

7/7/90

**HJR 99
(Subsistence)**

ROLL CALL HOUSE RULES MEETING 7/7/90

- MARTIN 3:04 PM.
- TAYLOR
- LARSON
- DAVIDSON N
- KUBINA
- DONLEY
- GRUSSENDORF

REMARKS:

~~REMARKS~~ MARTIN

DAVIDSON

T151 218 → TOM KOESTER (AST. ATT. AT LAW)

312 → ^{C.M.}MARTIN 3 QUESTIONS TO T.K.

497 → ^{C.M.}TAYLOR STATEMENT/QUESTIONS

638 → ^{C.M.}NAVARRE QUESTIONS

T152 003 → MARTIN → M.N. QUESTIONS

056 → DAVIDSON →

114 → TAYLOR → ~~STATEMENT~~

252 → NAVARRE → INQUIRY OF COURT DEC.

344 → MARTIN

S.M.L.O

444 → M. DAVIS.

TISZ 489 → HOFFMAN

TISZ 520 → M.DAVIS

TISZ 560 → TAYLOR AMENDMENT

TISZ 615 → 620 VOTE ON AM#1 PASSED

TISZ 625 → MARTIN

TISZ 669 → TAYLOR AMENDMENT

684 → 690 VOTE ON AM#2 FAILED 2-4

692-696 MOVING BILL OUT COM. PASSE 4-2

-697- TISZ

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

JAC 99

July 6, 1990

The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. II, sec. 9, and art. III, secs. 17 and 18, of the Alaska Constitution, I am transmitting a joint resolution that would (1) amend the Alaska Constitution to authorize the legislature to give Alaska residents a preference for subsistence uses of fish and wildlife based on community or area characteristics, need, customary and traditional use, direct dependence, local residence, or availability of alternative resources; (2) validate, ratify, and reinstate the provisions of current state statutes relating to subsistence that have been held unconstitutional by the Alaska Supreme Court in McDowell v. State, 785 P.2d 1 (Alaska 1989); and (3) make the subsistence amendment effective immediately upon certification by the lieutenant governor of the results of the election at which the amendment will be put before the people. The resolution incorporates a number of the ideas that have surfaced during this special session of the legislature, including the notion that the authorization for subsistence preference should be consistent with the Declaration of Rights in art. I of the Alaska Constitution.

In 1978, the Alaska legislature recognized that subsistence -- i.e., the taking of fish and wildlife for personal consumption and use -- should have a preference over sport and commercial uses of fish and wildlife. In Title VIII of the Alaska National Interest Land Conservation Act (ANILCA), P.L. 96 -- 487, 94 Stat. 2371, 2422 (1980), the United States Congress established a priority for rural residents on federal land, and provided that the priority would be implemented by the secretaries of interior and agriculture unless the state enacted laws of general applicability affording the same priority. In 1982, the Board of Fisheries and Board of Game jointly adopted regulations establishing a subsistence preference for rural residents. In the 1982 general election, the voters of the state overwhelmingly supported that subsistence preference by

defeating an initiative that would have repealed state subsistence laws. Finally, in 1986, the legislature established a subsistence preference for rural residents in state statutes.

Although it has been both state and federal policy for more than a decade, the Alaska Supreme Court held in the McDowell case that a subsistence preference for rural residents violates the Alaska Constitution. In subsequent proceedings in that case, the superior court recently ruled that the preference for subsistence uses over sport and commercial uses remains a part of state law, but only those individual Alaskans with a prior history of subsistence use are eligible to participate.

This puts the state in an intolerable position. Under existing state law, as interpreted by the court, only a select few Alaskans will be eligible to participate in subsistence, and they will have a preference over all other Alaskans. Determining who the lucky few are will be incredibly intrusive and burdensome to the residents of rural villages -- those Alaskans who everyone agrees are most reliant on the resources. It will require a substantial and expensive state bureaucracy.

In many ways, however, it will not substantially change the pre-McDowell allocation of fish and wildlife as a practical matter, except on the Kenai Peninsula with respect to salmon. The superior court ruled that the "tier two" criteria used to further allocate subsistence resources among qualifying subsistence users, including the local residency component, is constitutionally valid. As a consequence, when game resources are insufficient to supply the needs of all subsistence users (as is the case with the Nelchina caribou herd), local residents will still have a preference. In other areas of the state, subsistence seasons for local residents are, in most cases, the same as the general hunting seasons in which all Alaskans may participate. On the Kenai Peninsula, on the other hand, those with a history of customary and traditional subsistence uses of salmon will have a statutory preference over commercial and sport users, potentially resulting in a dramatic reallocation of those resources in that area.

On federal land, in the meantime, the federal government will take over management of fish and wildlife to the extent necessary to give rural residents a subsistence preference, as required by ANILCA. This dual management regime will prove awkward at best; at worst, it could seriously jeopardize the sustained yield of fish and wildlife because of the difficulty of coordinating between two sets of managers with two different mandates.

In my view, any advantages that might result from the status quo are greatly outweighed by the disadvantages of (1) the burdensome and intrusive (and expensive) administrative process that will have to be established, (2) federal management on federal land, and (3) the potentially dramatic reallocation of fish on the Kenai Peninsula. The subsistence constitutional amendment I am proposing will reestablish the pre-McDowell state policy of granting rural residents a subsistence preference and enable the state to retain management of fish and wildlife statewide. Most importantly, passage of the resolution will leave the final decision on this important issue to the people of the state, the ones most directly affected by it.

Section 1 of the joint resolution would add a new section to art. VIII of the Alaska Constitution ("natural resources") to authorize subsistence preferences based on community or area characteristics, need, customary and traditional use, direct dependence, local residence, or availability of alternative resources. This would give the legislature clear constitutional authority to pass laws that are consistent with the provisions of ANILCA.

There clearly is some tension between the explicit reference to the Declaration of Rights, which provides in part that "all persons are equal and entitled to equal rights, opportunities, and protection under the law," and the proposed subsistence constitutional provision authorizing the legislature to establish subsistence preferences based on specified criteria. The first says that all persons have equal rights; the second says the legislature may grant preferences.

The Declaration of Rights, however, has never been interpreted literally as guaranteeing absolutely equal rights to all Alaskans. If it did, we could not limit the right to vote to those over 18 years of age while those 17 or younger cannot vote. We could not prohibit unqualified individuals from practicing medicine. In other words, the Declaration of Rights in the Alaska Constitution is not absolute.

The fact that there will be some tension between the two concepts accordingly does not mean that they are inconsistent and that the court will be required to determine which principle supersedes the other. Instead,

It is an undisputed maxim of constitutional construction that different provisions of the document shall be read so as to avoid conflict whenever possible. Thus, "[w]henver

possible, all provisions should be given effect, and each interpreted in light of the others, so as to reconcile them, if possible, and to render none nugatory."

Abrams v. State, 534 P.2d 91, 95 (Alaska 1975) (citation omitted). Stated another way, "[i]t is a well accepted principle of judicial construction that, whenever reasonably possible, every provision of the Constitution should be given meaning and effect, and related provisions should be harmonized." Park v. State, 528 P.2d 785, 786-87 (Alaska 1974) (citations omitted).

The court accordingly would have to examine any statute establishing a subsistence preference in light of both constitutional provisions. While the proposed subsistence amendment clearly would authorize subsistence preferences on one or more of the bases specified, see State v. Ostrosky, 667 P.2d 1184, 1189 (Alaska 1983), the legislature could not establish any preference it wanted just because it employed one of the permissible criteria. At a minimum, the court would still "require that the legislation be based on a legitimate public purpose and that the classification 'be reasonable, not arbitrary, and . . . rest upon some ground of difference having a fair and substantial relation to the object of the legislation . . .'" Ostrosky, 667 P.2d at 1193, quoting Isakson v. Rickey, 550 P.2d 359, 362 (Alaska 1976). In Isakson, the court called this the "rational basis test." Id.

If passed by the voters, then, the subsistence constitutional amendment in sec. 1 of this resolution will amend the Alaska Constitution to allow for subsistence preferences for hunting and fishing, as long as the preferences established are rationally related to the purpose for which they are established. This clearly would include the preference for rural residents invalidated in McDowell v. State, 785 P.2d 1 (Alaska 1989).

Section 2 of the joint resolution validates, ratifies, and reinstates those provisions of the state's subsistence laws held invalid as a result of the McDowell decision. Case law from this and other jurisdictions makes clear that an amendment will have retroactive effect if such an intent is clearly expressed, as here. See, e.g., Matthews v. Quinton, 362 P.2d 932, 938-39 (Alaska 1961). By ratifying and reinstating the provisions of the 1986 law that are consistent with federal law, the state would be back in the same position it was in before the McDowell decision, but with the certainty that the provisions of the state's subsistence laws are constitutional under the Alaska Constitution.

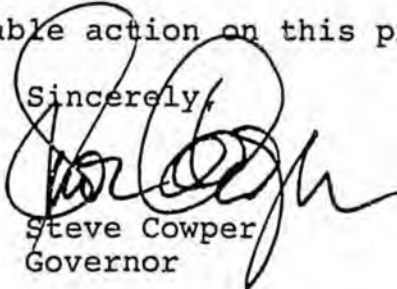
Section 3 of the joint resolution would add a new section to art. XV of the Alaska Constitution ("transitional measures"), providing that the subsistence amendment to art. VIII proposed in sec. 1 of the joint resolution becomes effective immediately upon certification of the election returns by the lieutenant governor, and not the normal 30 days after that certification as provided in art. XIII, sec. 1. The sooner the amendment becomes effective, the sooner the state will be able to take the management of fish and wildlife on federal land back from the federal government.

Section 4 of the joint resolution is, essentially, standard language directing the lieutenant governor to place the proposed constitutional amendments, including the statement of effect, before the voters in a single ballot proposition at the next general election.

The subsistence constitutional amendment that I am proposing would give constitutional authorization for a number of subsistence preferences. It would reestablish the rural subsistence preference from the 1986 law and, in doing so, retain state management of fish and wildlife throughout the state. Most importantly, it will enable the people of the state -- those most affected -- to make their will known through their vote at the general election this year.

I urge your prompt and favorable action on this proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper", written over the typed name below.

Steve Cowper
Governor

Introduced: 7/6/90
Referred: Rules

go650hr3

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 HOUSE JOINT RESOLUTION NO. 99

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SPECIAL SESSION

5 Proposing amendments to the Constitution
6 of the State of Alaska relating to
7 subsistence uses of fish and wildlife by
8 Alaska residents in order to retain
9 management of those resources by the
10 State of Alaska; and providing for an
11 effective date.

12 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

13 * Section 1. Article VIII, Constitution of the State of Alaska, is
14 amended by adding a new section to read:

15 SECTION 19. SUBSISTENCE USES OF FISH AND WILDLIFE. Consistent
16 with the sustained yield principle and the Declaration of Rights
17 (Article I of this Constitution), the legislature may grant a pref-
18 erence to and among Alaska residents in the taking of fish and wild-
19 life for subsistence uses on the basis of community or area charac-
20 teristics, need, customary and traditional use, direct dependence,
21 local residence, or the availability of alternative resources.

22 * Sec. 2. In addition to authorizing the legislature to enact laws
23 granting a preference for subsistence uses, the amendment proposed in sec.
24 1 of this resolution (1) validates, ratifies, and reinstates state subsis-
25 tence laws, including the definitions and subsistence preference for rural
26 residents in ch. 52, SLA 1986, that are consistent with federal laws
27 relating to subsistence uses, and (2) enables the state to retain manage-
28 ment of fish and wildlife on federal land.

29 * Sec. 3. Article XV, Constitution of the State of Alaska is amended by

1 adding a new section to read:

2 SECTION 29. EFFECTIVE DATE OF SUBSISTENCE AMENDMENT. Section 19
3 of Article VIII, regarding a subsistence preference, takes effect
4 immediately upon certification of the election returns by the
5 lieutenant governor.

6 * Sec. 4. The amendments proposed in secs. 1 and 3 of this resolution,
7 and the effect of the amendment proposed in sec. 1 of this resolution, as
8 set out in sec. 2 of this resolution, shall be placed before the voters of
9 the state as one ballot proposition at the next general election in con-
10 formity with art. XIII, sec. 1, Constitution of the State of Alaska, and
11 the election laws of the state.

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Representative Ben Grussendorf, Chair House Rules Committee

DATE: July 7, 1990

PLACE: House Fin Cmt.

SUBJECT OF MEETING:
HJR 99

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
<u>Hudson Epperly</u>	<u>Self</u>	<u>P.O. Box 34358 JUNO</u>	<u>99803</u>	<u>719-5659</u>	<u>/</u>	<input checked="" type="radio"/>	<input type="radio"/>	<u>HJR 99</u>
<u>Charles Edwards</u>	<u>TCAS</u>	<u>P.O. Box 211 Barrow</u>		<u>411</u> <u>DS2</u>		<input checked="" type="radio"/>	<input type="radio"/>	<u>''</u>
<u>DON MITCHELL</u>	<u>ADEN</u>	<u>411 W. 4th</u>				<input checked="" type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
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						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Subsistence
Sponsor: _____
Requestor: _____

Agency Affected: Dept. Fish/Game
BRU: Subsistence
Components: Subsistence

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	-0-	-0-	-0-			
TRAVEL	-0-	-0-	-0-			
CONTRACTUAL	-0-	-0-	-0-			
SUPPLIES	-0-	-0-	-0-			
EQUIPMENT	-0-	-0-	-0-			
LAND & STRUCTURES	-0-	-0-	-0-			
GRANTS, CLAIMS	-0-	-0-	-0-			
MISCELLANEOUS	-0-	-0-	-0-			
TOTAL OPERATING	-0-	-0-	-0-			

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-			
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-			

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: _____ Phone: _____

Division: _____ Date: _____

Approved by Commissioner: *Robert A. Quinn* Date: 7/6/90

Agency: _____

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

FISCAL NOTE

REQUEST:

Revision Date: 7/6/90
 Title: Constit. Amendment re:
Subsistence
 Sponsor: Rules/Governor
 Requestor: _____

Agency Affected: Office of Governor
 BRU: Division of Elections
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						


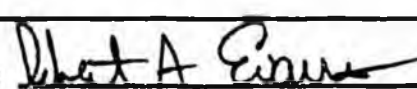
FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by:  Phone: _____
 Division: _____ Date: _____
 Approved by Commissioner:  Date: 7/6/90
 Agency: _____

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)