

ALASKA LEGISLATURE

1579

HOUSE and SENATE FINANCE COMMITTEE FILES, 1995-1996

SJR

31

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT OF
SFC 3/13/96

DATE: 2/13/96

DATE TURNED INTO OFFICE: _____

The Finance Committee considered **SENATE JOINT RESOLUTION NO. 31**

Proposing an amendment to the Constitution of the State of Alaska relating to voter ratification of legislative approval of amendments of the Alaska Statehood Act affecting an interest of the State of Alaska under that Act.

and recommends:

- be replaced with _____ CS SJR 31 (FIN)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
 same title
 new title
House Bill:
 same title
 technical change
 new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	VM
<i>Steve Kie</i>	✓	<i>Paul H. Huggins</i>	✓		
<i>Roll E. Jell</i>	✓	<i>Charles J. Jolley</i>	✓		
<i>Bob Sharp</i>	✓				
Co-Chair: <i>D. Dyer</i>	✓	Co-Chair:			
Co-Chair: <i>Rick Halford</i>	✓	Co-Chair:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

Gov/Elections	2/7/96		\$2.2
office of Governor	1/26/96	φ	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

No. 1

Bill Version: CS STR 31 (Jud)

(S) Publish Date: 2/13/96

**STATE OF ALASKA
1996 LEGISLATIVE SESSION**

Revision Date: 2/7/96 Dept. Affected: Office of the Governor
 Title: Constitutional Amendment RE: Alaska BRU: Elective Operations
 Statehood Act _____ Component: General and Primary Elections
 Sponsor: Senator Pearce
 Requester: Senator Taylor COMPONENT SERIAL NO. 22

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 100	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	2.2					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	2.2	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	2.2					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	2.2	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

FULL-TIME	0					
PART-TIME	0					
TEMPORARY	0					

ANALYSIS: (Attach a separate page if necessary)

This figure includes the cost of providing information about this issue in the Official Election Pamphlet as required by AS 15.58, and the programming costs for counting votes cast on the measure. However, only four measures can be printed on a single ballot card. If this measure requires printing an additional ballot card, the costs will increase by \$53.4.

Prepared by: Dana LaTour
 Division: Division of Elections

Phone: 465-5347
 Date: 2/7/96

Approved by
 Commissioner: Lt. Governor Fran Ulmer
 Agency: Office of the Lt. Governor

Date: 2/7/96

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FISCAL NOTE

). 2

Bill Version: CS SJR 31(Jud)

(S) Publish Date: 2/13/96

**STATE OF ALASKA
1996 LEGISLATIVE SESSION**

Revision Date: _____ Dept. Affected: Office of the Governor
 Title: "Proposing an amendment to the Constitution ... BRU: Executive Operations
voter ratification of legislative amendments of the AK. Statehood Act... Component: Executive Office
 Sponsor: Senator Pearce
 Requester: _____ COMPONENT SERIAL NO. 6

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 100	FY 01	FY 02
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Michael A. Nizich, Director *Mau* Phone: 465-3876
 Division: Administrative Services Date: 1/26/96

Approved by Commissioner: Jim Ayers, Chief of Staff *Jim Ayers* Date: _____
 Agency: Office of the Governor

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*moved by Sen. Sharp
adopted 3/13/94*

Chenoweth

9-LS1401M

CS FOR SENATE JOINT RESOLUTION NO. 31(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR PEARCE

A RESOLUTION

1 Proposing an amendment to the Constitution of the State of Alaska relating to
2 voter approval of amendments of the Alaska Statehood Act affecting an interest
3 of the State of Alaska under that Act.

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

5 * Section 1. Article XII, Constitution of the State of Alaska, is amended by adding a new
6 section to read:

7 SECTION 14. VOTER APPROVAL OF FEDERAL AMENDMENT TO
8 STATEHOOD ACT AFFECTING AN INTEREST OF THE STATE UNDER THAT
9 ACT. A federal statute or proposed federal statute that affects an interest of this State
10 under the Act admitting Alaska to the Union is ineffective as against the State interest
11 unless approved by the people of the State. The legislature may, by a resolution
12 passed by a two-thirds vote of each house, place the question of approval of the
13 federal statute on the ballot for the next general election unless in the resolution
14 placing the question of approval, the legislature requires the question to be placed
15 before the voters at a special election. The approval of the federal statute by the
16 people of the State is not effective unless the federal statute described in the resolution

1 is ratified by a majority of the qualified voters of the State who vote on the question.
2 Unless a summary of the question is provided in the resolution passed by the
3 legislature, the lieutenant governor shall prepare an impartial summary of the question.
4 The lieutenant governor shall present the question to the voters so that a "yes" vote on
5 the question is a vote to approve the federal statute.

6 * Sec. 2. The amendment proposed by this resolution shall be placed before the voters of
7 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the
8 State of Alaska, and the election laws of the state.

Alaska State Legislature



During Interim:

716 West 4th Avenue, Suite 500
Anchorage, Alaska 99501-2133
(907) 258-8185
Fax (907) 258-0226

During Session:

State Capitol
Juneau, Alaska 99801-1182
(907) 465-4993
Fax (907) 465-3872

Drue Pearce
President of the Senate

Memorandum

To: Senator Rick Halford, Co-Chair
Senate Finance Committee

From: Senator Drue Pearce

Date: 7 February, 1996

Re: Bill Hearing Request

I respectfully request that you schedule Senate Joint Resolution 31. This resolution would amend the Constitution, providing that a law amending the Alaska Statehood Compact may not take effect until approval by majority of votes cast at next election.

Your consideration of this request is appreciated.

STR 31
2/27/96

Article 4. The Statehood Act.

Section

110. Effect of amendments to Statehood Act

Sec. 01.10.110. Effect of amendments to Statehood Act. No amendment (enacted after September 16, 1976) which affects an interest of the state under the Alaska Statehood Act (72 Stat. 339) is effective as to the state unless approved by law enacted by the legislature or the people of the state. (§ 1 ch 192 SLA 1976)

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Alaska Statehood Act

Public Law 85-508
85th Congress, H. R. 7999
July 7, 1958
(72 Stat. 339)
As Amended

Cross references. — For sections implementing this act, see Act of December 2, 1980, P.L. 96-487, Title IX, 94 Stat. 2430-2448, set out at the end of this pamphlet.
Editor's notes. — The individual subject-matter headings, shown in brackets, were added by the publisher, based on marginal notations in the original.
The provisions of the Alaska Statehood Act may be found in the notes preceding 48 U.S.C. 21.

NOTES TO DECISIONS

Statehood Act fails to deal with native use of land. — The legislative history of the Statehood Act fails to clarify congressional intent with respect to native use and occupancy of Alaska lands. In fact, there is very little reference to native land claims in the legislative history on the Statehood Act. This is so because Congress was principally concerned with achieving statehood for Alaska, not with settlement of native land claims. Given the difficulty of winning congressional approval for Alaska statehood, Congress undertook to bypass, rather than to resolve, the complex and difficult questions arising out of native claims. *United States v. Atlantic Richfield Co.*, 435 F. Supp. 1009 (D. Alas. 1977), *aff'd*, 612 F.2d 1132 (9th Cir.), *cert. denied*, 449 U.S. 888, 101 S. Ct. 244, 66 L. Ed. 2d 113 (1980).

settlement act. — The Alaska Statehood Act is important insofar as it is a significant part of the background of the Alaska Native Claims Settlement Act and contributes to an understanding of legislative intent in the settlement act. *United States v. Atlantic Richfield Co.*, 435 F. Supp. 1009 (D. Alas. 1977), *aff'd*, 612 F.2d 1132 (9th Cir.), *cert. denied*, 449 U.S. 888, 101 S. Ct. 244, 66 L. Ed. 2d 113 (1980).
Applied in *Edwardsen v. Morton*, 369 F. Supp. 1359 (D.D.C. 1973).
Cited in *File v. State*, Sup. Ct. Op. No. 1827 (File Nos. 3482, 3537), 593 P.2d 268 (1979); *DeBoer v. United States*, 470 F. Supp. 1137 (D. Alas. 1979); *United States v. Atlantic Richfield Co.*, 612 F.2d 1132 (9th Cir. 1980); *Marrone v. State*, Ct. App. Op. No. 156 (File No. 5368), P.2d (1982).

But is part of background of

Collateral references. — 72 Am. Jur. 2d, States, § 72.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, subject to the provisions of this Act, and upon issuance of the proclamation required by section 8 (c) of this Act, the State of Alaska is hereby declared to be

a State of the United States of America, is declared admitted into the Union on an equal footing with the other States in all respects whatever, and the constitution formed pursuant to the provisions of the Act of the Territorial Legislature of Alaska entitled, "An Act to provide for the holding of a constitutional convention to prepare a constitution for the State of Alaska; to submit the constitution to the people for adoption or rejection; to prepare for the admission of Alaska as a State; to make an appropriation; and setting an effective date", approved March 19, 1955 (Chapter 46, Session Laws of Alaska, 1955), and adopted by a vote of the people of Alaska, 1955), and adopted by a vote of the people of Alaska in the election held on April 24, 1956, is hereby found to be republican in form and in conformity with the Constitution of the United States and the principles of the Declaration of Independence, and is hereby accepted, ratified, and confirmed.

(TERRITORY)

Sec. 2. The State of Alaska shall consist of all the territory, together with the territorial waters appurtenant thereon, now included in the Territory of Alaska.

NOTES TO DECISIONS

Evidence was insufficient to establish that Cook Inlet is an historic bay. *United States v. Alaska*, 422 U.S. 184, 95 S. Ct. 2240, 45 L. Ed. 2d 109, rehearing denied, 423 U.S. 885, 96 S. Ct. 159, 46 L. Ed. 2d 116 (1975).

Thus, the United States, as against

the state, has paramount rights to the subsurface lands of the lower, or seaward, portion of the inlet. *United States v. Alaska*, 422 U.S. 184, 95 S. Ct. 2240, 45 L. Ed. 2d 109, rehearing denied, 423 U.S. 885, 96 S. Ct. 159, 46 L. Ed. 2d 116 (1975).

(CONSTITUTION)

Sec. 3. The constitution of the State of Alaska shall always be republican in form and shall not be repugnant to the Constitution of the United State and the principles of the Declaration of Independence.

NOTES TO DECISIONS

Quoted in *Delahay v. Stata*, Sup. Ct. Op. No. 648 (File No. 1252), 476 P.2d 908 (1970).

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L. Ed. 2d

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[COMPACT WITH UNITED STATES]

SEC. 4. As a compact with the United States said State and its people do agree and declare that they forever disclaim all right and title to any lands or other property not granted or confirmed to the State or its political subdivisions by or under the authority of this Act, the right or title to which is held by the United States or is subject to disposition by the United States, and to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts (hereinafter called natives) or is held by the United States in trust for said natives: that all such lands or other property (including fishing rights), the right or title to which may be held by said natives or is held by the United States in trust for said natives, shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation: *Provided*, That nothing contained in this Act shall recognize, deny, enlarge, impair, or otherwise affect any claim against the United States, and any such claim shall be governed by the laws of the United States applicable thereto; and nothing in this Act is intended or shall be construed as a finding, interpretation, or construction by the Congress that any law applicable thereto authorizes, establishes, recognizes, or confirms the validity or invalidity of any such claim, and the determination of the applicability or effect of any law to any such claim shall be unaffected by anything in this Act: *And provided further*, That no taxes shall be imposed by said State upon any lands or other property now owned or hereafter acquired by the United States or which, as hereinabove set forth, may belong to said natives, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation. (Amended June 25 1959, P.L. 86-70 § 2(a), 73 Stat. 141)

Opinions of attorney general. — Congress only intended the disclaimer clause to leave unimpaired possible future rights of the Alaskan natives to compensation from the United States. 1969 Op. Att'y Gen., No. 6.

This section does not constitute authority in Congress to legislate in derogation of the Statehood Act. 1969 Op. Att'y Gen., No. 6.

The "plenary" Indian power of the United States does not recognize in Congress the authority to abrogate the Statehood Act. 1969 Op. Att'y Gen., No. 6.

As to whether the United States may compensate Alaskan natives by taking a royalty out of lands already granted in fee to the State of Alaska, see 1969 Op. Att'y Gen., No. 6 (Supp.).

NOTES TO DECISIONS

This section has been substantially incorporated into the Alaska Constitution as art. XII, § 12. *Aguilar v. Kleppe*, 424 F. Supp. 433 (D. Alas. 1976).

Eleventh amendment bar not waived. — This section and Alaska Const., art. XII, § 12, do not expressly waive the 11th amendment bar, and while Alaska disclaimed any interest in property rights held by Alaska Natives or the federal government, it is not overwhelmingly implied that the state consented to suits involving conflicting claims to land previously held by the federal government but later patented to the state. *Aguilar v. Kleppe*, 424 F. Supp. 433 (D. Alas. 1976).

Nothing in this act indicates that the state consented to be sued in the federal courts over such disagreements. *Aguilar v. Kleppe*, 424 F. Supp. 433 (D. Alas. 1976).

Immunity from state or local taxation of land in native townsite or allotment. — The beneficial interest of the natives in the land within a restricted native townsite or a native allotment cannot be taxed by the state or local government. *People of S. Naknek v. Bristol Bay Borough*, 466 F. Supp. 870 (D. Alas. 1979).

The United States has preempted the power of an Alaskan borough to tax the land, homes or other permanent improvements on Alaska Native allotments or restricted lots in native townsites. *People of S. Naknek v. Bristol Bay Borough*, 466

F. Supp. 870 (D. Alas. 1979).

When immunity on allotments arose. — The immunity on an allotment would arise at the time of the first use and occupancy that is the basis of the native's allotment claim. *People of S. Naknek v. Bristol Bay Borough*, 466 F. Supp. 870 (D. Alas. 1979).

Tax immunity on the land and improvements on native allotments and native townsite lots commenced operation when the native residents of the area petitioned for native townsite status. *People of S. Naknek v. Bristol Bay Borough*, 466 F. Supp. 870 (D. Alas. 1979).

But personal property may be taxed. — The "absolute jurisdiction" language in this section has been interpreted not to mean "exclusive jurisdiction," and therefore is not a prohibition on state and local taxation of personal property in a native townsite or on an allotment. *People of S. Naknek v. Bristol Bay Borough*, 466 F. Supp. 870 (D. Alas. 1979).

A borough is not prohibited from taxing personal property associated with either an Alaska Native allotment or an Alaska Native townsite. *People of S. Naknek v. Bristol Bay Borough*, 466 F. Supp. 870 (D. Alas. 1979).

Applied in *Rowe v. United States*, 464 F. Supp. 1060 (D. Alas. 1979), *aff'd in part*, 633 F.2d 799 (9th Cir. 1980), *cert. denied*, 451 U.S. 970, 101 S. Ct. 2047, 68 L. Ed. 2d 349 (1981).

[TITLE TO PROPERTY]

Sec. 5. The State of Alaska and its political subdivisions, respectively, shall have and retain title to all property, real and personal, title to which is in the Territory of Alaska or any of the subdivisions. Except as provided in section 6 hereof, the United States shall retain title to all property, real and personal, to which it has title, including public lands.

(SELECTION FROM PUBLIC LANDS; FISH AND WILDLIFE
 RESOURCES: PUBLIC SCHOOL SUPPORT; MINERAL
 PERMITS, LICENSES, OR CONTRACTS; MINERAL
 LAND GRANTS; SCHOOLS AND COLLEGES;
 CONFIRMATION OF GRANTS; INTERNAL
 IMPROVEMENTS; SUBMERGED LANDS)

SEC. 6. (a) For the purposes of furthering the development of and expansion of communities, the State of Alaska is hereby granted and shall be entitled to select, within thirty-five years after the date of the admission of the State of Alaska into the Union, from lands within national forests in Alaska which are vacant and unappropriated at the time of their selection not to exceed four hundred thousand acres of land, and from the other public lands of the United States in Alaska which are vacant, unappropriated, and unreserved at the time of their selection not to exceed another four hundred thousand acres of land, all of which shall be adjacent to established communities or suitable for prospective community centers and recreational areas. Such lands shall be selected by the State of Alaska with the approval of the Secretary of Agriculture as to national forest lands and with the approval of the Secretary of the Interior as to other public lands: *Provided*, That nothing herein contained shall affect any valid existing claim, location, or entry under the laws of the United States, whether for homestead, mineral, right-of-way, or other purpose whatsoever, or shall affect the rights of any such owner, claimant, locator, or entryman to the full use and enjoyment of the land so occupied: *Provided further*, That for the purposes of this section the term "public lands of the United States in Alaska which are vacant, unappropriated, and unreserved" shall include, without limiting the use thereof, the retained or reserved interest of the United States in lands which have been disposed of with a reservation to the United States of all minerals or any specified mineral or minerals.

(b) The State of Alaska, in addition to any other grants made in this section, is hereby granted and shall be entitled to select, within thirty-five years after the admission of Alaska into the Union, not to exceed one hundred and two million five hundred and fifty thousand acres from the public lands of the United States in Alaska which are vacant, unappropriated, and unreserved at the time of their selection: *Provided*, That nothing herein contained shall affect any valid existing claim, location, or entry under the laws of the United States, whether for homestead, mineral, right-of-way, or other purpose whatsoever, or shall affect the rights of any such owner, claimant, locator, or entryman to the full use and enjoyment of the lands so occupied: *And provided further*, That no selection hereunder shall be made in the area north and west of the line described in section 10 without approval of the President or his designated representative.

(c) Block 32, and the structures and improvements thereon, in the city of Juneau are granted to the State of Alaska for any or all of the

following purposes or a combination thereof: A residence for the Governor, a State museum, or park and recreational use.

(d) Block 19, and the structures and improvements thereon, and the interests of the United States in blocks C and 7, and the structures and improvements thereon, in the city of Juneau, are hereby granted to the State of Alaska.

(e) All real and personal property of the United States situated in the Territory of Alaska which is specifically used for the sole purpose of conservation and protection of the fisheries and wildlife of Alaska, under the provisions of the Alaska game law of July 1, 1943 (57 Stat. 301; 48 U.S.C., secs. 192-211), as amended, and under the provisions of the Alaska commercial fisheries laws of June 26, 1906 (34 Stat. 478; 48 U.S.C., secs. 230-239 and 241-242), and June 6, 1924 (43 Stat. 465; 48 U.S.C., secs. 221-228), as supplemented and amended, shall be transferred and conveyed to the State of Alaska by the appropriate Federal agency: *Provided*, That the administration and management of the fish and wildlife resources of Alaska shall be retained by the Federal Government under existing laws until the first day of the first calendar year following the expiration of ninety calendar days after the Secretary of the Interior certifies to the Congress that the Alaska State Legislature has made adequate provision for the administration, management, and conservation of said resources in the broad national interest: *Provided*, That such transfer shall not include lands withdrawn or otherwise set apart as refuges or reservations for the protection of wildlife nor facilities utilized in connection therewith, or in connection with general research activities relating to fisheries or wildlife. Sums of money that are available for apportionment or which the Secretary of the Interior shall have apportioned, as of the date the State of Alaska shall be deemed to be admitted into the Union, for wildlife restoration in the Territory of Alaska, pursuant to section (8) (a) of the Act of September 2, 1937, as amended (16 U.S.C., sec. 669g-1), and for fish restoration and management in the Territory of Alaska, pursuant to section 12 of the Act of August 9, 1950 (16 U.S.C., sec. 777k), shall continue to be available for the period, and under the terms and conditions in effect at the time, the apportionments are made. Commencing with the year during which Alaska is admitted into the Union, the Secretary of the Treasury, at the close of each fiscal year, shall pay to the State of Alaska 70 per centum of the net proceeds, as determined by the Secretary of the Interior, derived during such fiscal year from all sales of sealskins or sea-otter skins made in accordance with the provisions of the Fur Seal Act of 1966. In arriving at the net proceeds, there shall be deducted from the receipts from all sales all costs to the United States in carrying out the provisions of the Fur Seal Act of 1966, including, but not limited to, the costs of handling and dressing the skins, the costs of making the sales, and all expenses incurred in the administration of the Pribilof Islands, and the

payments made to any municipal corporation established pursuant to section 206 of the Fur Seal Act of 1966 and to the civil service retirement and disability fund pursuant to section 208 of the Fur Seal Act of 1966. In administering the Pribilof Islands fund established by section 407 of the Fur Seal Act of 1966, the Secretary shall consult with the State of Alaska annually. Nothing in this Act shall be construed as affecting the rights of the United States under the provisions of the Fur Seal Act of 1966 and the Northern Pacific Halibut Act of 1937 (16 U.S.C. 772—772i).

(f) Five per centum of the proceeds of sale of public lands lying within said State which shall be sold by the United States subsequent to the admission of said State into the Union, after deducting all the expenses incident to such sales, shall be paid to said State to be used for the support of the public schools within said State.

(g) Except as provided in subsection (a), all lands granted in quantity to and authorized to be selected by the State of Alaska by this Act shall be selected in such manner as the laws of the State may provide, and in conformity with such regulations as the Secretary of the Interior may prescribe. All selections shall be made in reasonably compact tracts, taking into account the situation and potential uses of the lands involved, and each tract selected shall contain at least five thousand seven hundred and sixty acres unless isolated from other tracts open to selection or, in the case of selections under subsection (a) of this section, one hundred and sixty acres. The authority to make selections shall never be alienated or bargained away, in whole or in part, by the State. Upon the revocation of any order of withdrawal in Alaska, the order of revocation shall provide for a period of not less than ninety days before the date on which it otherwise becomes effective, if subsequent to the admission of Alaska into the Union, during which period the State of Alaska shall have a preferred right of selection, subject to the requirements of this Act, except as against prior existing valid rights or as against equitable claims subject to allowance and confirmation. Such preferred right of selection shall have precedence over the preferred right of application created by section 4 of the Act of September 27, 1944 (58 Stat. 748; 43 U.S.C., sec. 282), as now or hereafter amended, but not over other preference rights now conferred by law. Where any lands desired by the State are unsurveyed at the time of their selection, the Secretary of the Interior shall survey the exterior boundaries of the area requested without any interior subdivision thereof and shall issue a patent for such selected area in terms of the exterior boundary survey; where any lands desired by the State are surveyed at the time of their selection, the boundaries of the area requested shall conform to the public land subdivisions established by the approval of the survey. All lands duly selected by the State of Alaska pursuant to this Act shall be patented to the State by the Secretary of the Interior. Following the selection of lands by the State and the tentative approval of such

selection by the Secretary of the Interior or his designee, but prior to the issuance of final patent, the State is hereby authorized to execute conditional leases and to make conditional sales of such selected lands. As used in this subsection, the words "equitable claims subject to allowance and confirmation" include, without limitation, claims of holders of permits issued by the Department of Agriculture on lands eliminated from national forests, whose permits have been terminated only because of such elimination and who own valuable improvements on such lands. As to all selections made by the State after January 1, 1979, pursuant to section 6(b) of this Act, the Secretary of the Interior, in his discretion, may waive the minimum tract selection size where he determines that such a reduced selection size would be in the national interest and would result in a better land ownership pattern.

(h) Any lease, permit, license, or contract issued under the Mineral Leasing Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181 and the following), as amended, or under the Alaska Coal Leasing Act of October 20, 1914 (38 Stat. 741; 30 U.S.C. 432 and the following), as amended, shall have the effect of withdrawing the lands subject thereto from selection by the State of Alaska under this Act, unless an application to select such lands is filed with the Secretary of the Interior within a period of ten years after the date of the admission of Alaska into the Union. Such selections shall be made only from lands that are otherwise open to selection under this Act. When all of the lands subject to a lease, permit, license, or contract are selected, the patent for the lands so selected shall vest in the State of Alaska all the right, title, and interest of the United States in and to that lease, permit, license, or contract that remains outstanding on the effective date of the patent, including the right to all the rentals, royalties and other payments accruing after that date under that lease, permit, license, or contract, and including any authority that may have been retained by the United States to modify the terms and conditions of that lease, permit, license, or contract: *Provided*, That nothing herein contained shall affect the continued validity of any such lease, permit, license, or contract or any rights arising thereunder. Where only a portion of the lands subject to a lease, permit, license, or contract are selected, there shall be reserved to the United States the mineral or minerals subject to that lease, permit, license, or contract, together with such further rights as may be necessary to the full and complete enjoyment of all rights, privileges, and benefits under or with respect to that lease, permit, license, or contract; upon the termination of the lease, permit, license, or contract, title to the minerals so reserved to the United States shall pass to the State of Alaska.

(i) All grants made or confirmed under this Act shall include mineral deposits. The grants of mineral lands to the State of Alaska under subsections (a) and (b) of this section are made upon the express conditions that all sales, grants, deeds, or patents for any of the mineral

lands so granted shall be subject to and contain a reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the same. Mineral deposits in such lands shall be subject to lease by the State as the State legislature may direct: *Provided*, That any lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States District Court for the District of Alaska.

(j) The schools and colleges provided for in this Act shall forever remain under the exclusive control of the State, or its governmental subdivisions, and no part of the proceeds arising from the sale or disposal of any lands granted herein for educational purposes shall be used for the support of an sectarian or denominational school, college, or university.

(k) Grants previously made to the Territory of Alaska are hereby confirmed and transferred to the State of Alaska upon its admission. Effective upon the admission of the State of Alaska into the Union, section 1 of the Act of March 4, 1915 (38 Stat. 1214; 48 U. S. C., sec. 353), as amended, and the last sentence of section 35 of the Act of February 25, 1920 (41 Stat. 450; 30 U. S. C., sec. 191), as amended, are repealed and all lands therein reserved under the provisions of section 1 as of the date of this Act shall, upon the admission of said State into the Union, be granted to said State for the purposes for which they were reserved; but such repeal shall not affect any outstanding lease, permit, license, or contract issued under said section 1, as amended, or any rights or powers with respect to such lease, permit, license, or contract, and shall not affect the disposition of the proceeds or income derived prior to such repeal from any lands reserved under said section 1, as amended, or derived thereafter from any disposition of the reserved lands or an interest therein made prior to such repeal.

(l) The grants provided for in this Act shall be in lieu of the grant of land for purposes of internal improvements made to new States by section 8 of the Act of September 4, 1841 (5 Stat. 455), and sections 2378 and 2379 of the Revised Statutes (43 U. S. C., sec. 857), and in lieu of the swampland grant made by the Act of September 28, 1850 (9 Stat. 520), and section 2479 of the Revised Statutes (43 U. S. C., sec. 982), and in lieu of the grant of thirty thousand acres for each Senator and Representative in Congress made by the Act of July 2, 1862, as amended (12 Stat. 503; 7 U. S. C., secs. 301-308), which grants are hereby declared not to extend to the State of Alaska.

(m) The Submerged Lands Act of 1953 (Public Law 31, Eighty-third Congress, first session; 67 Stat. 29) shall be applicable to the State of Alaska and the said State shall have the same rights as do existing States thereunder. (Amended June 25 1959, P.L. 86-70 § 2(b), 73 Stat. 141; August 18 1959, P.L. 86-173, 73 Stat. 395; September 14 1960, P.L.

86-786 § 4, 74 Stat. 1025; October 8 1963, P.L. 38-105, 77 Stat. 223; March 25 1964, P.L. 38-289, 78 Stat. 169; November 2 1966, P.L. 89-702, Title IV, § 408(b), 80 Stat. 1098; December 2 1980, P.L. 96-487, Title IX, § 906(a), (f)(3), 94 Stat. 2437, 2440)

Cross references. — See note to AS 38.05.180; for state law applicable to rights in and to mineral deposits on state lands which on January 3, 1959, were subject to location under the mining laws of the United States, see 38.05.185; for recognition of mining locations made on state lands, including shorelands, tidelands or submerged lands, or state selected lands, see 38.05.275.

Effect of amendments. — Act of December 2, 1980, P.L. 96-487, Title IX, § 906(a), 94 Stat. 2437, in subsections (a) and (b) substituted "thirty-five years" for "twenty-five years."

Opinions of attorney general. — The grants by the federal government of school and university lands and mental health lands were confirmed and transferred to the State of Alaska upon its admission to the Union under this subsection, with the express proviso that they be used for the purposes for which they were reserved. 1964 Op. Att'y Gen., No. 7.

Use of the words "is hereby granted" signifies a present grant of lands to be thereafter identified by selection. By virtue of that grant the state became at once vested with the right of property in selected lands. It cannot be thereafter divested of such right. The United States Supreme Court has so held. 1969 Op. Att'y Gen., No. 6 (Supp.).

As to whether the United States may compensate Alaskan natives by taking a royalty out of lands already granted in fee to the State of Alaska, see 1969 Op. Att'y Gen., No. 6 (Supp.).

Since the Alaska Statehood Act did not authorize execution by the state of third-party leases and sales on lands not tentatively approved, those lands which are merely selected by the state and which

thus remain under administration by the Bureau of Land Management appear to be subject to § 2 of P.L. 94-204, 39 Stat. 1146, Jan. 2, 1976, as a federal, and not state, obligation. June 14, 1979, Op. Att'y Gen. See also June 28, 1979, Op. Att'y Gen. and July 3, 1979, Op. Att'y Gen.

The knowing relinquishment of an existing state selection so that another party might make a claim to the land would appear to be the "alienation" of the state's right to select land which it wishes to own. March 26, 1982, Op. Att'y Gen.

When the state claims title under subsection (m) to the bed of a river it asserts to be navigable, it can assert management authority over the riverbed prior to a judicial determination of navigability. June 10, 1982, Op. Att'y Gen.

Lands underlying navigable waters must be managed in accordance with the common-law public trust doctrine so that paramount rights of the public to use the river for navigation and recreation are not substantially impaired. June 10, 1982, Op. Att'y Gen.

Where the state has selected and received tentative approval to a riverbed under subsections (a) or (b) of this Act, the leasing requirement of subsection (i) for mineral lands applies unless and until the state successfully adjudicates navigability to establish state ownership of the riverbed under subsection (m). June 10, 1982, Op. Att'y Gen.

The production license requirements of AS 38.05.207 apply to riverbeds that the state claims to own under subsection (m) of this Act as well as to lands tentatively approved to the state under subsections (a) and (b) of this Act. June 10, 1982, Op. Att'y Gen.

NOTES TO DECISIONS

- I. General Consideration.
- IV. Construction With Alaska Native Claims Settlement Act.
- V. Lands Available For Selection.
- VI. Fish and Wildlife Resources.
- VII. Mineral Land Grants.
- VIII. Submerged Lands.

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I. GENERAL CONSIDERATION.

The Alaska Statehood Act only created in the state the same authority as that given to other states. *State v. Andrus*, 429 F. Supp. 958 (D. Alas. 1977), *aff'd* on other grounds, 591 F.2d 537 (9th Cir. 1979).

The purpose of land grants under the Alaska Statehood Act is to serve Alaska's overall economic and social well-being. Some of the lands so selected will probably be used to protect mineral deposits. Others will safeguard wildlife. Still others will be used to protect domestic water supplies. *Udall v. Kalerak*, 396 F.2d 746 (9th Cir. 1968), *cert. denied*, 393 U.S. 1118, 99 S. Ct. 990, 22 L. Ed. 2d 123 (1969).

This section authorized the state to select 102,500,000 acres from public lands that were "vacant, unappropriated, and unreserved at the time of their selection." The intent of Congress was, of course, to provide the new state with a solid economic foundation. *United States v. Atlantic Richfield Co.*, 435 F. Supp. 1009 (D. Alas. 1977), *aff'd*, 612 F.2d 1132 (9th Cir.), *cert. denied*, 449 U.S. 888, 101 S. Ct. 244, 66 L. Ed. 2d 113 (1980).

Applicability of last sentence of subsection (g). — The "equitable claims" phrase in the last sentence of subsection (g) may have scope where there was physical possession or improvement by the equitable claimant or someone acting in his behalf, but it cannot be extended to a lease applicant merely because he has incurred expense in support or defense of his application. *Schraier v. Hickel*, 419 F.2d 663 (D.C. Cir. 1969).

Applied in *State v. University of Alaska*, Sup. Ct. Op. No. 2303 (File No. 4579), 624 P.2d 807 (1981); *Inupiat Community of Arctic Slope v. United States*, 680 F.2d 122 (Ct. Cl. 1982).

Cited in *McCubbins v. Keenan*, Sup. Ct. Op. No. 645 (File No. 1165), 475 P.2d 696 (1970).

IV. CONSTRUCTION WITH ALASKA NATIVE CLAIMS SETTLEMENT ACT.

Subsection 4(a) of the Alaska Native Claims Settlement Act requires dismissal of claims for entries under state leases pursuant to this subsection of the Alaska Statehood Act or entries pursuant to valid federal leases or conveyances. *United States v. Atlantic Richfield Co.*, 435 F. Supp. 1009 (D. Alas. 1977), *aff'd*, 612 F.2d 1132 (9th Cir.), *cert. denied*, 449 U.S. 888, 101 S. Ct. 244, 66 L. Ed. 2d 113 (1980).

Congress chose the specific language used in subsection 4(a) of the Alaska Native Claims Settlement Act by design. Congressional intent was to make clear that any prior grant of land under federal law or tentative approval under subsection 6(g) of the Alaska Statehood Act operated to extinguish aboriginal title at the time the conveyance was made or the approval given. In short, Congress intended the conveyance or approval to be the operative fact extinguishing aboriginal title. This construction is consistent with and is supported by other provisions of the settlement act. *United States v. Atlantic Richfield Co.*, 435 F. Supp. 1009 (D. Alas. 1977), *aff'd*, 612 F.2d 1132 (9th Cir.), *cert. denied*, 449 U.S. 888, 101 S. Ct. 244, 66 L. Ed. 2d 113 (1980).

V. LANDS AVAILABLE FOR SELECTION.

Indian trapping, hunting and camping could constitute a condition which would deprive the selected lands of the status of being "vacant, unappropriated, and unreserved." *Alaska v. Udall*, 420 F.2d 938 (9th Cir. 1969), *cert. denied*, 397 U.S. 1076, 90 S. Ct. 1522, 25 L. Ed. 2d 811 (1970).

Application for oil and gas lease not "valid existing claim". — The proviso in subsection (b) is inapplicable to an application for an oil and gas lease under the Mineral Leasing Act, 30 U.S.C. § 181 et seq., which provides that lands subject to disposition under the act, which are believed to contain oil or gas deposits, "may be leased by the Secretary of the Interior." *Schraier v. Hickel*, 419 F.2d 663 (D.C. Cir. 1969).

An applicant under the Mineral Leasing Act, 30 U.S.C. § 181 et seq., may have the further right to a lease where he is entitled to a lease over anyone else under the law and the Secretary of the Interior has exercised his discretion to execute a lease, but his proposal does not rise to the level of "claim" or "right" within the savings clause of the Statehood Act where there has been no such determination to lease. *Schraier v. Hickel*, 419 F.2d 663 (D.C. Cir. 1969).

Lease rights are subordinated to rights-of-way legally exercised. *Mercer v. Yutan Constr. Co.*, Sup. Ct. Op. No. 371 (File No. 631), 420 P.2d 323 (1966).

VI. FISH AND WILDLIFE RESOURCES.

State wolf hunt program. — 43 U.S.C. § 1732(a), 43 U.S.C. § 1732(b) and 43

U.S.C. § 1702(c), taken together, clearly provide the Secretary of the Interior with the power to halt the state wolf hunt program. Under 43 U.S.C. § 1732(a), the Secretary is commanded to manage the public lands under principles of multiple use. Multiple use includes the management of wildlife. 43 U.S.C. § 1702(c). Finally, the Secretary may close the lands to hunting for purposes of "administration" which on the face of the statute includes wildlife management. *State v. Andrus*, 429 F. Supp. 958 (D. Alas. 1977), *aff'd* on other grounds, 591 F.2d 537 (9th Cir. 1979).

The Secretary of the Interior has the authority under the "BLM Organic Act," 43 U.S.C. § 1701 et seq., Pub. L. 94-579, to halt the wolf kill program, instituted by the Alaska Department of Fish and Game to help protect the Western Arctic caribou herd, which was taking place entirely on federally controlled land. *State v. Andrus*, 429 F. Supp. 958 (D. Alas. 1977), *aff'd* on other grounds, 591 F.2d 537 (9th Cir. 1977).

There is no requirement of an environmental impact statement for wolf hunt program under the Alaska Native Claims Settlement Act. *State v. Andrus*, 429 F. Supp. 958 (D. Alas. 1977), *aff'd* on other grounds, 591 F.2d 537 (9th Cir. 1979).

Even if the Alaska Native Claims Settlement Act can be construed as authorizing an independent authority to close the wolf hunt program, there is still no federal action involved. *State v. Andrus*, 429 F. Supp. 958 (D. Alas. 1977), *aff'd* on other grounds, 591 F.2d 537 (9th Cir. 1979).

Under the property clause of the United States Constitution the federal government retains the right to control wildlife management on federal lands. By passage of the BLM Organic Act the Congress has implemented the property clause on federally controlled lands where a state instituted wolf hunt program was taking place and any state authority to the contrary has been divested by virtue of the supremacy clause. Accordingly, the Secretary of the Interior had the authority to issue an order prohibiting the hunt. *State v. Andrus*, 429 F. Supp. 958 (D. Alas. 1977), *aff'd* on other grounds, 591 F.2d 537 (9th Cir. 1979).

A substantial portion of the wolf hunt program instituted by the Alaska Department of Fish and Game was to occur on "d-2" lands (referring to § 17(d)(2) of the Alaska Native Claims Settlement Act). These are tracts of land which have been

withdrawn by the Secretary of the Interior for possible inclusion in the National Parks, Forest, Wildlife Refuge, and Wild and Scenic Rivers Systems, pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 et seq. Under that act the Secretary is to administer d-2 lands under applicable laws and regulations. 43 U.S.C. § 1616(d)(3). The Secretary has the authority to halt hunting on the lands pending resolution of their status because the BLM Organic Act is one of the applicable laws under which these lands are administered. 43 U.S.C. § 1616(d)(3). Hence, the requirement of an environmental impact statement under the ANCSA § 17(d)(3) is precisely the same as it is under the BLM Organic Act. The ANCSA imposes no independent duty on the Secretary to require licenses or permits to hunt on these lands and cannot be the basis for a determination that there is federal action involved in the hunts. The power of the Secretary on these lands is totally derivative from other acts. *State v. Andrus*, 429 F. Supp. 958 (D. Alas. 1977), *aff'd* on other grounds, 591 F.2d 537 (9th Cir. 1979).

VII. MINERAL LAND GRANTS.

Alaska Constitution not amended to include terms and conditions set forth in subsection (i). — Although included in Alaska Statehood Act, § 8(b) was the provision that in the event that three propositions to be submitted to the voters, one of which required the consent by the state and its people to provisions of the Alaska Statehood Act reserving rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property therein made to the state of Alaska, were adopted by a majority vote, "the proposed constitution of the proposed State of Alaska . . . shall be deemed amended accordingly," and although the propositions were adopted, the Alaska Constitution was not thereby amended to include "the terms or conditions of the grants of land" set forth in subsection (i) of this section. *State v. Lewis*, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, appeal dismissed, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

There was no state legislature in existence at the time of passage of the Statehood Act, and the territorial legislature never approved an amendment incorporating the restrictions of subsection (i) of this section, which relates to mineral land grants, into the Alaska Con-

stitution. Nor was any constitutional convention called to act on the matter. *State v. Lewis*, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, appeal dismissed, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

Rather, compact formed as to federal restrictions on alienability of land. — Alaskans by ratification of the constitution including the provisions of Alaska Const., art. VIII, § 9 and art. XII, § 13; and again, separately, by approving proposition 3 of Alaska Statehood Act, § 8(b), agreed to be bound by restrictions on alienability of land imposed by the federal government. This constituted a compact. *State v. Lewis*, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, appeal dismissed, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

Congressional restraints intended to be binding to limited extent. — The congressional restraints on alienation were intended by Congress to be binding only to the extent required by that body. This also was the intent of those who agreed upon and adopted the Alaska Constitution by vote. *State v. Lewis*, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, appeal dismissed, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

All that was required to release the restrictions required by Congress was congressional consent. *State v. Lewis*, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, appeal dismissed, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

And state constitutional amendment not mandated. — After Congress has given its consent to a change in terms, a state constitutional amendment is not mandated to alter the compact. *State v. Lewis*, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, appeal dismissed, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

Since constitution did not contain specific restrictions on alienation. — The Alaska Constitution did not contain any specific restrictions on alienation but merely a consent to be bound by such reservations as would be required by Congress. *State v. Lewis*, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, appeal dismissed, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

Chapter 19, SLA 1976, not violative of Alaska Constitution. — Once congressional consent to release its restrictions was secured, the Alaska legislature, in agreeing to the disposition of the land and mineral rights by ch. 19, SLA 1976, was

not violating any specific provision of the Alaska Constitution. *State v. Lewis*, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, appeal dismissed, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

State's ownership of resource as basis for law discriminating against non-residents. — Rather than placing a statute completely beyond the privileges and immunities clause, a state's ownership of the property with which the statute is concerned is a factor — although often the crucial factor — to be considered in evaluating whether the statute's discrimination against non-citizens violates the clause. *Hicklin v. Orbeck*, 437 U.S. 518, 98 S. Ct. 2482, 57 L. Ed. 2d 397 (1978).

Alaska has little or no proprietary interest in much of the activity swept within the ambit of the Alaska hire law, and the connection of the state's oil and gas with much of the covered activity is sufficiently attenuated so that it cannot justifiably be the basis for requiring private employers to discriminate against non-residents. *Hicklin v. Orbeck*, 437 U.S. 518, 98 S. Ct. 2482, 57 L. Ed. 2d 397 (1978).

The fact that a state owns a resource, of itself, does not completely remove a law concerning that resource from the prohibitions of the privileges and immunities clause. *Hicklin v. Orbeck*, 437 U.S. 518, 98 S. Ct. 2482, 57 L. Ed. 2d 397 (1978).

VIII. SUBMERGED LANDS.

Applicability of Submerged Lands Act. — Since "... all lands expressly retained by or ceded to the United States when the State entered the Union ... and any rights the United States has in lands presently and actually occupied by the United States under claim of right" are specifically excluded from the operation of the Submerged Lands Act, 43 U.S.C. § 1301 et seq., and the provisions of § 6(e) of this act specifically exclude all land and water previously withdrawn, the Submerged Lands Act had no application in an action to quiet title to lands under a lake located in lands withdrawn prior to statehood for establishment of the Kenai National Moose Range. *United States v. Alaska*, 423 F.2d 764 (9th Cir.), cert. denied, 400 U.S. 967, 91 S. Ct. 363, 27 L. Ed. 2d 388 (1970).

The state owns or controls the land beneath navigable waters. *Alaska Pub. Easement Defense Fund v. Andrus*, 435 F. Supp. 664 (D. Alas. 1977).

The court takes judicial notice of the fact that Alaska lies westward of the 98th meridian. Thus, under federal law

ownership and control of the land under navigable waters is confirmed in the state. *Alaska Pub. Easement Defense Fund v. Andrus*, 435 F. Supp. 664 (D. Alas. 1977).

The people of the state have the right to use the water itself on nonnavigable rivers and streams. *Alaska Pub. Easement Defense Fund v. Andrus*, 435 F. Supp. 664 (D. Alas. 1977).

The ownership of ground and surface waters is to be determined according to state law. Under the Alaska Constitution and state law the right to use such waterways is placed in the people of the state. *Alaska Pub. Easement Defense Fund v. Andrus*, 435 F. Supp. 664 (D. Alas. 1977).

The purpose of the easements along the courses of major waterways is to provide a place for docks, campsites and such facilities to service those who are properly using the public waters. This purpose is apparently accommodated by the reservation of site easements under the order of the Secretary of the interior. *Alaska Pub. Easement Defense Fund v. Andrus*, 435 F. Supp. 664 (D. Alas. 1977).

Thus, the United States, as against the state, has paramount rights to the subsurface lands of the lower, or seaward, portion of the inlet. *United States v. Alaska*, 422 U.S. 184, 95 S. Ct. 2240, 45 L. Ed. 2d 109, rehearing denied, 423 U.S. 885, 96 S. Ct. 159, 46 L. Ed. 2d 116 (1975).

Title remaining in United States. — The United States, as the sovereign at the time, had the power, prior to Alaskan statehood, to withhold, withdraw or convey the land and water of the Kenai Peninsula, Alaska, for any valid purpose, and in such case, the property withdrawn would not pass to the state. *United States v. Alaska*, 423 F.2d 764 (9th Cir.), cert. denied, 400 U.S. 967, 91 S. Ct. 363, 27 L. Ed. 2d 388 (1970).

Where the Alaska Railroad Act (Act

March 12, 1914, 38 Stat. 305; Act July 7, 1958, 72 Stat. 339), implemented by Presidential Order of August 31, 1915, empowered the President to "build or otherwise acquire docks, wharves, terminal facilities, and all structures needed for the equipment and operation of such railroad or railroads," and authorized him to perform any and all acts in addition to those specifically set out in the statutory language which were necessary to accomplish the purposes and declared objects of the Act; more precisely, to reserve such lands as might be useful for furnishing the materials for the construction of stations, terminals and docks in connection with the operation and construction of the railroad lines, such act, by necessary implication, reserved for the use of the Alaska railroad as a terminal the tide and submerged lands immediately adjacent to and contiguous with the ordinary highwater mark on the eastern shore of Knik Arm and also the tidelands and bed of Ship Creek within the exterior boundaries of the terminal reserve; and title to these lands remained therefore in the United States after the admission of Alaska into the Union on January 3, 1959. *United States v. City of Anchorage*, 437 F.2d 1081 (9th Cir. 1971).

Alaska's ownership of tidelands same as other states. — By this subsection, Alaska was given the same ownership of tidelands and lands beneath navigable waters as other states of the Union. *State v. A.J. Indus., Inc.*, Sup. Ct. Op. No. 263 (File No. 477), 397 P.2d 280 (1964); *City of Juneau v. Cropley*, Sup. Ct. Op. No. 415 (File No. 752), 429 P.2d 21 (1967).

Evidence was insufficient to establish that Cook Inlet is an historic bay. *United States v. Alaska*, 422 U.S. 184, 95 S. Ct. 2240, 45 L. Ed. 2d 109, rehearing denied, 423 U.S. 885, 96 S. Ct. 159, 46 L. Ed. 2d 116 (1975).

(CERTIFICATION BY PRESIDENT)

Sec. 7. Upon enactment of this Act, it shall be the duty of the President of the United States, not later than July 3, 1958, to certify such fact to the Governor of Alaska. Thereupon the Governor, on or after July 3, 1958, and not later than August 1, 1958, shall issue his proclamation for the elections, as hereinafter provided, for officers of all elective offices and in the manner provided for by the constitution of the proposed State of Alaska, but the officers so elected shall in any event include two Senators and one Representative in Congress.

[ELECTION OF OFFICERS; DATE, ETC.; CERTIFICATION OF VOTING RESULTS BY GOVERNOR; PROCLAMATION BY PRESIDENT; LAWS IN EFFECT]

SEC. 8. (a) The proclamation of the Governor of Alaska required by section 7 shall provide for holding of a primary election and a general election on dates to be fixed by the Governor of Alaska: *Provided*, That the general election shall not be held later than December 1, 1958, and at such elections the officers required to be elected as provided in section 7 shall be, and officers for other elective offices provided for in the constitution of the proposed State of Alaska may be, chosen by the people. Such elections shall be held, and the qualifications of voters thereat shall be, as prescribed by the constitution of the proposed State of Alaska for the election of members of the proposed State legislature. The returns thereof shall be made and certified in such manner as the constitution of the proposed State of Alaska may prescribe. The Governor of Alaska shall certify the results of said elections to the President of the United States.

(b) At an election designated by proclamation of the Governor of Alaska, which may be the general election held pursuant to subsection (a) of this section, or a Territorial general election, or a special election, there shall be submitted to the electors qualified to vote in said election, for adoption or rejection, by separate ballot on each, the following propositions:

"(1) Shall Alaska immediately be admitted into the Union as a State?

"(2) The boundaries of the State of Alaska shall be as prescribed in the Act of Congress approved (date of approval of this Act)

and all claims of this State to any areas of land or sea outside the boundaries so prescribed are hereby irrevocably relinquished to the United States.

"(3) All provisions of the Act of Congress approved (date of approval of this Act) reserving rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property therein made to the State of Alaska, are consented to fully by said State and its people."

In the event each of the foregoing propositions is adopted at said election by a majority of the legal votes cast on said submission, the proposed constitution of the proposed State of Alaska, ratified by the people at the election held on April 24, 1956, shall be deemed amended accordingly. In the event any one of the foregoing propositions is not adopted at said election by a majority of the legal votes cast on said submission, the provisions of this Act shall thereupon cease to be effective.

The Governor of Alaska is hereby authorized and directed to take such action as may be necessary or appropriate to insure the

submission of said propositions to the people. The return of the votes cast on said proposition shall be made by the election officers directly to the Secretary of Alaska, who shall certify the results of the submission to the Governor. The Governor shall certify the results of said submission, as so ascertained, to the President of the United States.

(c) If the President shall find that the propositions set forth in the preceding subsection have been duly adopted by the people of Alaska, the President, upon certification of the returns of the election of the officers required to be elected as provided in section 7 of this Act, shall thereupon issue his proclamation announcing the results of said election as so ascertained. Upon the issuance of said proclamation by the President, the State of Alaska shall be deemed admitted into the Union as provided in section 1 of this Act.

Until the said State is so admitted into the Union, all of the officers of said Territory, including the Delegate in Congress from said Territory, shall continue to discharge the duties of their respective offices. Upon the issuance of said proclamation by the President of the United States and the admission of the State of Alaska into the Union, the officers elected at said election, and qualified under the provisions of the constitution and laws of said State, shall proceed to exercise all the functions pertaining to their offices in or under or by authority of the government of said State, and officers not required to be elected at said initial election shall be selected or continued in office as provided by the constitution and laws of said State. The Governor of said State shall certify the election of the Senators and Representative in the manner required by law, and the said Senators and Representative shall be entitled to be admitted to seats in Congress and to all the rights and privileges of Senators and Representatives of other States in the Congress of the United States.

(d) Upon admission of the State of Alaska into the Union as herein provided, all of the Territorial laws then in force in the Territory of Alaska shall be and continue in full force and effect throughout said State except as modified or changed by this Act, or by the constitution of the State, or as thereafter modified or changed by the legislature of the State. All of the laws of the United States shall have the same force and effect within said State as elsewhere within the United States. As used in this paragraph, the term "Territorial laws" includes (in addition to laws enacted by the Territorial Legislature of Alaska) all laws or parts thereof enacted by the Congress the validity of which is dependent solely upon the authority of the Congress to provide for the government of Alaska prior to the admission of the State of Alaska into the Union; and the term "laws of the United States" includes all laws or parts thereof enacted by the Congress that (1) apply to or within Alaska at the time of the admission of the State of Alaska into the Union, (2) are not "Territorial laws" as defined in this paragraph, and (3) are not in conflict with any other provisions of this Act.

Opinions of attorney general. — The only constitutional method by which there can be enacted legislation which is in direct conflict with the Statehood Act is the approval by the people of the State of Alaska of such federal legislation. 1969 Op. Att'y Gen., No. 6.

Congress does not have the authority to enact Indian legislation in Alaska which will override the Statehood Act because of the "supremacy clause" principle. 1969 Op. Att'y Gen., No. 6.

NOTES TO DECISIONS

This section does not hold state agencies bound by federal regulations extant as of statehood. *Dresser Indus., Inc. v. Alaska Dep't of Labor*, Sup. Ct. Op. No. 2415 (File No. 5625), 633 P.2d 998 (1981).

This section made it clear that federal legislative enactments were to be carried over unless overruled by the state constitution or the state legislature. *Dresser Indus., Inc. v. Alaska Dep't of Labor*, Sup. Ct. Op. No. 2415 (File No. 5625), 633 P.2d 998 (1981).

Alaska Constitution not amended to include terms and conditions of § 6(i) of this act. — Although included in subsection (b) of this section was the provision that in the event that three propositions to be submitted to the voters, one of which required the consent by the state and its people to provisions of the Alaska Statehood Act reserving rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property therein made to the state of Alaska, were adopted by a majority vote, "the proposed constitution of the proposed State of Alaska . . . shall be deemed amended accordingly," and although the propositions were adopted, the Alaska Constitution was not thereby amended to include "the terms or conditions of the grants of land" set forth in Alaska Statehood Act, § 6(i). *State v. Lewis*, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, appeal dismissed, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

There was no state legislature in existence at the time of passage of the Statehood Act, and the territorial legislature never approved an amendment incorporating the restrictions of Alaska Statehood Act, § 6(i), which relates to mineral land grants, into the Alaska Constitution. Nor was any constitutional convention called to act on the matter. *State v. Lewis*, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, appeal dismissed, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

Rather, compact formed as to federal restrictions on alienability of land. — Alaskans by ratification of the constitution including the provisions of Alaska Const., art. VIII, § 9 and art. XII, § 13, and again, separately, by approving proposition 3 of subsection (b) of this section, agreed to be bound by restrictions on alienability of land imposed by the federal government. This constituted a compact. *State v. Lewis*, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, appeal dismissed, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

Congressional restraints intended to be binding to limited extent. — The congressional restraints on alienation were intended by Congress to be binding only to the extent required by that body. This also was the intent of those who agreed upon and adopted the Alaska Constitution by vote. *State v. Lewis*, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, appeal dismissed, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

All that was required to release the restrictions required by Congress was congressional consent. *State v. Lewis*, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, appeal dismissed, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

And state constitutional amendment not mandated. — After Congress has given its consent to a change in terms, a state constitutional amendment is not mandated to alter the compact. *State v. Lewis*, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, appeal dismissed, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

Since constitution did not contain specific restrictions on alienation. — The Alaska Constitution did not contain any specific restrictions on alienation but merely a consent to be bound by such reservations as would be required by Congress. *State v. Lewis*, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, appeal dismissed, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

Chapter 19, SLA 1976, not violative of Alaska Constitution. — Once congressional consent was secured, the Alaska legislature, in agreeing to the disposition of the land and mineral rights by ch. 19, SLA 1976, was not violating any specific provision of the Alaska Constitution. *State v. Lewis*, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, appeal dismissed, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

Congress cannot limit supreme court's power to discipline Alaskan lawyers either directly or by continuing in force the provision of a territorial statute claimed to have that effect. In re Mackay, Sup. Ct. Op. No. 279 (File No. ABA 8), 416 P.2d 923 (1965), rehearing denied, 385 U.S. 890 (1966).

[HOUSE OF REPRESENTATIVES MEMBERSHIP]

SEC. 9. The State of Alaska upon its admission into the Union shall be entitled to one Representative until the taking effect of the next reapportionment, and such representative shall be in addition to the membership of the House of Representatives as now prescribed by law; *Provided*, That such temporary increase in the membership shall not operate to either increase or decrease the permanent membership of the House of Representatives as prescribed in the Act of August 8, 1911 (37 Stat. 13) nor shall such temporary increase affect the basis of apportionment established by the Act of November 15, 1941 (55 Stat. 761; 2 U. S. C., sec. 2a), for the Eighty-third Congress and each Congress thereafter.

[NATIONAL DEFENSE WITHDRAWALS: JURISDICTION]

SEC. 10. (a) The President of the United States is hereby authorized to establish, by Executive order or proclamation, one or more special national defense withdrawals within the exterior boundaries of Alaska, which withdrawal or withdrawals may thereafter be terminated in whole or in part by the President.

(b) Special national defense withdrawals established under subsection (a) of this section shall be confined to those portions of Alaska that are situated to the north or west of the following line: Beginning at the point where the Porcupine River crosses the international boundary between Alaska and Canada; thence along a line parallel to, and five miles from, the right bank of the main channel of the Porcupine River to its confluence with the Yukon River; thence along a line parallel to, and five miles from, the right bank of the main channel of the Yukon River to its most southerly point of intersection with the meridian of longitude 160 degrees west of Greenwich; thence south to the intersection of said meridian with the Kuskokwim River; thence along a line parallel to, and five miles from the right bank of the Kuskokwim River to the mouth of said river; thence along the shoreline of Kuskokwim Bay to its intersection with the meridian of longitude 162 degrees.30 minutes west of Greenwich; thence south to the intersection of said meridian with the parallel of latitude 57 degrees 30 minutes north; thence east to the intersection of said parallel with the meridian of longitude 156 degrees west of Greenwich; thence south to the intersection of said meridian with the parallel of latitude 50 degrees north.

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(c) Effective upon the issuance of such Executive order or proclamation, exclusive jurisdiction over all special national defense withdrawals established under this section is hereby reserved to the United States, which shall have sole legislative, judicial, and executive power within such withdrawals, except as provided hereinafter. The exclusive jurisdiction so established shall extend to all lands within the exterior boundaries of each such withdrawal, and shall remain in effect with respect to any particular tract or parcel of land only so long as such tract or parcel remains within the exterior boundaries of such a withdrawal. The laws of the State of Alaska shall not apply to areas within any special national defense withdrawal established under this section while such areas remain subject to the exclusive jurisdiction hereby authorized: *Provided, however,* That such exclusive jurisdiction shall not prevent the execution of any process, civil or criminal, of the State of Alaska, upon any person found within said withdrawals: *And provided further,* That such exclusive jurisdiction shall not prohibit the State of Alaska from enacting and enforcing all laws necessary to establish voting districts, and the qualification and procedures for voting in all elections.

(d) During the continuance in effect of any special national defense withdrawal established under this section, or until the Congress otherwise provides, such exclusive jurisdiction shall be exercised within each such withdrawal in accordance with the following provisions of law:

(1) All laws enacted by the Congress that are of general application to areas under the exclusive jurisdiction of the United States, including, but without limiting the generality of the foregoing, those provisions of title 18, United States Code, that are applicable within the special maritime and territorial jurisdiction of the United States as defined in section 7 of said title, shall apply to all areas within such withdrawals.

(2) In addition, any areas within the withdrawals that are reserved by Act of Congress or by Executive action for a particular military or civilian use of the United States shall be subject to all laws enacted by the Congress that have application to lands withdrawn for that particular use, and any other areas within the withdrawals shall be subject to all laws enacted by the Congress that are of general application to lands withdrawn for defense purposes of the United States.

(3) To the extent consistent with the laws described in paragraphs (1) and (2) of this subsection and with regulations made or other actions taken under their authority, all laws in force within such withdrawals immediately prior to the creation thereof by Executive order or proclamation shall apply within the withdrawals and, for this purpose, are adopted as laws of the United States: *Provided, however,* That the laws of the State or Territory relating to the organization or powers of municipalities or local political subdivisions, and the laws or ordinances of such municipalities or political subdivisions shall not be adopted as laws of the United States.

(4) All functions vested in the United States commissioners by the laws described in this subsection shall continue to be performed within the withdrawals by such commissioners.

(5) All functions vested in any municipal corporation, school district, or other local political subdivision by the laws described in this subsection shall continue to be performed within the withdrawals by such corporation, district, or other subdivision, and the laws of the state or the laws or ordinances of such municipalities or local political subdivision shall remain in full force and effect notwithstanding any withdrawal made under this section.

(6) All other functions vested in the government of Alaska or in any officer or agency thereof, except judicial functions over which the United States District Court for the District of Alaska is given jurisdiction by this Act or other provisions of law, shall be performed within the withdrawals by such civilian individuals or civilian agencies and in such manner as the President shall from time to time, by Executive order, direct or authorize.

(7) The United States District Court for the District of Alaska shall have original jurisdiction, without regard to the sum or value of any matter in controversy, over all civil actions arising within such withdrawals under the laws made applicable thereto by this subsection, as well as over all offenses committed within the withdrawals.

(e) Nothing contained in subsection (d) of this section shall be construed as limiting the exclusive jurisdiction established in the United States by subsection (c) of this section or the authority of the Congress to implement such exclusive jurisdiction by appropriate legislation, or as denying to persons now or hereafter residing within any portion of the areas described in subsection (b) of this section the right to vote at all elections held within the political subdivisions as prescribed by the State of Alaska where they respectively reside, or as limiting the jurisdiction conferred on the United States District Court for the District of Alaska by any other provision of law, or as continuing in effect laws relating to the Legislature of the Territory of Alaska. Nothing contained in this section shall be construed as limiting any authority otherwise vested in the Congress or the President.

[MOUNT MCKINLEY NATIONAL PARK; MILITARY, NAVAL, ETC., LANDS;
CIVIL AND CRIMINAL JURISDICTION]

SEC. 11. (a) Nothing in this Act shall affect the establishment, or the right, ownership, and authority of the United States in Mount McKinley National Park, as now or hereafter constituted; but exclusive jurisdiction, in all cases, shall be exercised by the United States for the national park, as now or hereafter constituted; saving, however, to the State of Alaska the right to serve civil or criminal process within the limits of the aforesaid park in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in said

State, but outside of said park; and saving further to the said State the right to tax persons and corporations, their franchises and property on the lands included in said park; and saving also to the persons residing now or hereafter in such area the right to vote at all elections held within the respective political subdivisions of their residence in which the park is situated.

(b) Notwithstanding the admission of the State of Alaska into the Union, authority is reserved in the United States, subject to the proviso hereinafter set forth, for the exercise by the Congress of the United States of the power of exclusive legislation, as provided by article I, section 8, clause 17, of the Constitution of the United States, in all cases whatsoever over such tracts or parcels of land as, immediately prior to the admission of said State, are owned by the United States and held for military, naval, Air Force, or Coast Guard purposes, including naval petroleum reserve numbered 4, whether such lands were acquired by cession and transfer to the United States by Russia and set aside by Act of Congress or by Executive order or proclamation of the President or the Governor of Alaska for the use of the United States, or were acquired by the United States by purchase, condemnation, donation, exchange, or otherwise: *Provided*, (i) That the State of Alaska shall always have the right to serve civil or criminal process within the said tracts or parcels of land in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed within the said State but outside of the said tracts or parcels of land; (ii) that the reservation of authority in the United States for the exercise by the Congress of the United States of the power of exclusive legislation over the lands aforesaid shall not operate to prevent such lands from being a part of the State of Alaska, or to prevent the said State from exercising over or upon such lands, concurrently with the United States, any jurisdiction whatsoever which it would have in the absence of such reservation of authority and which is consistent with the laws hereafter enacted by the Congress pursuant to such reservation of authority; and (iii) that such power of exclusive legislation shall rest and remain in the United States only so long as the particular tract or parcel of land involved is owned by the United States and used for military, naval, Air Force, or Coast Guard purposes. The provisions of this subsection shall not apply to lands within such special national defense withdrawal or withdrawals as may be established pursuant to section 10 of this Act until such lands cease to be subject to the exclusive jurisdiction reserved to the United States by that section.

Opinions of attorney general. — Alaska's fish and game laws are applicable as federal law on military reservations, except for the licensing of military personnel who hunt on military reservations. 1964 Op. Att'y Gen., No. 2.

Any hunting or fishing at a military

reservation must be in accord with Alaska laws regulating seasons, bag limits, methods of taking, etc., even though military personnel are not required to comply with Alaska's licensing requirements while on the reservation. 1964 Op. Att'y Gen., No. 2.

Alaska and the federal government have concurrent jurisdiction over federal military reservations by the terms of (ii) of this subsection. 1964 Op. Att'y Gen., No. 2.

Subsection (b) (ii) grants to Alaska and the federal government concurrent jurisdiction to enforce Alaska's fish and game laws and regulations on federal military reservations. 1964 Op. Att'y Gen., No. 2.

Only on a military reservation under the exclusive legislative jurisdiction of the federal government could enforcement of

game and fish laws be in the hands of the federal government exclusively. 1964 Op. Att'y Gen., No. 2.

The state has subject matter jurisdiction over sewage disposal in Petroleum Reserve No. 4. June 28, 1977, Op. Att'y Gen.

Until Congress expressly exercises its latent power of exclusive jurisdiction, the state has concurrent jurisdiction over Petroleum Reserve No. 4. June 28, 1977, Op. Att'y Gen.

(JUDICIAL AND CRIMINAL PROVISIONS)

SEC. 12. Effective upon the admission of Alaska into the Union —

(a) The analysis of chapter 5 of title 28, United States Code, immediately preceding section 81 of such title, is amended by inserting immediately after and underneath item 81 of such analysis, a new item to be designated as item 81A and to read as follows:

"81A. Alaska";

(b) Title 28, United States Code, is amended by inserting immediately after section 81 thereof a new section, to be designated as section 81A, and to read as follows:

"§ 81A. Alaska

"Alaska constitutes one judicial district.

"Court shall be held at Anchorage, Fairbanks, Juneau, and Nome.";

(c) Section 133 of title 28, United States Code, is amended by inserting in the table of districts and judges in such section immediately above the item: "Arizona * * * 2", a new item as follows: "Alaska * * * 1";

(d) The first paragraph of section 373 of title 28, United States Code, as heretofore amended, is further amended by striking out the words: "the District Court for the Territory of Alaska,": *Provided*, That the amendment made by this subsection shall not affect the rights of any judge who may have retired before it takes effect;

(e) The words "the District Court for the Territory of Alaska," are stricken out wherever they appear in sections 333, 460, 610, 753, 1252, 1291, 1292, and 1346 of title 28, United States Code;

(f) The first paragraph of section 1252 of title 28, United States Code, is further amended by striking out the word "Alaska," from the clause relating to courts of record;

(g) Subsection (2) of section 1294 of title 28, United States Code, is repealed and the later subsections of such section are renumbered accordingly;

(h) Subsection (a) of section 2410 of title 28, United States Code, is amended by striking out the words: "including the District Court for the Territory of Alaska,";

(i) Section 3241 of title 18, United States Code, is amended by striking out the words: "District Court for the Territory of Alaska, the";

(j) Subsection (e) of section 3401 of title 18, United States Code, is amended by striking out the words: "for Alaska or";

(k) Section 3771 of title 18, United States Code, as heretofore amended, is further amended by striking out from the first paragraph of such section the words: "the Territory of Alaska,";

(l) Section 3772 of title 18, United States Code, as heretofore amended, is further amended by striking out from the first paragraph of such section the words: "the Territory of Alaska.";

(m) Section 2072 of title 28, United States Code, as heretofore amended, is further amended by striking out from the first paragraph of such section the words: "and of the District Court for the Territory of Alaska";

(n) Subsection (q) of section 376 of title 18, United States Code, is amended by striking out the words: "the District Court for the Territory of Alaska.": *Provided*, That the amendment made by this subsection shall not affect the rights under such section 376 of any present or former judge of the District Court for the Territory of Alaska or his survivors;

(o) The last paragraph of section 1963 of title 28, United States Code, is repealed;

(p) Section 2201 of title 28, United States Code, is amended by striking out the words: "and the District Court for the Territory of Alaska"; and

(q) Section 4 of the Act of July 28, 1950 (64 Stat. 380; 5 U. S. C., sec. 341b) is amended by striking out the word: "Alaska".

[CONTINUATION OF SUITS]

SEC. 13. No writ, action, indictment, cause, or proceeding pending in the District Court for the Territory of Alaska on the date when said Territory shall become a State, and no case pending in an appellate court upon appeal from the District Court for the Territory of Alaska at the time said Territory shall become a State, shall abate by the admission of the State of Alaska into the Union, but the same shall be transferred and proceeded with as hereinafter provided.

All civil causes of action and all criminal offenses which shall have arisen or been committed prior to the admission of said State, but as to which no suit, action, or prosecution shall be pending at the date of such admission, shall be subject to prosecution in the appropriate State courts or in the United States District Court for the District of Alaska in like manner, to the same extent, and with like right of appellate review, as if said State had been created and said courts had been established prior to the accrual of said causes of action or the commission of such offenses; and such of said criminal offenses as shall have

been committed against the laws of the Territory shall be tried and punished by the appropriate courts of said State, and such as shall have been committed against the laws of the United States shall be tried and punished in the United States District Court for the District of Alaska.

Cross references. — See note to AS 33.15.240.

[APPEALS]

SEC. 14. All appeals taken from the District Court for the Territory of Alaska to the Supreme Court of the United States or the United States Court of Appeals for the Ninth Circuit, previous to the admission of Alaska as a State, shall be prosecuted to final determination as though this Act had not been passed. All cases in which final judgment has been rendered in such district court, and in which appeals might be had except for the admission of such State, may still be sued out, taken, and prosecuted to the Supreme Court of the United States or the United States Court of Appeals for the Ninth Circuit under the provisions of then existing law, and there held and determined in like manner; and in either case, the Supreme Court of the United States, or the United States Court of Appeals, in the event of reversal, shall remand the said cause to either the State supreme court or other final appellate court of said State, or the United States district court for said district, as the case may require: *Provided*, That the time allowed by existing law for appeals from the district court for said Territory shall not be enlarged thereby.

Cross references. — See note to AS 33.15.240.

NOTES TO DECISIONS

This section was obviously an expedient provided by Congress while the State court system was being organized. *Moody v. State*, Sup. Ct. Op. No. 221 (File No. 401), 392 P.2d 466 (1964).

[SUCCESSION OF COURTS]

SEC. 15. All causes pending or determined in the District Court for the Territory of Alaska at the time of the admission of Alaska as a State which are of such nature as to be within the jurisdiction of a district court of the United States shall be transferred to the United States District Court for the District of Alaska for final disposition and enforcement in the same manner as is now provided by law with reference to the judgments and decree in existing United States district courts. All other causes pending or determined in the District Court for the Territory of Alaska at the time of the admission of Alaska as a State shall be transferred to the appropriate State court of Alaska. All

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final judgments and decrees rendered upon such transferred cases in the United States District Court for the District of Alaska may be reviewed by the Supreme Court of the United States or by the United States Court of Appeals for the Ninth Circuit in the same manner as is now provided by law with reference to the judgments and decrees in existing United States district courts.

Cross references. — See note to AS 33.15.240.

[TRANSFER OF CASES]

SEC. 16. Jurisdiction of all cases pending or determined in the District Court for the Territory of Alaska not transferred to the United States District Court for the District of Alaska shall devolve upon and be exercised by the courts of original jurisdiction created by said State, which shall be deemed to be the successor of the District Court for the Territory of Alaska with respect to cases not so transferred and, as such, shall take and retain custody of all records, dockets, journals, and files of such court pertaining to such cases. The files and papers in all cases so transferred to the United States district court, together with a transcript of all book entries to complete the record in such particular cases so transferred, shall be in like manner transferred to said district court.

Cross references. — See note to AS 33.15.240.

[CASES PENDING IN DISTRICT COURT FOR TERRITORY OF ALASKA]

SEC. 17. All cases pending in the District Court for the Territory of Alaska at the time said Territory becomes a State not transferred to the United States District Court for the District of Alaska shall be proceeded with and determined by the courts created by said State with the right to prosecute appeals to the appellate courts created by said State, and also with the same right to prosecute appeals or writs of certiorari from the final determination in said causes made by the court of last resort created by such State to the Supreme Court of the United States, as now provided by law for appeals and writs of certiorari from the court of last resort of a State to the Supreme Court of the United States.

Cross references. — See note to AS 33.15.240.

(JURISDICTION OF DISTRICT COURT; TERMINATION DATE)

SEC. 18. The provisions of the preceding sections with respect to the termination of the jurisdiction of the District Court for the Territory of Alaska, the continuation of suits, the succession of courts, and the satisfaction of rights of litigants in suits before such courts, shall not be effective until three years after the effective date of this Act, unless the President, by Executive order, shall sooner proclaim that the United States District Court for the District of Alaska, established in accordance with the provisions of this Act, is prepared to assume the functions imposed upon it. During such period of three years or until such Executive order is issued, the United States District Court for the Territory of Alaska shall continue to function as heretofore. The tenure of the judges, the United States attorneys, marshals, and other officers of the United States District Court for the Territory of Alaska shall terminate at such time as that court shall cease to function as provided in this section.

Cross references. — See note to AS
33.15.240.

(FEDERAL RESERVE SYSTEM)

SEC. 19. The first paragraph of section 2 of the Federal Reserve Act (38 Stat. 251) is amended by striking out the last sentence thereof and in inserting in lieu of such sentence the following: "When the State of Alaska is hereafter admitted to the Union the Federal Reserve districts shall be readjusted by the Board of Governors of the Federal Reserve System in such manner as to include such State. Every national bank in any State shall, upon commencing business or within ninety days after admission into the Union of the State in which it is located, become a member bank of the Federal Reserve System by subscribing and paying for stock in the Federal Reserve bank of its district in accordance with the provisions of this Act and shall thereupon be an insured bank under the Federal Deposit Insurance Act, and failure to do so shall subject such bank to the penalty provided by the sixth paragraph of this section."

(REPEAL)

SEC. 20. Section 2 of the Act of October 20, 1914 (38 Stat. 742; 48 U. S. C., sec. 433), is hereby repealed.

(UNITED STATES NATIONALITY)

SEC. 21. Nothing contained in this Act shall operate to confer United States nationality, nor to terminate nationality heretofore lawfully acquired, nor restore nationality heretofore lost under any law

of the United States or under any treaty to which the United States may have been a party.

[IMMIGRATION AND NATIONALITY ACT AMENDMENT]

SEC. 22. Section 101 (a) (36) of the Immigration and Nationality Act (66 Stat. 170, 8 U. S. C., sec. 1101 (a) (36)) is amended by deleting the word "Alaska,".

[IMMIGRATION AND NATIONALITY ACT AMENDMENT]

SEC. 23. The first sentence of section 212 (d) (7) of the Immigration and Nationality Act (66 Stat. 188, 8 U. S. C., sec. 1182 (d) (7)) is amended by deleting the word "Alaska,".

[IMMIGRATION AND NATIONALITY ACT AMENDMENT]

SEC. 24. Nothing contained in this Act shall be held to repeal, amend, or modify the provisions of section 304 of the Immigration and Nationality Act (66 Stat. 237, 8 U. S. C., sec. 1404).

[IMMIGRATION AND NATIONALITY ACT AMENDMENT]

SEC. 25. The first sentence of section 310 (a) of the Immigration and Nationality Act (66 Stat. 239, 8 U. S. C., sec. 1421 (a)) is amended by deleting the words "District Courts of the United States for the Territories of Hawaii and Alaska" and substituting therefor the words "District Court of the United States for the Territory of Hawaii".

[IMMIGRATION AND NATIONALITY ACT AMENDMENT]

SEC. 26. Section 344 (d) of the Immigration and Nationality Act (66 Stat. 265, 8 U. S. C., sec. 1455 (d)) is amended by deleting the words "in Alaska and".

[TRANSPORTATION BY WATER]

SEC. 27. (a) The third proviso in section 27 of the Merchant Marine Act, 1920, as amended (46 U. S. C., sec. 883), is further amended by striking out the word "excluding" and inserting in lieu thereof the word "including".

(b) Nothing contained in this or any other Act shall be construed as depriving the Federal Maritime Board of the exclusive jurisdiction heretofore conferred on it over common carriers engaged in transportation by water between any port in the State of Alaska and other ports in the United States, its Territories or possessions, or as conferring upon the Interstate Commerce Commission jurisdiction over transportation by water between any such ports.

[MINES AND MINING]

SEC. 28. (a) The last sentence of section 9 of the Act entitled "An Act to provide for the leasing of coal lands in the Territory of Alaska, and for other purposes", approved October 20, 1914 (48 U. S. C. 439), is hereby amended to read as follows: "All net profits from operation of Government mines, and all bonuses, royalties, and rentals under leases as herein provided and all other payments received under this Act shall be distributed as follows as soon as practicable after December 31 and June 30 of each year: (1) 90 per centum thereof shall be paid by the Secretary of the Treasury to the State of Alaska for disposition by the legislature thereof; and (2) 10 per centum shall be deposited in the Treasury of the United States to the credit of miscellaneous receipts."

(b) Section 35 of the Act entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain", approved February 25, 1920, as amended (30 U. S. C. 191), is hereby amended by inserting immediately before the colon preceding the first proviso thereof the following: ", and of those from Alaska 52½ per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof".

Opinions of attorney general. — Neither the state nor federal government may unilaterally amend the Statehood Act. 1969 Op. Att'y Gen., No. 6.

The United States may not constitutionally enact effective legislation in direct conflict with compact provisions of the Statehood Act unless there is an amendment to the Constitution of the State of Alaska, because a Statehood Act constitutes a compact in the nature of a contract between two sovereign governments. 1969 Op. Att'y Gen., No. 6.

Royalty legislation on state oil and gas leases is a matter within the paramount jurisdiction of the state. The conservation of oil and gas is a matter within the authority of the states. 1969 Op. Att'y Gen., No. 6.

The royalty provisions of a mineral leasing act are related to conservation of natural resources. 1969 Op. Att'y Gen., No. 6.

The United States, under the 10th amendment to the federal constitution, has no authority to legislate on state royalty provisions and state oil and gas leases. 1969 Op. Att'y Gen., No. 6.

An overriding gross royalty of 2% of all proceeds from any state and federal lands conflicts with the Statehood Act and the province of the Alaska state legislature. 1969 Op. Att'y Gen., No. 6.

The United States cannot unilaterally amend the Statehood Act to the state's detriment without the state's consent or acquiescence. April 2, 1981, Op. Att'y Gen.

NOTES TO DECISIONS

Legislative intent. — It was the intent of Congress in the Statehood Act to provide the new state with a solid economic foundation *Rowe v. United States*, 464 F. Supp. 1060 (D. Alas. 1979), *aff'd in part*, 633 F.2d 799 (9th Cir. 1980), *cert. denied*, 451 U.S. 970, 101 S. Ct. 2047, 68 L. Ed. 2d 349 (1981).

Applied in *United States v. Atlantic Richfield Co.*, 435 F. Supp. 1009 (D. Alas. 1977), *aff'd*, 612 F.2d 1132 (9th Cir.), *cert. denied*, 449 U.S. 898, 101 S. Ct. 244, 66 L. Ed. 2d 113 (1980).

(SEPARABILITY CLAUSE)

SEC. 29. If any provision of this Act, or any section, subsection, sentence, clause, phrase, or individual word, or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and of the application of any such provision, section, subsection, sentence, clause, phrase, or individual word to other persons and circumstances shall not be affected thereby.

(REPEAL OF CONFLICTING LAWS)

SEC. 30. All Acts or parts of Acts in conflict with the provisions of this Act, whether passed by the legislature of said Territory or by Congress, are hereby repealed.

Approved July 7, 1953.

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Alaska v. United States ([compact case], United States Court of Federal Claims 93-454-L Civ.; our file no. 221-94-0115; state's counsel: Joanne Grace and Heller, Erhman, White & McAullife; U.S.' attorney: Margaret Sweeney). On July 22, 1993, the state filed suit against the United States in the Court of Federal Claims for violating the statehood compact. Congress included in the statehood act a grant to Alaska of 90% of the revenues from oil and gas development on federal lands, to assure that Alaska would be able to finance state government. The state alleges that the act constitutes a contract because it required approval of the voters of Alaska to become effective, and because Alaskans relied on the terms of the act in agreeing to accept the social, political, and financial responsibilities of statehood. The state argues that the United States cannot unilaterally amend an essential provision of this agreement.

Specifically, the state alleges that Congress breached its promise to give the state 90% of revenues from oil and gas development on federal lands by withdrawing land from mineral leasing, selling land to third parties, and paying Alaska less than 90% of the revenue it receives. The state also alleges a breach of the covenant of good faith and fair dealing, fraudulent inducement, and a taking without compensation in violation of the fifth amendment, for which it requests compensation of \$29 billion.

On November 30, 1994, the state moved for partial summary judgment to resolve the issue of whether the United States can deduct administrative expenses from Alaska's 90% share of the revenues. The United States has opposed the motion and filed a motion to dismiss all the claims. The state filed its responsive briefing on July 13, 1995, and the United States filed its final briefs on November 1, 1995. The court has not yet scheduled oral argument.

Alaska to U.S.: You Owe Us \$29 Billion

The State of Alaska filed suit on July 22 against the United States in the Court of Federal Claims, alleging breach of the Alaska statehood compact. We argue that the United States has broken the compact by failing to give Alaska 90% of revenues from mineral leasing on federal land. We seek damages of \$29 billion.

The litigation is rooted in the history of Alaska statehood. In 1958, when statehood was being considered, the vast Territory of Alaska was a wealth of natural resources, yet some members of Congress and many Alaskans believed that Alaska would be unable to generate sufficient revenues

Rule of Law

By Charles E. Cole

from traditional sources to meet the expenses of statehood.

As a state, Alaska's taxing power could not be expected to produce much income: 99.9% of its land was federally owned and therefore untaxable, its industrial base was extremely limited, and its population was too small to produce much more than a trickle of income tax revenue. Further, Congress recognized that a republican form of government would be proportionally much more expensive in Alaska, where the territory's population of 211,000 was spread over a land mass one-fifth the size of the contiguous 48 states, far from the rest of the Union.

To ensure that Alaska could meet the economic demands of statehood, Congress included three extraordinary grants of natural resource interests in the Statehood Act. Congress granted the state 103.35 million acres of land, inalienable mineral rights to this land, and a 90% share of the

revenues from mineral leases on the lands in Alaska that were retained by the federal government.

The House Committee on Interior and Insular Affairs characterized the 90% revenue grant as one of the "major provisions" of the Alaska Statehood Act. The Senate Committee on Interior and Insular Affairs "deem[ed] it only fair that when the State relieves the United States of most of its expense burden, the State should receive a realistic portion of the proceeds from resources within its borders."

The 90% revenue grant is unique to Alaska. Sixteen other states, by comparison, directly received only 50% of mineral revenues from federal lands within their borders, with 40% more dedicated to the Reclamation Fund, a federal fund used for water and conservation projects in those states. To ensure Alaska's viability, however, Congress increased Alaska's share to 90% and offered it as an inducement to Alaskans to accept the financial burdens of statehood. The 10% retained by the United States was to compensate the federal government for the cost of administering the mineral leases.

The 90% revenue provision was included in the Alaska Statehood Act passed by Congress and signed into law by President Eisenhower on July 7, 1958. The act also required, however, that Alaska's electorate approve statehood and consent to "the terms or conditions of the grants of lands or other property therein made to the State of Alaska."

Alaskans studied and considered the Statehood Act provisions before voting in the statewide referendum. Local newspapers published the text of the act in August 1958, and Interior Secretary Fred Seaton visited Alaska and delivered speeches outlining the act's terms. In a speech to the Anchorage Chamber of Commerce on Aug.

25, Secretary Seaton discussed the land and mineral rights grant and the 90% revenue provision. He assured his listeners that according to an analysis prepared by the Department of the Interior, the additional costs of statehood would be more than offset by these additional revenues to be provided to the state.

On Aug. 26, 1958, Alaskans voted 40,452 to 8,010 for the admission of Alaska to the Union on the terms provided in the Statehood Act. Upon acceptance, the Statehood Act became a compact.

Since Alaska became a state in 1958 the federal government has violated its promise to provide the state with 90% of the mineral revenues from federal lands.

A statehood compact is essentially a contract. It constitutes Congress's agreement to admit a state into the Union with all the sovereign attributes of the existing states, and the citizens' agreement to accept the social, political and financial responsibilities of self-governance.

Having agreed to a compact's terms, the federal government cannot unilaterally alter them; any alteration requires the state's consent. As the Supreme Court has stated (*Asarco Inc. v. Kadish*, 1989) in discussing a statehood compact: "Congress could not . . . grant lands to a state on certain specific conditions and then later, after the conditions had been met and the lands vested, succeed in upsetting settled expectations through a belated effort to render those conditions more onerous."

Since Alaska's statehood, however, the federal government has violated its

promise to provide the state with 90% of the mineral revenues from federal lands. When the Statehood Act was ratified, nearly all the federal land in Alaska was open to leasing under the Mineral Leasing Act. Congress, in passing the Statehood Act, and Alaskans, in ratifying it, understood that the revenue provision applied to all of these lands.

In the 35 years since statehood, however, Congress has systematically withdrawn federal lands from potential mineral leasing, thereby keeping the state from realizing revenues from mineral development on these lands. Currently, more than 100 million acres of the 218 million acres of federal land in Alaska are closed to mineral leasing. In addition, Congress recently has begun to deduct administrative costs from the state's 90% share of revenues.

Congress's breach of the revenue provision is blatant. If Congress, on the day following admittance of Alaska into the Union, had withdrawn the same amount of federal lands within the state from mineral leasing, no one would doubt that Congress had broken its word to Alaska. Yet over the years, Congress's cumulative withdrawals have had the same effect. Alaskans believe that the federal government has not acted in good faith.

In bringing suit against the United States, Alaska seeks to enforce Congress's promise, upon which its citizens relied in accepting statehood, and to which Congress is bound. If Congress did not intend to honor its promise to pay Alaska 90% of mineral lease revenues on federal lands, it should not have made the provisions part of the statehood bargain.

The Department of the Interior has stated that it does not take Alaska's lawsuit seriously. It should.

Mr. Cole is attorney general of Alaska.

1/31/96

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SJR 31

Revision Date: _____ Dept. Affected: Office of the Governor
 Title: "Proposing an amendment to the Constitution ... BRU: Executive Operations
voter ratification of legislative amendments of the AK. Statehood Act... Component: Executive Office
 Sponsor: Senator Pearce
 Requester: _____ COMPONENT SERIAL NO. 6

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 100	FY 01	FY 02
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						
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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						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Michael A. Nizich, Director Phone: 465-3876
 Division: Administrative Services Date: 1/26/96

Approved by Commissioner: Jim Ayers, Chief of Staff Date: _____
 Agency: Office of the Governor

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1/31/96

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SJR31

Revision Date: <u>1/29/96</u>	Dept. Affected: <u>Office of the Governor</u>
Title: <u>Constitutional Amendment RE: Alaska</u>	BRU: <u>Elective Operations</u>
Statehood Act	Component: <u>General and Primary Elections</u>
Sponsor: <u>Senator Pearce</u>	
Requester: <u>Senator Taylor</u>	COMPONENT SERIAL NO. <u>22</u>

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 100	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	2.2					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	2.2	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	2.2					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	2.2	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

FULL-TIME	0					
PART-TIME	0					
TEMPORARY	0					

ANALYSIS: (Attach a separate page if necessary)

This figure includes the cost of providing information about this issue in the Official Election Pamphlet as required by AS 15.58, and the programming costs for counting votes cast on the measure. However, only four measures can be printed on a single ballot card. If this measure requires printing an additional ballot card, the costs will increase by \$53.4.

Prepared by: <u>Dana LaTour</u> <i>Dana LaTour</i>	Phone: <u>465-5347</u>
Division: <u>Division of Elections</u>	Date: <u>1/29/96</u>
Approved by: <u>Lt. Governor Fran Ulmer</u> <i>John Sandback for</i>	Date: <u>1/29/96</u>
Agency: <u>Office of the Lt. Governor</u>	

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SJR 31

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 1/8/96

FURTHER: Finance

Date of 5-Day Notice: 1/26/96
 (in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 2/12/96

The Judiciary Committee considered **SENATE JOINT RESOLUTION NO. 31**

Proposing an amendment to the Constitution of the State of Alaska relating to voter ratification of legislative approval of amendments of the Alaska Statehood Act affecting an interest of the State of Alaska under that Act.

*FIN & OPN
 attached*

and recommends:

- be replaced with CS SJR 31 (JUD)
- adopt previous CS ()
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
 - same title
 - new title
- House Bill:**
 - same title
 - technical title
 - new: SCR# _____

SIGNING DEPT	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Mike Mall</i>	<input checked="" type="checkbox"/>	<i>Ch. Ellis</i>		<input checked="" type="checkbox"/>	
<i>Lynne Green</i>	<input checked="" type="checkbox"/>	<i>Al Adams</i>		<input checked="" type="checkbox"/>	
CHAIR: <i>Chris Taylor</i>	<input checked="" type="checkbox"/>				

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

CS -	Office of Gov	2/2/96		202
CS -	Office of Gov	1/26/96	X	

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

2/13/96

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSSJR 31(Jud)

Revision Date: 2/7/96 Dept. Affected: Office of the Governor
 Title: Constitutional Amendment RE: Alaska BRU: Elective Operations
 Statehood Act _____ Component: General and Primary Elections
 Sponsor: Senator Pearce
 Requester: Senator Taylor COMPONENT SERIAL NO. 22

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 100	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	2.2					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	2.2	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	2.2					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	2.2	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

FULL-TIME	0					
PART-TIME	0					
TEMPORARY	0					

ANALYSIS: (Attach a separate page if necessary)

This figure includes the cost of providing information about this issue in the Official Election Pamphlet as required by AS 15.58, and the programming costs for counting votes cast on the measure. However, only four measures can be printed on a single ballot card. If this measure requires printing an additional ballot card, the costs will increase by \$53.4.

Prepared by: Dana LaTour *D. LaTour* Phone: 465-5347
 Division: Division of Elections Date: 2/7/96

Approved by
 Commissioner: Lt. Governor Fran Ulmer *F. Ulmer* Date: 2/7/96
 Agency: Office of the Lt. Governor

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SJR

32

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 2/28/96

DATE TURNED INTO OFFICE: 3-8-96

The Finance Committee considered SJR 32

Relating to the constitutional defense council.

REPORTED OUT OF
SFC 3/8/96

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical change
 - new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Roll & O'Connell</i>	✓	<i>Steve Klein</i>	✓		
<i>Sen. Noyes</i>	✓	<i>Walter Donley</i>	✓		
Co-Chair: <i>[Signature]</i>	✓	Co-Chair:			
Co-Chair: <i>[Signature]</i>	✓	Co-Chair:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

<i>Gov.</i>	<i>2/27/96</i>		<i>2.2</i>

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

No. 1

Bill Version: SJR 32

(S) Publish Date: 2/28/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Revision Date: 2/27/96 Dept. Affected: Office of the Governor
 Title: Constitutional Amendment relating to the BRU: Elective Operations
constitutional defense council. Component: General and Primary Elections
 Sponsor: Senators Taylor, Frank, Green...
 Requester: Senator Taylor COMPONENT SERIAL NO. 22

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 100	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	2.2					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	2.2	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	2.2					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	2.2	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

FULL-TIME	0					
PART-TIME	0					
TEMPORARY	0					

ANALYSIS: (Attach a separate page if necessary)

This figure includes the cost of providing information about this issue in the Official Election Pamphlet as required by AS 15.58, and the programming costs for counting votes cast on the measure. However, only four measures can be printed on a single ballot card. If this measure requires printing an additional ballot card, the costs will increase by \$53.4.

Prepared by: Dana LaTour Phone: 465-5347
 Division: Division of Elections Date: 2/27/96

Approved by
 Commissioner: Lt. Governor Fran Ulmer Date: 2/27/96
 Agency: Office of the Lt. Governor

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SJR32

Revision Date: 2/27/96 Dept. Affected: Office of the Governor
 Title: Constitutional Amendment relating to the BRU: Elective Operations
constitutional defense council. Component: General and Primary Elections
 Sponsor: Senators Taylor, Frank, Green...
 Requester: Senator Taylor COMPONENT SERIAL NO. 22

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 100	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	2.2					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	2.2	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	2.2					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	2.2	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

FULL-TIME	0					
PART-TIME	0					
TEMPORARY	0					

ANALYSIS: (Attach a separate page if necessary)

This figure includes the cost of providing information about this issue in the Official Election Pamphlet as required by AS 15.58, and the programming costs for counting votes cast on the measure. However, only four measures can be printed on a single ballot card. If this measure requires printing an additional ballot card, the costs will increase by \$53.4.

Prepared by: Dana LaTour *Dana LaTour* Phone: 465-5347
 Division: Division of Elections Date: 2/27/96

Approved by
 Commissioner: Lt. Governor Fran Ulmer *John Enders* Date: 2/27/96
 Agency: Office of the Lt. Governor

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SJR 32

Revision Date: _____ Dept. Affected: Department of Law
 Title: "...amendments to the Constitution...relating to BRU: Civil Division
the constitutional defense council." Component: General Legal Services
 Sponsor: Senator Taylor
 Requester: Senate Judiciary Committee COMPONENT SERIAL NO. 2087

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This joint resolution will have no fiscal impact for the Department of Law.

Prepared by: Richard I. Pegues, Director
 Division: Administrative Services Division
 Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law

Phone: 465-3672
 Date: 2/23/96
 Date: 2/23/96

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Alaska State Legislature

Chairman,
Judiciary Committee

Vice Chairman,
Transportation Committee

Member,
Resources Committee
Western Legislative Forestry Task Force



Senator Robin L. Taylor

State Capitol
Juneau, Alaska 99801-1152
(907) 465-2573
Fax: (907) 465-3922

352 Front Street
Ketchikan, Alaska 99901
(907) 225-8055
Fax: (907) 225-0713

Sponsor Statement

Senate Joint Resolution No. 32

SJR 32 would establish a Constitutional Defense Council in the legislative branch of state government. This nine member panel would have the authority to bring actions or to intervene in actions involving questions of State or federal constitutional law.

The CDC that would be established if the voters of Alaska approve this amendment to our Constitution would similar to Constitutional Defense Councils already in existence in Utah and Arizona. The major difference is that while the Utah and Arizona councils are advisory in nature, the Alaska CDC would have the power to litigate.

Arizona established its CDC to "restore, maintain and advance state sovereignty and authority over issues that affect Arizona and the well being of its citizens by taking any legal action it deems appropriate against the federal government".

Alaska's CDC would be composed of the presiding officers of each legislative body, the governor, the attorney general and five public members. One public member is appointed by the governor and two each are appointed by the presiding officers.

SPONSOR STATEMENT

Sponsor Statement
SJR 32

Under our present system, the legislative branch cannot bring or intervene in litigation. Passage of SJR 32 and its approval by the voters would provide for a "second opinion" on controversial issues currently decided only by the governor in consultation with his or her attorney general.

SJR 32 would add a check and balance provision to our Constitution that would enable the council to act if the council and the administration disagree on the best course of action on a constitutional issue. Reasonable people can disagree. SJR 32 would enable us to see those disagreements to final resolution instead of empowering one individual with the authority to decide how to proceed.



WESTERN STATES COALITION

Co Chairs:

Mel Brown-UT
Mark Kilham-AZ
Gail Phillips-AK

Co-Founders:

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Met Johnson-UT

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Bob Turner-NV
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Deb Williams-NM

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Yvonne Culverwell-NV
Lynise Linton-UT
Stirling Spencer-NM

February 21, 1996

Dear Legislator:

I am enclosing a copy of a bill sponsored by Senator Rod Johnson of Oregon. Even though we have sent copies of Utah's and Arizona's, this is a shortened version, really clean, and to the point. It may help.

Good luck with your legislative session and I'm looking forward to seeing you in Casper.

Sincerely,

Met Johnson
Executive Director
WESTERN STATES COALITION

Senate Bill 1061

Sponsored by Senator JOHNSON

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Creates Constitutional Defense Council. Creates Constitutional Defense Council Revolving Fund. Appropriates moneys for activities of council.

A BILL FOR AN ACT

1
2 Relating to the Constitutional Defense Council; and appropriating money.

3 Be It Enacted by the People of the State of Oregon:

4 **SECTION 1.** (1) The Constitutional Defense Council is established consisting of the Gov-
5 ernor or a designee of the Governor, a person appointed by the President of the Senate and
6 a person appointed by the Speaker of the House of Representatives. Members of the council
7 shall serve for a term of two years and are eligible for reappointment. Members are not eli-
8 gible for compensation but may receive actual and necessary travel and other expenses as
9 provided in ORS 292.495 (2).

10 (2) The purpose of the council is to restore, maintain and advance the state's sovereignty
11 and authority over issues that affect this state and the well-being of its citizens by taking
12 any action the council deems appropriate.

13 (3) Meetings of the council may be called by any member, and decisions of the council
14 shall be made by a majority vote of the members.

15 (4) The council may hold meetings or hearings regarding any of the following:

16 (a) Federal mandates.

17 (b) Court rulings.

18 (c) The authority granted to, or assumed by, the Federal Government.

19 (d) Laws, regulations and practices of the Federal Government.

20 (e) Any other activity deemed appropriate given the purposes of the council.

21 (5) The council may require the Attorney General or a designee of the Attorney General
22 to provide testimony on potential legal actions that would enhance the state's sovereignty
23 or authority on issues affecting this state and the well-being of its citizens.

24 (6) By majority vote, the council may initiate and prosecute any action that the council
25 determines will further its purposes.

26 (7) The council may select and employ attorneys to implement the purposes of this sec-
27 tion. The Attorney General may assist any council attorney in any manner deemed appro-
28 priate by the Attorney General to best serve the purposes of the council. When requested
29 by the council, agencies and departments of this state shall provide reasonable personnel and
30 resources to assist in any matter pursued by the council. The council shall not hire perma-
31 nent staff.

NOTE: Matter in boldfaced type in an amended section is new; matter (*italic and bracketed*) is existing law to be omitted. New sections are in boldfaced type.

SENATE COMMITTEE REPORT First Committee of Referral

DATE: 1/18/96

FURTHER: Finance

Date of 5-Day Notice: 2-22-96
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 2-27-96

The Judiciary Committee considered SJR 32

Relating to the constitutional defense council.

and recommends:

- be replaced with _____ CS _____
- adopt previous _____ CS _____
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:
- same title
 - new title
- House Bill:
- same title
 - technical title
 - new: SCR# _____

EM

SIGNING, DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Mike Miller</i>	<input checked="" type="checkbox"/>				
<i>Lynne Green</i>	<input checked="" type="checkbox"/>	<i>Carl Coak</i>		<input checked="" type="checkbox"/>	
CHAIR: <i>Christ Taylor</i>	<input checked="" type="checkbox"/>				

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
<i>Elections</i>	<i>2/27/96</i>	<input checked="" type="checkbox"/>	<i>2.2</i>

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill