

Original sponsor(s): SEN. JONES, Faiks

1 IN THE SENATE BY THE RESOURCES COMMITTEE
2 CS FOR SENATE CONCURRENT RESOLUTION NO. 62 (Resources)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - FIRST SPECIAL SESSION
5 Relating to the subsistence priority
6 required under the Alaska National
7 Interest Lands Conservation Act.
8 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:
9 WHEREAS the Alaska National Interest Lands Conservation Act (ANILCA)
10 requires subsistence uses to be given priority on federal land in Alaska
11 over the taking of subsistence resources for other purposes; and
12 WHEREAS under ANILCA only rural residents are entitled to the subsis-
13 tence priority; and
14 WHEREAS the Alaska Supreme Court held in McDowell v. State, 785 P.2d 1
15 (Alaska 1989), that the state law granting a subsistence priority to rural
16 residents violates secs. 3, 15, and 17 of art. VIII of the state constitu-
17 tion; and
18 WHEREAS the court did not discuss other grounds advanced by appellants
19 in McDowell v. State, including the challenge based on the equal protection
20 and due process clauses of the United States Constitution; and
21 WHEREAS, unless the state implements the subsistence preference, the
22 federal government is required under ANILCA to take over subsistence re-
23 source management on federal land from the state; and
24 WHEREAS it has not been determined whether the subsistence priority in
25 ANILCA can be complied with under the state constitution and whether ANILCA
26 violates the federal constitution;
27 BE IT RESOLVED by the Alaska State Legislature that the Governor is
28 respectfully requested to file an original action in the United States
29 Supreme Court on behalf of the State of Alaska challenging the

1 constitutionality of the subsistence priority under ANILCA and requesting
2 that the federal government be enjoined from assuming management over
3 subsistence resources on federal land in Alaska; and be it

4 FURTHER RESOLVED that the Department of Law is requested to arrange to
5 have the challenge handled by a private attorney or law firm through con-
6 tract; and be it

7 FURTHER RESOLVED that the Alaska State Legislature respectfully re-
8 quests the Alaska Supreme Court to stay the effect of its decision in
9 McDowell v. State, 785 P.2d 1 (Alaska 1989), until a final decision is
10 rendered by the United States Supreme Court on the constitutionality of
11 ANILCA.

12 COPIES of this resolution shall be sent to the Honorable George Bush,
13 President of the United States; the Honorable Richard Thornburgh, Attorney
14 General of the United States; the Honorable Ted Stevens and the Honorable
15 Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Repre-
16 sentative, members of the Alaska delegation in Congress; the Honorable
17 Steve Cowper, Governor of the State of Alaska; and to the Honorable Warren
18 W. Matthews, Chief Justice of the Alaska Supreme Court.