

SCR

3

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

No. 1
Bill Version: SR 3

Revision Date/Time (Note if correction) _____ Dept. Affect(S) Publish Date: 4-6-00
 Title Sovereignty of the State: Resources BRU _____
 Component _____
 Sponsor Senator Taylor _____
 Requester Senate Resources Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This resolution is anticipated to have no fiscal impact on state agencies.

Prepared by: Juli Lucky Phone 465-4907
 Division: Senate Resources Committee Date/Time 3/30/00 5:20 PM
 Approved by: _____ Date _____
 Agency: _____

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information, call the Governor's Legislative Office

Alaska State Legislature

Chairman,
Judiciary Committee

State Capitol
Juneau, Alaska 99801-1182
(907) 465-3873
Fax (907) 465-3922



50 Front Street
Suite 203
Ketchikan, Alaska 99901
(907) 225-8088
Fax (907) 225-0713

Senator Robin L. Taylor

SPONSOR STATEMENT SCR 3

Relating to the sovereignty of the State of Alaska and the sovereign right of the State of Alaska to manage the natural resources of Alaska.

SCR 3 is based on the Constitution of the United States, the Constitution of the State of Alaska, the Alaska Statehood Act and the Alaska Statehood Compact, as well as U.S. Supreme Court case law. It asks the governor and the legislature to uphold their oaths of office and defend our sovereign rights as a state and as a people.

When Congress passes the Alaska National Interest Lands Conservation Act (ANILCA), the provisions of the Alaska Statehood Compact, the Public Trust Doctrine and the Constitutions of the State of Alaska and the Constitution of the United States of America were violated.

SCR 3 recognizes the need of the legislature to pursue a judicial solution to the conflicts between ANILCA and our State and Federal Constitutions. The resolution further requests the Governor to urge the Secretary of Interior to put the unresolved dispute before the U.S. Supreme Court for a final resolution. Finally, the resolution requests the Interior Department to allow fish and game management to remain with the state until the U.S. Supreme Court has ruled on the Constitutionality of ANILCA.

District A:

Hyder • Ketchikan • Kupreanof • Meyers Chuck • Petersburg • Saxman • Sitka • Wrangell

ACCORDING TO:

- THE U.S. CONSTITUTION; AND
- THE U.S. SUPREME COURT;

THE POWER TO CONTROL FISHING IS AN ESSENTIAL ELEMENT OF STATE SOVEREIGNTY AND THE U.S. CONGRESS DOES NOT HAVE ANY SIMILAR POWER IN ALASKA'S NAVIGABLE WATERS.

"[T]he States entered the federal system with their sovereignty intact."

Blatchford v. Native Village of Noatak, 501 U.S. 775, 779 (1991)

"Under the federal system established by the Constitution, the States retain a 'residuary and inviolable sovereignty.'"

Alden et al. v. Maine, 98-436 (Decided June 23, 1999 - Citing *The Federalist* No. 39, p. 245)

"Being an instrument of limited and enumerated powers, it follows irresistibly that what is not conferred [to the Federal Government by the Constitution] is withheld, and belongs to State authorities."

New York v. United States, 505 U.S. 144, 156 (1992)

"[I]f a power is an attribute of state sovereignty . . . it is necessarily a power the Constitution has not conferred on Congress."

New York v. United States, 505 U.S. 144, 156 (1992) Referencing *United States v. Oregon*, 366 U.S. 643, 649 (1961); *Case v. Bowles*, 327 U.S. 92, 102 (1946); and *Oklahoma ex. Rel. Phillips v. Guy F. Atkinson Co.*, 313 U.S. 508, 534 (1941)

"Ownership of submerged lands - which carries with it the power to control navigation, fishing, and other public uses of water - is an essential attribute of [Alaska's] sovereignty."

United States v. Alaska, No. 84 Orig. (Decided June 19, 1997)

ACCORDING TO:

- THE UNITED STATES CONGRESS;
- THE U.S. SUPREME COURT; AND
- THE U.S. JUSTICE DEPARTMENT;

TITLE TO ALASKA'S NAVIGABLE WATERS AND SUBMERGED LANDS BELONGS TO THE STATE OF ALASKA

"[N]ew States are admitted to the Union on an "equal footing" with the original 13 colonies and succeed to the United States' title to the beds of navigable waters within their boundaries."

United States v. Alaska, No. 84, Orig. (Decided June 19, 1997)

"The State [of Alaska] received at statehood all navigable waterways . . ."

Judicial Admission by Elizabeth Ann Peterson - Attorney for U.S. Justice Department - during oral arguments re: *The Alaska Legislative Council, Alaska State Legislature, et al. v. Bruce Babbitt, Secretary of The Interior, et al.* held in the U.S. Court of Appeals for the District of Columbia on Thursday, April 8, 1999.

"In 1953 . . . Congress enacted the Submerged Lands Act . . . That Act 'confirmed' and 'established' State's title to and interest in 'lands beneath navigable waters within the boundaries of the respective States.'"

United States v. Alaska, No. 84, Orig. (Decided June 19, 1997)

"The Alaska Statehood Act expressly provides that the Submerged Lands Act applies to Alaska."

United States v. Alaska, No. 84, Orig. (Decided June 19, 1997)

"As a general matter, then, Alaska is entitled¹ under both the equal footing doctrine and the Submerged Lands Act to submerged lands beneath tidal and inland navigable waters, and under the Submerged Lands Act alone to submerged lands extending three miles seaward of its coastline."

United States v. Alaska, No. 84, Orig. (Decided June 19, 1997)

¹ *Black's Law Dictionary*, West Publishing Co., 1990 Edition: "Entitle. In its usual sense, to entitle is to give a right or legal title to."

"State sovereignty over submerged lands rests on the Submerged Lands Act of 1953."

United States v. Alaska, 442 U.S. 184, 188 (1975)

"Section 6(m) of the Alaska Statehood Act of July 7, 1958, provides that the Submerged Lands Act 'shall be applicable to the State of Alaska and the said State shall have the same rights as do existing States thereunder.'"

United States v. Alaska, 442 U.S. 184, 188 (Footnote 3) (1975)

"The Alaska Statehood Act expressly provides that the Submerged Lands Act applies to Alaska."

United States v. Alaska, No. 84, Orig. (Decided June 19, 1997)

THE SUBMERGED LANDS ACT OF 1953

"Sec. 1311 (a) Confirmation and establishment of title and ownership of lands and resources; management, administration, leasing, development, and use. It is determined and declared to be in the public interest that

(1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law be, and they are, subject to the respective States . . ."

Public Law 31, 83rd Congress, Second Session: 67 Stat. 29

**THE SUBMERGED LANDS ACT AMOUNTS TO A QUIT CLAIM DEED. HENCE,
ALL LEGAL AND JUDICIAL ROADS LEAD TO THE FOLLOWING:**

- Title to Alaska's Submerged Lands belongs to the State of Alaska.
- Alaska holds title to and owns all the natural resources in all her Submerged Lands.
- Alaska holds title to and owns all the natural resources in all her Navigable Waters.
- The right and power to manage all Alaska's Submerged Lands and Navigable Waters belongs to the State of Alaska and is subject to State law (not Federal law).
- The right and power to manage all natural resources (including fish) in Alaska's Navigable Waters belongs to the State of Alaska and is subject to State law (not Federal law).

ALASKA HOLDS SOVEREIGN TITLE TO AND MANAGEMENT AUTHORITY
OVER ALASKA'S SUBMERGED LANDS, NAVIGABLE WATERS AND THE
NATURAL RESOURCES ON AND WITHIN THOSE LANDS AND WATERS

In his September 2, 1999 press release announcing his call for the September 22, 1999 special session on "subsistence," Alaska Governor Tony Knowles was quoted as stating:

"It would be irresponsible to turn over our right and responsibility to manage Alaska's fish and game to the federal government, a right that was at the heart of Statehood which we are celebrating on the 40th anniversary this year."¹

However, as shown below, it was Governor Knowles himself who has tried the hardest to surrender that right to the federal government.

During his term of office, Governor Hickel brought a lawsuit in the Federal Courts titled *State of Alaska v. Babbitt*.² He challenged federal intervention and defended Alaska's sovereign "title" and right to manage its submerged lands, navigable waters and the resources therein according to State law.

The primary discussion in *Babbitt* concerned the definition of "public lands" in Section 102 of the Alaska National Interest Lands Conservation Act ("ANILCA").³ The federal government argued that the definition of "public lands" includes navigable waters within and adjacent to federal uplands, by virtue of the implied reservation of water rights doctrine.⁴ The State of Alaska objected, pointing out that "title" to Alaska's submerged lands and navigable waters had definitively been transferred to Alaska at statehood. Therefore, according to the Equal Footing Doctrine of the U.S. Constitution and the Submerged Lands Act of 1953,⁵ ownership of and management of those lands, waters and the natural resources therein are subject to state law - not federal law. The State also pointed out that ANILCA itself clearly provides

¹ September 2, 1999 Press Release from Office of the Governor.

² 72 F.3d 698 (9th Cir. 1995)

³ 16 U.S.C. 3102.

⁴ See discussion in *State of Alaska v. Babbitt*, 72 F.3d 698 (9th Cir. 1995).

⁵ Section 6(m) of the Alaska Statehood Act of July 7, 1958, provides that the Submerged Lands Act "shall be applicable to the State of Alaska and the said State shall have the same rights as do existing States thereunder." 72 Stat. 343, note following 48 U.S.C. c.2 Section 2 of the Act provides: "The State of Alaska shall consist of all the territory, together with the territorial waters appurtenant thereto, now included in the Territory of Alaska." 72 Stat. 339, note following 48 U.S.C. c.2.

that federal "public land" does not include "land validly . . . granted . . . to the State under any other provision of Federal Law."⁶

Once again, *Babbitt* was an "ownership" case defending Alaska's "title" to its sovereign lands and resources and Alaska's sovereign right to manage those lands and resources according to State law. It had nothing at all to do with who could hunt or fish on Alaska's submerged lands or in Alaska's navigable waters.

Shortly after taking office, Governor Knowles announced (in Fairbanks, at a luncheon meeting of the Alaska Outdoor Council) that he was dropping *Alaska v. Babbitt* because some Alaskans felt it was "anti-subsistence." Later, at its annual convention, he told the Alaska Federation of Natives he dismissed the case to fulfill a political campaign promise. Attorney General Bothello supported that admission when he testified before the State Senate that the case was not dismissed for any "legal" reason.

By dismissing *Babbitt* "with prejudice," Governor Knowles unilaterally, without legal contest, agreed to forfeit control over huge tracts of Alaska's sovereign submerged lands, thousands of miles of Alaska's sovereign navigable waters, hundreds of thousands of Alaska's sovereign lakes and all of Alaska's sovereign natural resources within those lands and waters (including but not limited to fish) to the federal government. In other words, by dismissing "with prejudice," the Governor "consented" to the federal government's blatant attempt to narrow Alaska's sovereign domain - an act the U.S. Supreme Court has recently held to be without legal basis.⁷

Governor Knowles knew exactly what he was doing. He, not the Legislature, has caused the dilemma that is currently facing the State. He decided not to contest the federal government's position that Alaska's sovereign submerged lands and navigable waters in and adjacent to federal uplands are "Federal Lands." It was Governor Knowles who ceded management authority to the federal government: - a position that is without legal authority and is a barefaced attempt to surrender Alaska's sovereign powers to the federal government.

Now, after personally attempting to remove all avenues of appeal to the courts, the Governor is telling the Legislature that they must initiate a change in the equality provisions of Alaska's Constitution or they will take the blame for a federal takeover of Alaska's resources. His recent call for a special session (like all others the

⁶ 16 U.S.C. 3102(j)(3).

⁷ *New York v. United States*, 505 U.S. 144, 182 (1992). "Where Congress exceeds its authority relative to the States . . . the departure from the constitutional plan cannot be ratified by the "consent" of state officials . . . The authority of Congress cannot be expanded by the "consent" of the governmental unit whose domain is thereby narrowed, whether that unit is the Executive Branch or the States."

Governor has initiated) is indeed a thinly veiled appeal for the Legislature to join him in his surrender of Alaska's sovereignty to the federal government

Interestingly, the last paragraph of the Governor's September 2nd press release provides:

"Every public opinion survey says Alaskans want us to act to preserve state sovereignty and the culture of rural residents," Knowles said. "As elected leaders, we must now have the courage and foresight to take the actions necessary to achieve these worthy goals."

Here, the Governor is right. Without a doubt, Alaskans do want a Legislature (and a Governor) with the courage and foresight to take the actions necessary to preserve (not surrender) state sovereignty. In fact, each Legislator (and the Governor) has sworn an oath to do just that. It is abundantly clear that Alaska's elected leaders cannot act to preserve Alaska's Sovereignty by surrendering to the federal government the State's ability to manage or allocate Alaska's sovereign lands, waters and wildlife resources.

What actions can the Legislature (and the Governor) take to preserve Alaska's Sovereignty?

Each member must examine the legal foundation supporting Alaska's Sovereign title and Sovereign management authority. Then, the Legislature can forge an action plan based on solid legal grounds.

Three recent U.S. Supreme Court cases: a 1975 Alaska case; a 1997 Alaska case; and a 1997 Idaho case, very clearly address the matter of state sovereignty over submerged lands.

In 1975, in *United States v. Alaska*, a case that addressed who owned the submerged lands in lower Cook Inlet, the U.S. Supreme Court ruled:

State sovereignty over submerged lands rests on the Submerged Lands Act of 1953 . . .⁹

Section 6(m) of the Alaska Statehood Act of July 7, 1958, provides that the Submerged Lands Act "shall be

⁹ *United States v. Alaska*, 422 U.S. 184, 187 (1975).

applicable to the State of Alaska and the said State shall have the same rights as do existing States thereunder."⁹

Moreover, in June of 1997, in the Alaska case of *United States of America, Plaintiff v. State of Alaska*,¹⁰ a case that addressed who owned certain submerged lands in Alaska, Justice O'Connor, delivering the opinion of the U.S. Supreme Court, wrote:

Ownership of submerged lands – which carries with it the power to control navigation, fishing, and other public uses of water – is an essential attribute of [state] sovereignty.

Justice O'Connor then very clearly explained how Alaska obtained sovereign title to and became owner of her submerged lands. In this 1997 Alaska case, the U.S. Supreme Court said:

Under the doctrine of *Lessee of Pollard v. Hagan* . . . new States are admitted into the Union on an "equal footing" with the original colonies and succeed to the United States' title to the beds of navigable waters within their boundaries.

The Alaska Statehood Act expressly provides that the [1953] Submerged Lands Act applies to Alaska.

That [Submerged Lands] Act "confirmed" and "established" States' title to and interest in "lands beneath navigable waters within the "boundaries of the respective states."

The [Submerged Lands] Act essentially confirms States' equal footing title to tidelands and submerged lands.

As a general matter, then, Alaska is entitled under both the equal footing doctrine and the Submerged Lands Act to submerged lands beneath tidal and inland navigable waters, and under the Submerged Lands Act alone to submerged lands three miles seaward of its coastline.

⁹ *United States v. Alaska*, 422 U.S. 184 (footnote 3) (1975).

¹⁰ *United States of America, Plaintiff v. State of Alaska*, No. 84 Orig. (1997).

"Entitled" is defined as: "In its usual sense, to entitle is to give a right or legal title to."¹¹

The Court said the only exception to this automatic transfer at statehood was if the United States had "explicitly retained" specific submerged lands prior to statehood.

Then, in the 1997 case of *Idaho v. Coeur d'Alene Tribe of Idaho*,¹² the U.S. Supreme Court said:

As we stressed . . . lands underlying navigable waters have historically been considered "sovereign lands." State ownership of them has been "considered an essential attribute of sovereignty."

In consequence of this rule, a State's title to these sovereign lands arises from the equal footing doctrine and is "conferred not by Congress but by the Constitution itself."

There is no doubt. The U.S. Supreme Court believes Alaska's submerged lands are State "sovereign lands" and Alaska's ownership of them is "considered an essential attribute of [State] sovereignty."

In the 1992 case of *New York v. United States*,¹³ the U.S. Supreme Court ruled:

[I]f a power is an attribute of state sovereignty . . . it is necessarily a power the Constitution has not conferred on Congress.

The constitutional authority of Congress cannot be expanded by the "consent" of the governmental unit whose domain is thereby narrowed, whether that unit is the Executive Branch or the States.

¹¹ Black's Law Dictionary, (1990 Ed.).

¹² U.S. Supreme Court No. 94-1474 (decided June 23, 1997).

¹³ *New York v. United States*, 505 U.S. 144, 156 (1992).

Clearly, according to very recent, clear and consistent rulings of the U.S. Supreme Court: State ownership of submerged lands is an "essential attribute" of sovereignty; the power to control fishing in the water covering a state's submerged lands is an "essential attribute" of state sovereignty; and, since the power to control fishing in those waters is an "essential attribute" of state sovereignty, it is necessarily a power the Constitution has not conferred on Congress.

But, that's not all.

Notice that both Alaska cases refer to the Submerged Lands Act of 1953. Most Alaskans have never read the Act and are unaware of how directly on point it is to the current conflict. The Act was passed in 1953 by Congress to once and for all clarify which sovereign (state or federal) holds title to, ownership of and management authority over submerged lands, navigable waters and the natural resources (including fish) within those lands and waters. The Submerged Lands Act is very simple and very clear. Anyone can understand it. The portion pertinent to the matter at hand provides:

Sec. 1311(a)(1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law be, and they are subject to the respective States . . .

Clearly, Congress intended the Submerged Lands Act to be a simple quitclaim deed. Then Congress provided, in the Alaska Statehood Act, that the Submerged Lands Act would apply to Alaska - even though Alaska became a State long after the Act was passed. Therefore, since the moment of statehood, Alaska's submerged lands, navigable waters and the natural resources within such lands and waters have belonged to Alaska and their management has been subject to Alaska law. Hence, according to the clear and consistent rulings of the U.S. Supreme Court in Alaska cases, the federal government has no ownership of or title to Alaska's submerged lands, navigable waters or the resources in those lands and waters and has no management power or authority over any of those lands, waters and natural resources (including fish). Once again, the power to control fishing in Alaska's navigable waters is "necessarily a power the Constitution has not conferred on Congress."¹⁴

¹⁴ *New York v. United States*, 505 U.S. 144, 156 (1992).

Now, it is abundantly clear why the federal government is doing everything it can to frighten and coerce Alaskans into surrendering their sovereignty and equality and to keep the merits of this issue from being argued in the courts! They know Alaska would win!

The foregoing white paper was researched and prepared by Ralph Seekins, Chairman and Lynn Levensgood, Executive Director of:

ALASKA WILDLIFE CONSERVATION ASSOCIATION

1625 Old Steese Highway

Fairbanks, Alaska 99701

(907) 456-1992