and he is therefore urging the legislature to help stop this by passing HCR 10.

[1:54:07 PM](#)

ROD ARNO, Executive Director, Alaska Outdoor Council, supported HCR 10 on behalf of the council's 2,500 individual members and 48 clubs. He related that in 1996 the National Park Service determined this was simply a clarification of a prior law, and since then it has frequently attempted to use this regulation to further restrict access in numerous areas of the state. Alaska is a unique area due to its lack of infrastructure and roads, he said, therefore this access on navigable waters is extremely

important to all Alaskans, and particularly to members of the council. He applauded Representative Hawker for listening to his constituent and putting forth HCR 10.

[1:56:19 PM](#)

STAN LEAPHART, Executive Director, Citizens' Advisory Commission on Federal Areas, explained that the commission is charged with determining the impact of federal management, agency actions, regulations, and management decisions on the citizens of the State of Alaska. He related that Mr. Sturgeon testified before the commission's November [2008] meeting in regard to this issue. After subsequent follow-up work, the commission determined it should recommend to the attorney general's office and the governor that the state takes the necessary action to resolve this issue.

MR. LEAPHART stated that ANILCA has some very specific language that allows access to rivers and lakes. He said the commission believes the state's authority to regulate its waters should not be impeded by the provisions of ANILCA, nor should they be impeded by National Park Service regulations. So far the National Park Service has been constrained in enforcing these regulations over the past 12 years, but there is evidence that this may be changing as seen by the increasing number of citations issued to people engaged in activities that are lawful under state regulations.

MR. LEAPHART expressed the commission's concern that if the National Park Service's regulations are allowed to stand, other federal land management agencies might decide to promulgate the same restrictive regulations. Such action would affect millions of acres of federal lands within national wildlife refuges, national forests, and wild and scenic river areas, he said; thus, the commission supports HCR 10.

[2:00:53 PM](#)

SCOTT HAMANN maintained it is time for Alaskans to assert their rights. He said he agrees with all of the previous testimony and urged that HCR 10 be moved forward.

CO-CHAIR JOHNSON closed public testimony after ascertaining that no one else wished to testify.

CO-CHAIR NEUMAN moved that the committee adopt [Conceptual] Amendment 1, as follows:

Page 2, line 17, following "by the state,":  
Delete "issuing citations to placer miners that  
have valid state permits,"

Page 2, line 25, following "the Governor to":  
Delete "file suit against the United States  
Department of the Interior, National Park Service,"  
Insert "pursue all available legal options"

REPRESENTATIVE SEATON objected for discussion purposes.

SENATOR OLSON objected for discussion purposes.

REPRESENTATIVE GUTTENBERG objected for discussion purposes.

[2:03:21 PM](#)

REPRESENTATIVE SEATON offered the following friendly amendment to Amendment 1:

Page 1, line 1, following "Governor to":  
Delete "file an action"  
Insert "pursue all legal options"

CO-CHAIR JOHNSON, after ascertaining there was no objection, announced that the friendly amendment to [Conceptual] Amendment 1 has passed. [Conceptual] Amendment 1, as amended, was now before the committee.

REPRESENTATIVE SEATON asked whether Amendment 1 was offered as a conceptual amendment.

CO-CHAIR JOHNSON understood Amendment 1 to be conceptual even though Co-Chair Neuman did not state it as such.

REPRESENTATIVE SEATON withdrew his objection.

SENATOR OLSON withdrew his objection.

REPRESENTATIVE GUTTENBERG withdrew his objection.

CO-CHAIR JOHNSON, after ascertaining there was no objection, announced that Conceptual Amendment 1, as amended, has passed. He said HCR 10 was now before the committee.

[2:04:45 PM](#)

REPRESENTATIVE GUTTENBERG offered his opinion that the National Park Service's long-term goal is to eliminate all human habitation from a particular area along the Yukon River, despite there being human presence in this area since the Gold Rush. He said he therefore thinks HCR 10 is appropriate.

CO-CHAIR NEUMAN moved to report HCR 10, as amended, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHCR 10(RES) was reported from the House Resources Standing Committee.

HJR 27-STATE SOVEREIGNTY

[2:07:00 PM](#)

CO-CHAIR JOHNSON announced that the final order of business would be, HOUSE JOINT RESOLUTION NO. 27, Relating to sovereign powers of the state.

REPRESENTATIVE MIKE KELLY, Alaska State Legislature, first noted that the content of HJR 27 is identical to that of HR 9. He said the federal government's encroachment on states' rights seems to be dialing up. He read the following from his sponsor statement:

According to the National Conference of State Legislatures, "the volume of federal legislation that preempts state authority has increased" and "pressure continues to mount for Congress and the White House to support federal usurpation of state authority in a variety of areas such as criminal law, tort reform, driver's license security and the environment."

REPRESENTATIVE KELLY added that Alaska's right to manage its own fish and game, navigable waters, and R.S. 2477 have all taken a nasty turn, and now the federal funds for fighting the fight for state access have been taken away. He pointed out that HJR 27 could have had more strident, secession-like language which would have made several of his constituents happy. However, the reason for a less strident resolution is because in other states the resolutions with the more strident language did not pass. He said that if Alaska does not receive favorable treatment upon stating its demands in this manner, then he will lead the pack for making Alaska's actions more strident.

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REPRESENTATIVE KELLY related that four states have passed sovereignty bills, 22 states have introduced such legislation, and Alaska is among the 12 states expected to pass legislation. Although some states have rejected strident language, he said three states have more strident language than that of HJR 27.

REPRESENTATIVE KELLY explained that the [United States Constitution] was written under the principle of positive grant, which means that the federal government is authorized to exercise only those powers which are positively granted to it by the constitution. Thus, if a power is not listed in the constitution, then the federal government does not have it. He said members must keep in mind that the founders envisioned a confederation of states, not a one-size-fits-all solution, and HJR 27 asserts Alaska's sovereign rights.

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CO-CHAIR NEUMAN related that the cost of improving a nine-mile road in his district doubled because of federal government requirements. He cited several examples of demands made by the federal government and surmised that the gist of HJR 27 is that the federal government tells Alaska what to do and sometimes a carrot is provided to force the action and sometimes not.

REPRESENTATIVE KELLY answered that this is precisely so, from Alaska from managing its own fish and game to access to its own navigable waters.

REPRESENTATIVE GUTTENBERG pointed out that there is a difference between intent and what is actually meant.

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CO-CHAIR JOHNSON opened public testimony.

JAMES FLOYD applauded Representative Kelly's efforts and stated that the legislature can always follow this resolution with an act should there be more things that need to be said. There is a lot of citizen concern that the federal government is stepping beyond its scope of power on many different issues, he said. The states entered a contract with each other called the U.S. Constitution, and this contract created the federal government; thus, it is the states that have the authority and the power. He reported that since the 1990s, 47 legislatures have been involved with this type of Tenth Amendment resolution. In this

regard, he read several statements made by legislators from states around the U.S.

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SCOTT HAMANN stated that while he understands the reasoning for toning down the resolution, the time for being nice has passed. He urged that some teeth be put into legislation and one way to do so would be to withhold the federal tax monies that are collected in the state until the federal government does what Alaska is requesting. The federal government will not be receptive until something like this is done, he said.

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ROD ARNO, Executive Director, Alaska Outdoor Council, stated that HJR 27 is not strident enough. As director of the Alaska Outdoor Council and as a member of the Citizens' Advisory Commission of Federal Areas (CACFA), he said he has seen over and over again the loss of access, the loss of fish and game management, and the loss of fish and game allocations because of federal encroachment. He urged that HJR 27 be passed.

CO-CHAIR JOHNSON closed public testimony after ascertaining that no one else wished to testify.

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REPRESENTATIVE SEATON said it seems to him that the language on page 2, lines 17-19, says Alaska wants federal monies but does not want to be told what to do with the money. He asked whether Representative Kelly would be amenable to deleting the language "or lose federal funding" because it diminishes the forcefulness of the resolution.

REPRESENTATIVE KELLY replied that there was a lot of discussion on this while the resolution was being toned down. He said he thinks it is important to have this language because it is one of the ways the federal government consistently enforces its inappropriate overreach. The federal government has taken away 250 million acres of productive land and has not kept its promise on the Arctic National Wildlife Refuge (ANWR). The federal government takes away from the state every chance it gets, yet he is made to feel embarrassed about saying that the federal government should not use money to make the state feel better. He said the resolution is stating that the money sent to Alaska is being used to force the state to break its own

Tenth Amendment rights. The resolution is not about money, it is about the rights Alaska has a state; therefore he said he prefers to leave this language in.

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CO-CHAIR JOHNSON stated that he has sat through numerous budget subcommittee meetings where the state replaced federal funds, most of which came with a stipulation that the state must do something or lose the funding. Often such funds suddenly disappear and the state is left holding the bag and having to determine whether to continue the program. He urged that the resolution not be softened any further.

REPRESENTATIVE SEATON clarified that he is not attempting to soften the resolution. Rather, the language makes it appear to him that what is really being talked about is getting federal money and he sees these words as softening the resolution. He agreed to keep the language in, given that this is what the sponsor would like.

CO-CHAIR JOHNSON added that he reads the language as requiring the state to pass legislation or lose federal funding.

CO-CHAIR NEUMAN commented that there could be an additional "Be It Resolved" that returns some of the carrots so the state could get some of its freedoms back.

REPRESENTATIVE KELLY responded that a list should be made and specific action directed, and if there is no action then the next step can be discussed. He said he believes it best that the first step not be a threat.

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REPRESENTATIVE TUCK suggested adding a comma after the word penalties and after the word sanctions on page 2, line 18, as a way of providing clarification.

REPRESENTATIVE SEATON surmised that adding the commas would make "threat of civil or criminal penalties" one thought, "sanctions" a second thought, and "requires states to pass legislation or lose federal funding" a third thought.

REPRESENTATIVE TUCK answered correct.

CO-CHAIR JOHNSON said he does not think the commas change the substance or the meaning, it just breaks things out.

REPRESENTATIVE SEATON stated that the commas would get to the problem he is talking about.

REPRESENTATIVE KELLY said this appears to be okay at the moment, but he reserves the right to come back if it is not.

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REPRESENTATIVE TUCK moved that the committee adopt Conceptual Amendment 1 as follows:

Page 2, line 18, following "penalties"  
Insert ", "

Page 2, line 18, following "sanctions":  
Insert ", "

CO-CHAIR JOHNSON, after ascertaining there was no objection, announced that Conceptual Amendment 1 has passed.

REPRESENTATIVE TUCK recalled discussions he and his fellow Anchorage School District board members had about whether to refuse federal funds and not participate in the No Child Left Behind mandate. However, it was decided that loss of the funds would have put too much of a burden on the school district. Although a third of Alaska's economy is from federal funds, he said there are times the state must flex and remind authorities of its rights, but this is not to be construed that he is a secessionist. He said he hopes there is enough money in the "Statehood Defense Fund" to cover the resolution and Alaska's best interests.

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CO-CHAIR JOHNSON inquired whether it would be beneficial to send this to the governors of all 50 states.

REPRESENTATIVE KELLY agreed that this is a good idea.

REPRESENTATIVE SEATON asked whether the resolution would be sent to other legislatures or governors.

CO-CHAIR JOHNSON replied that his intent was governors, but he has no problem with it going to both legislatures and governors.

REPRESENTATIVE KELLY agreed as long as it would not require a fiscal note.

CO-CHAIR JOHNSON pointed out that it can be done electronically at no cost.

CO-CHAIR JOHNSON moved that the committee adopt Conceptual Amendment 2 which would "send copies [of HCR 10] to the governors and heads of the legislature, both bodies, with the exception of Nebraska which only has one." There being no objection, Conceptual Amendment 2 was passed.

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REPRESENTATIVE GUTTENBERG expressed his belief that page 2, line 19, weakens the resolution because the legislature has no control over how the media might spin the federal money aspect.

CO-CHAIR JOHNSON disagreed, saying he thinks it just separates it out and more clearly defines it.

REPRESENTATIVE TUCK said the language on line 19 is confusing and could be diminishing because he had taken line 19 to be one concept instead of two concepts. He suggested adding a comma on line 19 after the word legislation so it would separate it into two concepts.

CO-CHAIR JOHNSON pointed out that the sponsor has agreed to work with Legislative Legal and Research Services to ensure the verbiage is proper, plus there is a public record of what the committee is looking for. He said that instead of amending the resolution further he would like to advance it as it is because this can be brought up again once the committee substitute is seen.

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REPRESENTATIVE TUCK stated that no one is looking to lessen the resolution, just help it.

CO-CHAIR NEUMAN said he likes the resolution as it is and Representative Kelly can request that it go to the House Rules Standing Committee if there needs to be a change.

CO-CHAIR JOHNSON clarified that his purpose for a conceptual amendment was not to hold it up, but to give members one more

look at the resolution before advancement. He said he thinks all of the resolutions before the committee today [HJR 28, HCR 10, HJR 28] are important to the state and reflect why many people came to Alaska and chose to stay. Alaska needs to flex its muscle every chance it can get, he added.

CO-CHAIR NEUMAN moved to report HJR 27, as amended, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHCR 27(RES) was reported from the House Resources Standing Committee.

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#### **ADJOURNMENT**

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 2:48 p.m.