ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672

2347 SCOMM 99 HOUSE SPEC. WORLD TRADE...RELATIONS, 1995-1996

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Date

SCOMM 99: HOUSE SPECIAL COMMITTEE ON WORLD TRADE AND STATE/FEDERAL RELATIONS, 1995-96

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MEMBERS:

REPRESENTATIVE RAMONA BARNES, CHAIR
REPRESENTATIVE GARY DAVIS
REPRESENTATIVE GENE KUBINA
REPRESENTATIVE JERRY MACKIE
REPRESENTATIVE ELDON MULDER
REPRESENTATIVE GAIL PHILLIPS
REPRESENTATIVE BILL WILLLIAMS

Established by House Resolve No. 1, 1995 (HR 2).

Contents: 27 files. 9 tapes are also available of hearings held 1/24/95 - 04/29/96.

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3. CONFIRMATION HEARING: VIRGIL UMPHENOUR, BOARD OF FISHERIES, 2/13/95
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SCOMM 99: HOUSE SPECIAL COMMITTEE ON WORLD TRADE AND STATE/FEDERAL RELATIONS, 1995-96

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27. COMMITTEE "INTERIM REPORT ON WORLD TRADE AND STATE/FEDERAL RELATIONS, 1/24/97

# SCOMM

# 99:1

COMMITTEE: HOUSE SP CMTE WORLD TRADE & ST/FED RELATIONS

| BILL ID | NUMBER | ABBREVIATED TITLE | SPONSOR/REQUESTOR | DATE | FURTHER REFERRALS |
|---|---|---|---|---|---|
| HCR 28 | HCR 28 | EXTEND DALTON HIGHWAY | Davies<br>BY REQUEST | 02/12/96 | (H) TRA<br>THEN STA |
| HJR 10 | HJR 10 | OPPOSING FEDERAL MANDATES ON STATES | James | 01/16/95 | (H) STA<br>THEN JUD |
| HJR 14 | HJR 14 | CONST. AMDT: SUBSISTENCE PREFERENCE | Ivan | 01/16/95 | (H) RES<br>THEN JUD<br>THEN FIN |
| HJR 15 | HJR 15 | OPPOSING FEDERAL MANDATES ON STATES | Barnes | 01/16/95 | (H) STA<br>THEN JUD |
| HJR 16 | HJR 16 | STATE'S RIGHTS UNDER 10TH AMENDMENT | Green | 01/16/95 | (H) STA<br>THEN JUD |
| HJR 21 | HJR 21 | CONFERENCE OF THE STATES | Mulder | 01/23/95 | (H) STA |
| HJR 37 | HJR 37 | SUPPORT INCREASING FEDERAL MINIMUM WAGE | Finkelstein | 03/15/95 | (H) STA<br>THEN L&C<br>THEN FIN |
| HJR 53 | HJR 53 | VOTER APPROVAL:AK STATEHOOD ACT AMENDMENT | Davies | 01/10/96 | (H) STA<br>THEN JUD<br>THEN FIN |
| HJR 57 | HJR 57 | CONVEYANCE OF LAND IN DALTON HWY CORRIDOR | Davies | 01/24/96 | (H) STA<br>THEN RES |
| HR 11 | HR 11 | REINDEER INDUSTRY ACT OF 1937 | Ogan | 05/10/95 | (H) STA<br>THEN RES |
| CSSSSJR 18(STA) | SJR 18 | CREATION OF ARCTIC COUNCIL | Adams | 04/26/95 | (H) ITT<br>THEN CRA<br>THEN STA<br>THEN FIN |

Official Business

COMMITTEES:
Natural Resources
Legislative Council

# Alaska State Legislature

## Office of World Trade And State/Federal Relations

REPRESENTATIVE
**RAMONA L. BARNES**
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(907) 258-8163

State Capitol
Juneau, AK 99801-1182
(907) 465-3438

## House Special Committee on World Trade & State/Federal Relations

## M E M B E R S

| | session | interim |
|---|---|---|
| BARNES, Chairman | 3438 | 258-8163 |
| PHILLIPS, V. Chairman | 2689 | 258-8164 |
| MULDER | 2647 | 258-8193 |
| WILLIAMS | 3424 | 247-4672 |
| G. DAVIS | 2693 | 283-7095 |
| KUBINA | 4859 | same |
| MACKIE | 4925 | same |

# House Special Committee on World Trade and State/Federal Relations

## January 24, 1995 5 p.m.
## House Finance Committee Room

## AGENDA

I. CALL TO ORDER

II. ROLL CALL

III. AGENDA ITEMS

1) Joint meeting with Committee on International Trade and Tourism.
Presentation from Robin Zerbel, World Trade Center and Chuck Becker, District Director, U.S. Foreign Commercial Service.

IV. OTHER BUSINESS

V. ADJOURNMENT

VI. REMINDER: Next meeting---Tuesday, January 31, 1995 5 p.m. Capitol Bldg. Room 408

HB 83 "Review of Federally Mandated Programs"
HJR 8 "Opposing Federal Mandates on States"

HOUSE SPECIAL COMMITTEE WORLD TRADE AND STATE/FEDERAL RELATIONS
January 24, 1995
5:10 p.m.

MEMBERS PRESENT

Representative Ramona Barnes, Chairman
Representative Eldon Mulder
Representative Bill Williams
Representative Gene Kubina
Representative Jerry Mackie
Representative Bev Masek
Representative Brian Porter
Representative Pete Kott
Representative Jeannette James
Representative Irene Nicholia
Representative Caren Robinson

MEMBERS ABSENT

Representative Gail Phillips, Vice Chairman
Representative Gary Davis
Representative Alan Austerman

OTHER HOUSE MEMBERS PRESENT

Representative Jerry Sanders
Representative John Davies

COMMITTEE CALENDAR

(* First public meeting)

Joint meeting with Special Committee on International Trade and Tourism.

Presentation from Chuck Becker, District Director, U.S. Foreign Commercial Service and Robin Zerbel, Director, World Trade Center.

WITNESS REGISTER

CHARLES F. BECKER, District Office Director, Int'l Trade Admin.
U.S. Foreign Commercial Service
World Trade Center Alaska
421 West First Avenue, Suite 300
Anchorage, Alaska 99501
Telephone: 271-6237
POSITION STATEMENT: Overview of U.S. Foreign Commercial Service

Ms. E.H. PETE NELSON, Regional Land Manager
TEXACO, Inc.
Post Office Box 100899
Anchorage, Alaska 99510-0899
Telephone: 278-9611
POSITION STATEMENT: Board member of World Trade Center

Ms. ROBIN R. ZERBEL, Director
World Trade Center Alaska
421 West First Avenue, Suite 300
Anchorage, Alaska 99501
Telephone: 278-7233
POSITION STATEMENT: Overview of World Trade Center

JOSEPH M. BEEDLE, President
Goldbelt, Inc.
9097 Glacier Highway, Suite 200
Juneau, Alaska 99801
Telephone: 790-4990
POSITION STATEMENT: Board member of World Trade Center

WILLIAM L. BLACHMAN, Ph.D., Dean
University of Alaska Anchorage
School of Business
3211 Providence Drive
Anchorage, Alaska 99508
Telephone: 786-4125
POSITION STATEMENT: Board member of World Trade Center

PREVIOUS ACTION

ACTION NARRATIVE

TAPE 95-1, SIDE A
Number 000

The Joint Meeting of the House Special Committees on World Trade and State/Federal Relations and International Trade and Tourism was called to order by Chairman Ramona Barnes at 5:10 p.m. Members present at the Call To Order were Representatives Barnes, Mulder, Williams, Masek, Porter, Kott and Nicholia. Members absent were Representatives Kubina, Mackie, James, Robinson, Phillips, G. Davis, Austerman.

Number 033

CHAIRMAN RAMONA BARNES welcomes the committee members and public to the first meeting of this committee. She introduces Representative Masek, chairman of the International Trade & Tourism. Chairman Barnes states that this committee looks forward to enhancing the relations of this state and that the areas of interest will include world trade and how the state can promote trade that will benefit Alaska. While deals involving millions of dollars are important, so are opportunities for small businesses to find trading partners and make investments in foreign countries. She notes in a recent state economic report that Alaska's exports fell 24 % in 1993. Half of that total is just one commodity--fish, and of the $2.7 billion in goods exported in 1993, Japan purchased over $2 billion worth. We must expand trade with other partners including China, Taiwan and Russia. We also must take a more active role in asserting our rights with the federal government as they relate to our state and our state sovereignty.

Number 095

REPRESENTATIVE BEV MASEK, Chairman of International Trade & Tourism Committee, also welcomed the committee and thanked the public for their representation. She said the State had not taken a strong look toward tourism and that her committee looked forward to hearing from the public so that the committee may have a good overview of the areas that need work.

Number 116

CHARLES BECKER, District Director, U.S. Foreign Commercial Service, testified via teleconference from Anchorage and give an overview of the agency and its mission, how they operate and how they help Alaskan companies and thirdly to discuss a conversation he had with Commerce Commissioner Willie Hensley and the transition team. The agency is a group of marketing professionals as a group that spans the globe and has about 135 locations. They are typically the hottest markets for U.S. products and services. They also have 70 domestic offices. The service began in 1980. They have a sophisticated technical system called a National Trade Data Bank that will assist companies in conducting business. The agency is now located with the World Trade Center. They look forward to working with their "missing" partner, the governor's office of International Trade.

Number 296

MR. BECKER says that a joint strategic plan with his agency, the World Trade Center and the Office of International Trade has been developed to address the problems of trade development in Alaska. There would be export seminars.

Number 320

MR. BECKER pointed out in his meeting with Commerce Commissioner Hensley that the Commissioner take a look at the governor's office of International Trade, that we work as closely as we can to eliminate any duplication and to develop the strategic plan to define common objectives.

Number 370

CHAIRMAN BARNES noted as a side comment how pleased she is that Mr. Becker is working on exporting our cold weather technology as it relates to our development of our oil patch at Prudhoe Bay. She also noted that Taipei is one of the largest trade centers in the world, and a sister-city to Anchorage and yet that office is closed and that we could have free space there.

MR. BECKER noted that the office was closed about four years ago , although Alaska has a small contract with an individual there who is doing excellent work.

Number 425

Ms. PETE NELSON, Board member of the World Trade Center, gave an overview of the origin and operation of the Center. The advisory board is made up of people from the banking community, oil companies, law firms, native corporations and retail merchants as well as government agencies involved in international trade activities.

Representatives Mackie and Kubina arrived late.

Number 455

Ms. ROBIN ZERBEL, Director, World Trade Center, stated that the WTC is an association that consists of 200 organizations throughout Alaska with its headquarters in New York. She stresses the importance of how we can increase the success of Alaskan companies without expanding significantly our financial resources.
Our mission is to facilitate trade for our member companies. It's a two-prong approach with networking as the facilitator. Services and facilities component make up the two parts of the mission. We do 80 % of our business with Russia.

Representatives James and Robinson arrived late.

Number 499

Ms. ZERBEL offers the services of the WTC to the State of Alaska. There are six key elements to the success of trade in Alaska's future. They are education, leadership from the State of Alaska, develop a strategy, trade financing, trade missions and trade shows and publicity. She offers the cooperation of her agency work to closely with both committees in any effort to promote and enhance trade in Alaska.

Number 644

CHAIRMAN BARNES relates her trip with Representative Phillips this past summer to Taipei.

REPRESENTATIVE JEANNETTE JAMES stated that Alaska has just exported its first shipment of potatoes to Taiwan and that more shipments were planned.

Number 689

JOSEPH BEEDLE, Board member of WTC, that this is a public-private partnership that is funded by 70% of people who are willing to pay for the resources that are provided.

TAPE 95-1, SIDE B
Number 000

DR. WILLIAM BLACHMAN, Board member of the WTC, agrees that the joint-venturing is going to prove very valuable to Alaska businesses.

REPRESENTATIVE JOHN DAVIES inquired about the relationship between the WTC and the mission of University of Alaska.

Ms. ZERBEL explained that it is very important to teach people how to do business internationally. It's like having a classroom without walls.

Number 064

REPRESENTATIVE BRIAN PORTER noted that there isn't an awful lot of coordination with the energy industries or timber in Alaska, but since fish is such a large export, he wanted to know if they were related in any way to Alaska Seafood and Marketing Institute.

Ms. ZERBEL says they work very closely with International Trade, who works with ASMI.

Ms. ZERBEL commented that although they work cooperatively with the tourism trade and the Convention and Visitors Bureau and Alaska Visitors Bureau and when there is a cross-over, we work with them, but they are not in a position to take on tourism.

REPRESENTATIVE CAREN ROBINSON inquired about how to become a member and how are board members chosen.

Ms. ZERBEL stated that it is a $300 annual fee and have many fund raisers. The board members have been historically appointed by the chancellor of the University of Alaska Anchorage.

CHAIRMAN BARNES announced that the next committee meeting will be Tuesday, January 31, at 5 p.m. to hear HB 83 and HJR 8.

## ADJOURNMENT

There being no further business to come before the House Special Committee of World Trade and State/Federal Relations, Chairman Barnes adjourned the meeting at 6:05 p.m.

# Alaska State Legislature

Official Business

State Capitol
Juneau, AK 99801-1182

## House Special Committee on World Trade and State/Federal Relations

January 31, 1995 5 p.m.
Capitol, Room 408

## AGENDA

I. CALL TO ORDER

II. ROLL CALL

III. COMMITTEE CALENDAR

(* first public hearing)

1) * HB 83 "Review of Federally Mandated Programs".
2) * HJR 8 "Opposing Federal Mandates on States".
3) * HJR 20 "Conference of the States".

IV. OLD BUSINESS

V. NEW BUSINESS

VI. ADJOURNMENT

VII. REMINDER: Next meeting---Thursday, February 9, 1995
5 p.m. Capitol Bldg. Butrovich Room (205)

1. Overview by the Department of Commerce & Economic Development
Testimony: John Sibert, Executive Director, Alaska Science & Technology Foundation
2. Joint meeting with International Trade & Tourism

# Alaska State Legislature
## HOUSE OF REPRESENTATIVES

Official Business

State Capitol
Juneau, AK 99801-1182

**SPONSOR STATEMENT**

To: House Committees of Referral for HJR 8

From: Representative Scott Ogan S.O.

Re: HJR 8, "A Resolution relating to mandates and other conditions imposed on the states by the federal government."

Date: January 19, 1995

I have introduced HJR 8 as a means of articulating the resolve of the citizens of this state to stand against further attempts by the federal government to encroach upon our autonomy and rights as a state under the Tenth Amendment to the United States Constitution. The Resolution reflects the widely held opinion that the federal government has grossly exceeded its authority to make and enforce policy in certain areas. The United States Constitution creates a federal government of limited jurisdiction, and permits government at that level to exercise only those powers specifically granted in the document. The Tenth Amendment specifically articulates the principle reflected throughout the Constitution that all governmental authority not explicitly granted to the federal government is reserved to the several states.

It is clear that Congress has lost any understanding of its limited role and continues to enact legislation dealing with issues that are completely outside of its jurisdiction, as that jurisdiction is defined in Article I, Section 8 of the Constitution. Such legislation typically authorizes the various executive agencies to promulgate regulations which are oppressive, unconstitutional, and which demonstrate little understanding of or concern for the unique conditions and problems faced by the citizens of the State of Alaska. A prime example of this abuse, the federal management of fish and wildlife resources within the state, is specifically addressed in HJR 8. Nowhere in the United States Constitution is either Congress or the Executive Branch given authority to regulate or manage fish and game, except to the extent these resources enter the flow of interstate commerce.

As if the abrogation of state governmental authority were not enough, many of these constitutionally dubious federal mandates require state or local governments to pay for their implementation. These "unfunded mandates" have imposed enormous burdens on smaller governments already stretched thin by the effort required to meet their own responsibilities.

This Resolution is a timely statement to the federal government demanding that it cease and desist from interfering with Alaska's right to determine policy in those areas reserved to the states, and from attempting to manage Alaska's fish and wildlife resources.

# Alaska State Legislature
## HOUSE OF REPRESENTATIVES

Official Business

State Capitol
Juneau, AK 99801-1182

**MEMORANDUM**

To: House Committees of Referral for HJR 8

From: Allen Kingman, Aide to Rep. Scott Ogan

Re: Sectional Analysis of HJR 8

Date: January 20, 1995

The following is a sectional analysis of HJR 8, "A Resolution relating to mandates and other conditions imposed on the states by the federal government." Please be advised that this analysis is not an authoritative interpretation of this resolution, and is not intended to provide legal advice concerning the potential ramifications of the resolution.

**Section 1**. (This is a single section resolution)

This resolution makes two clear and simple demands upon the federal government: First, that the federal government cease and desist from exercising any governmental authority in areas outside of its explicitly granted jurisdiction, and second, that the federal authorities relinquish their unlawful control over the fish and wildlife resources of this state. Compliance with these demands would restore to the state sole authority to make and enforce policy in those areas not delegated to the federal level by the Constitution, such as health and safety, environmental issues, education, welfare, fish and wildlife, and discretionary decisions concerning financial support for science and the arts. The citizens of each state would determine through their elected officials whether, and to what extent, these functions would be regulated and funded by state government.

# Alaska State Legislature
## HOUSE OF REPRESENTATIVES

Official Business

State Capitol
Juneau, AK 99801-1182

**MEMORANDUM**

To: House Committees of Referral for HB 83

From: Allen Kingman, Aide to Rep. Scott Ogan SO

Re: Sectional Analysis of HB 83

Date: January 19, 1995

The following is a sectional analysis of HB 83, "An Act relating to state implementation of federal statutes." Please be advised that this analysis is not an authoritative interpretation of this bill, and is not intended to provide legal advice concerning the potential ramifications of the bill.

**Section 1.** FINDINGS AND INTENT:

The findings set forth in this bill are clear and self-explanatory; they reflect the widely held opinion that the federal government has grossly exceeded its authority to make and enforce policy in certain areas. Federal legislation typically authorizes the various executive agencies to promulgate regulations which are oppressive, unconstitutional, and which demonstrate little understanding of or concern for the unique conditions and problems faced by the citizens of the State of Alaska.

**Section 2.** ADDITION OF A NEW CHAPTER 40 TO TITLE 37:

§ 37.40.10 (a) requires that a commissioner or other agency head charged with implementing a federally mandated program shall annually review the cost-effectiveness of that mandate, as well as whether the mandate conflicts with state policy. The commissioner or agency head will then present his findings and recommendations to the governor, the Legislative Budget and Audit Committee, and the judiciary committees of each house.

§ 37.40.10 (b) requires a similar annual review of federal mandates by commissioners and agency heads, but with a focus on whether the federal mandate encroaches on an area of jurisdiction reserved to the states under the United States Constitution. Findings are reported to the governor and judiciary committees only.

§ 37.40.10 (c) requires that state agencies or departments responsible for developing state programs that implement federal mandates shall develop programs that are responsive to the fiscal limitations of the state and its municipalities, and that the agencies balance the cost of the program to the state with the program's intended benefit.

§ 37.40.020 (a) charges the committees receiving the above-described reports with making an independent determination as to the legality of the federal mandate, and with reviewing any alternative methods of compliance that might be more cost-effective.

§ 37.40.020 (b) requires the reviewing committees to submit recommendations to the governor regarding executive branch implementation of the federal mandate.

# Alaska State Legislature
## HOUSE OF REPRESENTATIVES

Official Business

State Capitol
Juneau, AK 99801-1182

**SPONSOR STATEMENT**

To: House Committees of Referral for HB 83

From: Representative Scott Ogan SO

Re: HB 83, "An Act relating to state implementation of federal statutes."

Date: January 19, 1995

I have introduced HB 83 as a companion bill to HJR 8, "A Resolution relating to mandates and other conditions imposed on the states by the federal government." Whereas the Resolution articulates the resolve of the citizens of this state to stand against further attempts by the federal government to encroach upon our autonomy and rights as a state under the Tenth Amendment to the United States Constitution, this bill provides a simple and practical modality for taking that stand.

HB 83 requires that any commissioner or agency head faced with implementing a federal mandate or condition must first carefully analyze the mandate for three specific difficulties before making any efforts at compliance. First, is the federal policy or legislation an unconstitutional abrogation of state power? Second, is it in conflict with state policy? And third, is the federal mandate a cost-effective method in this state of dealing with the problem it addresses? The agency head or commissioner will present his findings in the form of a written report to the Governor, the Legislative Budget and Audit Committee, and the House and Senate Judiciary Committees.

The two legislative committees receiving such reports shall review them, and are authorized to research the legality of the mandate. Their conclusions shall be presented to the governor, along with specific recommendations to the executive branch for compliance, modified compliance, or legal challenge.

This bill provides a mechanism to scrutinize efforts by the federal government to impose unsuitable policy on our state, and to assert our right to self-determination--a right purchased for us at high cost by our ancestors.

Ogan 01/31/95

# AMENDMENT

OFFERED IN THE HOUSE SPECIAL COMMITTEE ON WORLD TRADE AND STATE/FEDERAL RELATIONS

BY REPRESENTATIVE OGAN

Page 2, lines 13 - 15:

Delete:

"The commissioner of each department or head of another agency in the executive branch shall annually review each program administered by that department or agency"

Insert:

"The Office of Management and Budget shall annually review each program administered by each department or agency of the executive branch"

Page 2, line 16:

Delete "The commissioner or agency head"

Insert "The Office of Management and Budget"

Page 2, line 19:

Delete "commissioner or agency head"

Insert "Office of Management and Budget"

Page 3, line 18:

Following "governor":

Insert "and the Alaska congressional delegation"

Official Business

COMMITTEES:
Natural Resources
Legislative Council

# Alaska State Legislature

**Office of World trade**
**And**
**State/Federal Relations**

REPRESENTATIVE
**RAMONA L. BARNES**
District 22

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State Capitol
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## HOUSE COMMITTEE PASSES RESOLUTION TO RESTORE STATES RIGHTS

2/1/95
FOR IMMEDIATE RELEASE
CONTACT: REP. RAMONA BARNES, 465-3438

The House Special Committee on World Trade and State/Federal Relations last night approved a resolution that authorizes the State of Alaska to participate in the first formal conference of the fifty states since 1786. Delegates to the conference would debate and vote on an action plan designed to restore the checks and balances between the states and the federal government.

"My resolution is an important first step toward reversing the encroachment of the federal government into areas where it doesn't belong," said Representative Ramona Barnes (R) Anchorage. "It is intended to restore the balanced system of government envisioned by the Tenth Amendment." Similar resolutions are pending in legislatures across the nation.

The conference, which is expected to occur during 1996, would convene no later than nine months after at least 26 states pass resolutions authorizing it. Alaska would be represented by five voting members including the governor and four legislators, two from each House. No more than two of the legislators selected may be from the same political party.

Barnes noted that since 1990 alone, the federal government has enacted at least 42 major statutes imposing expensive regulations and requirements on state and local governments. The measure (HJR 20) now goes to the State Affairs Committee. The Conference of the States is being organized by the Council of State Governments in cooperation with the National Conference of State Legislatures and the National Governors' Association.

Official Business

COMMITTEES:
Natural Resources
Legislative Council

# Alaska State Legislature

**Office of World trade**
**And**
**State/Federal Relations**

REPRESENTATIVE
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## SPONSOR STATEMENT

FROM: Representative Ramona Barnes

DATE: January 26, 1995

RE: HJR 20
"Relating to unfunded federal mandates and the Conference of the States"

HJR 20 authorizes the State of Alaska to send a delegation to represent the people of Alaska at a Conference of the States. The delegates would debate and vote on an action plan to restore the checks and balances between the states and the national government.

The resolution notes that the conference will convene no later than 270 days after at least 26 legislatures adopt similar resolutions and that Alaska will be represented by five voting members consisting of the governor or a constitutional officer selected by him, and four legislators, two from each house selected by the presiding officer of that house. No more than two of the legislators selected may be from the same political party. Two alternate legislator delegates, one from each party, would also be selected.

The action plan to be voted on at the conference will be called a States' Petition. It will be presented to each state in the form of a resolution for ratification, then presented to Congress as the will of the states of the Union.

Since 1990 alone, the federal government has enacted at least 42 major statutes imposing expensive regulations and requirements on state and local governments. HJR 20 is an important first step toward reversing that trend and restoring the balanced system of government envisioned by the Tenth Amendment.

Office of the Governor
Office of Management and Budget
January 31, 1995

# Position Statement

## HJR 20

The Knowles Administration supports House Joint Resolution 20, relating to unfunded federal mandates and the Conference of the States. The Conference of the States, which is supported by this resolution, has received broad interest and support among the states as a forum for addressing the balance of state and federal powers.

For Alaska, one of the key issues in our relationship with the federal government is not just the funding of federal mandates, but also the flexibility to tailor our government services to meet the unique needs of our state. In many areas — including welfare reform, education, environmental protection and health care — Alaska could benefit from greater freedom to design out own solutions, rather than being required to follow rigid requirements dictated by Washington.

The Administration looks forward to working with the Legislature in presenting a unified Alaska position on the balance of state and federal powers at the Conference of the States.

# ROLL CALL

## House Special Committee
## World Trade & State/Federal Relations

MEETING OF World Trade

SUBJECT Organ Amendment 1 HB 83

| MEMBER | YES | NO |
|---|---|---|
| BARNES | ✓ | |
| PHILLIPS | ✓ | |
| MULDER | ✓ | |
| G. DAVIS | ✓ | |
| WILLIAMS | ✓ | |
| KUBINA | ✓ | |
| MACKIE | ✓ | |
| TOTAL | 7 | 0 |

PASSED: 7-0

FAILED: _____

TCN: 50083 DATE & TIME: 01/31/95 17:00 TO 18:00 STATUS:7 STATS. IN

**** ORDER SUMMARY ****
SPONSOR: HWIR HOUSE SP CMTE WORLD TRADE & STATE/FED RE CHAIRS: BARNES
PURPOSE: PUB PUBLIC HEARING LEGISLATIVE
CONTACT: WAYNE TEL#: (907)465-6586
CHAIRING SITE: JUNEAU CAPITOL CAP408
TOLL FREE: DIAL-UP: LIO:(800)478-9908

SPONSOR REMARKS(PUB): TESTIMONY:Y ALLOWED 3 MINUTE LIMIT

SPONSOR REMARKS(LIO): BACKUP MATERIAL:Y MEETING IN PROGRESS:N MAX. SITES: 5
OTHER SITES MAY ADD - WAYNE WOULD LIKE TO BE INFORMED WHEN/IF THIS HAPPENS.
BACK-UP FAXED ON 1/27. ****JNU TO DIAL 9-10866-1-800-478-9908****
TCN REQUESTED ON 01/31/95 AND HAS 3 UPDATES

**** AGENDA ****
1 HB 83 REVIEW OF FEDERALLY MANDATED PROGRAMS
2 HJR 8 OPPOSING FEDERAL MANDATES ON STATES

**** PARTICIPATING LIOS ****

| | | | | | |
|---|---|---|---|---|---|
| | DJT | DELTA JCT. | JARVIS CTR. #210 | | LOCATION STAFF |
| * | JNU | JUNEAU | CAPITOL | CAP408 | LOCATION STAFF |
| | MAT | MATSU | 165 E PARKS HWY. | | LOCATION STAFF |
| | SOL | KEN/SOL | 34824 KALIFONSKY | | LOCATION STAFF |

PARTICIPANTS IN:DELTA JCT. DJT

| | | | | | |
|---|---|---|---|---|---|
| 1 | MR. GENE | OTTENSTROER | | | TSFY. ALL ITEMS |
| | PO BOX 1059 | | DELTA JUNCTION | AK 99737 | (907)895-4805 |
| 2 | MS. JEANNE' | PHIPPS | | | OBSV. ALL ITEMS |
| | PO BOX 544 | | DELTA JUNCTION | AK 99737 | (907)895-4805 |

PARTICIPANTS IN:JUNEAU JNU

| | | | |
|---|---|---|---|
| 1 | TO | OBSERVE | OBSV. ALL ITEMS |
| 2 | TO | OBSERVE | OBSV. ALL ITEMS |
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| 13 | TO | OBSERVE | OBSV. ALL ITEMS |
| 14 | TO | OBSERVE | OBSV. ALL ITEMS |
| 15 | TO | TESTIFY | TSFY. ALL ITEMS |
| 16 | TO | TESTIFY | TSFY. ALL ITEMS |
| 17 | TO | TESTIFY | TSFY. ALL ITEMS |

PARTICIPANTS IN:MATSU MAT

| | | | | | |
|---|---|---|---|---|---|
| 1 | MR. ROBERT | SHUMAKER | | | TSFY. HB 83 |
| | P O BOX 3712 | | | AK 99645 | (907)746-4453 |

PARTICIPANTS IN:KEN/SOL SOL

TCN: 50083 DATE & TIME: 01/31/95 17:00 TO 18:00 STATUS:7 STATS. IN

PARTICIPANTS IN:KEN/SOL SOL

| | | | | | |
|---|---|---|---|---|---|
| 1 | MR. | GARY | SUPERMAN | SELF | TSFY. HB 83 |
| | | PO BOX 8425 | | NIKISKI | AK 99635 (907)776-8448 |
| 2 | MR. | SCOTT | HAMANN | ABATE | TSFY. HB 83 |
| | | PO BOX 934 | | KENAI | AK 99611 (907)776-8448 |
| 3 | MR. | MIKE | SEAMAN | ABATE | TSFY. HB 83 |
| | | 408 N. GILL ST | | KENAI | AK 99611 (907)283-4970 |
| 4 | MR. | SEYMOUR | MILLS | SELF | TSFY. HB 83 |
| | | PO BOX 51 | | STERLING | AK 99672 (907)262-9289 |

**** SCHEDULING NOTES ****
ROOM 408 MAY NOT BE SET UP - WE NEED TO CHECK THIS OUT .

**** UPDATES ****

| | | | |
|---|---|---|---|
| 01 | 01/20/95 | 17:33:27 | ANNOUNCING TELECONFERENCE |
| 02 | 01/23/95 | 13:54:42 | KEN/SOL ADDED ON |
| 03 | 01/30/95 | 13:12:14 | DELTA JCT. ADDED ON |

LIN1100-R01 LEGISLATIVE TELECONFERENCE NETWORK PAGE 01
02/01/95 08:53:47
TCN: 50083 DATE & TIME: 01/31/95 17:00 TO 18:00 STATUS:6 ADJOURNED

**** ORDER SUMMARY ****
SPONSOR: HWTR HOUSE SP CMTE WORLD TRADE & STATE/FED RE CHAIRS: BARNES
PURPOSE: PUB PUBLIC HEARING LEGISLATIVE
CONTACT: WAYNE TEL#: (907)465-6586
CHAIRING SITE: JUNEAU CAPITOL CAP408
TOLL FREE: DIAL-UP: LIO:(800)478-9908

SPONSOR REMARKS(PUB): TESTIMONY:Y ALLOWED 3 MINUTE LIMIT

SPONSOR REMARKS(LIO): BACKUP MATERIAL:Y MEETING IN PROGRESS:N MAX. SITES: 5
OTHER SITES MAY ADD - WAYNE WOULD LIKE TO BE INFORMED WHEN/IF THIS HAPPENS.
BACK-UP FAXED ON 1/27. ****JNU TO DIAL 9-10866-1-800-478-9908****
TCN REQUESTED ON 01/31/95 AND HAS 3 UPDATES

**** AGENDA ****
1 HB 83 REVIEW OF FEDERALLY MANDATED PROGRAMS
2 HJR 8 OPPOSING FEDERAL MANDATES ON STATES

**** PARTICIPATING LIOS ****

| | | | | |
|---|---|---|---|---|
| DJT | DELTA JCT. | JARVIS CTR. #210 | | LOCATION STAFF |
| * JNU | JUNEAU | CAPITOL | CAP408 | LOCATION STAFF |
| MAT | MATSU | 165 E PARKS HWY. | | LOCATION STAFF |
| SOL | KEN/SOL | 34824 KALIFONSKY | | LOCATION STAFF |

PARTICIPANTS IN:DELTA JCT. DJT

| | | | | | |
|---|---|---|---|---|---|
| 1 MR. | GENE | OTTENSTROER | | | TSFY. ALL ITEMS |
| | PO BOX 1059 | | DELTA JUNCTION | AK 99737 | (907)895-4805 |
| 2 MS. | JEANNE' | PHIPPS | | | OBSV. ALL ITEMS |
| | PO BOX 544 | | DELTA JUNCTION | AK 99737 | (907)895-4805 |

PARTICIPANTS IN:KEN/SOL SOL

| | | | | | |
|---|---|---|---|---|---|
| 1 MR. | GARY | SUPERMAN | SELF | | TSFY. HB 83 |
| | PO BOX 8425 | | NIKISKI | AK 99635 | (907)776-8448 |
| 2 MR. | SCOTT | HAMANN | ABATE | | TSFY. HB 83 |
| | PO BOX 934 | | KENAI | AK 99611 | (907)776-8448 |
| 3 MR. | MIKE | SEAMAN | ABATE | | TSFY. HB 83 |
| | 408 N. GILL ST | | KENAI | AK 99611 | (907)283-4970 |
| 4 MR. | SEYMOUR | MILLS | SELF | | TSFY. HB 83 |
| | PO BOX 51 | | STERLING | AK 99672 | (907)262-9289 |

**** SCHEDULING NOTES ****
ROOM 408 MAY NOT BE SET UP - WE NEED TO CHECK THIS OUT .

**** UPDATES ****
01 01/20/95 17:33:27 ANNOUNCING TELECONFERENCE
02 01/23/95 13:54:42 KEN/SOL ADDED ON
03 01/30/95 13:12:14 DELTA JCT. ADDED ON

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| | |
|---|---|
| To BEN | From LIZ @ LIO |
| Co. | Co. |
| Dept. | Phone # 4648 |
| Fax # 4565 | Fax # |

Official Business

**COMMITTEE:** World Trade S/F

**DATE:** 1/31/95

# SIGN-IN

**Subject of meeting:**

HB 83
HJR 8
HJR 20

**PLEASE PRINT!**

| NAME | ADDRESS (MAILING) & (ZIP) | PHONE | REPRESENTING | DO YOU WANT TO TESTIFY? |
|---|---|---|---|---|
| GORDON EBERLY | % P.O. Box 3435 & Juneau 99803 | 789.5659 | SELF | Yes |
| BRIAN WEBER | 1560 BROADWAY #700 DENVER, CO | 303 830-2200 | NCSL | YES |
| J.B. COGHILL | 800 F ST JUNEAU AK 99801 | 586 4074 | SELF | Yes |
| Jack Kreinheder | OMB, Juneau Box ATM. | X4676 | OMB | Yes |
| | | | | |
| | | | | |
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| | | | | |
| | | | | |

Official Business

**COMMITTEE:** World Trade

**DATE:** 1/31/95

# SIGN-IN

**Subject of meeting:**
HB 83
HJR 8
HJR 20

**PLEASE PRINT!**

| NAME | ADDRESS (MAILING) & (ZIP) | PHONE | REPRESENTING | DO YOU WANT TO TESTIFY? |
|---|---|---|---|---|
| | Gordon Epperly - Juneau | (HJR 8 | | Yes |
| | Brian Weberg - NCSL | (20) | | Yes |
| | Jack Coghill | (HB-83) | | |
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HOUSE SPECIAL COMMITTEE ON WORLD
TRADE AND STATE/FEDERAL RELATIONS
January 31, 1995
5:05 p.m.

MEMBERS PRESENT

Representative Ramona Barnes, Chairman
Representative Gail Phillips, Vice Chairman
Representative Eldon Mulder
Representative Bill Williams
Representative Gary Davis
Representative Gene Kubina
Representative Jerry Mackie

MEMBERS ABSENT

None

COMMITTEE CALENDAR

* HB 83:An Act relating to state implementation of federal statutes."

PASSED OUT OF COMMITTEE

* HJR 8 "A Resolution relating to mandates and other conditions imposed on the states by the federal government."

PASSED OUT OF COMMITTEE

* HJR 20 "A Resolution relating to unfunded federal mandates and the Conference of the States."

PASSED OUT OF COMMITTEE

(* First public hearing)

WITNESS REGISTER

REPRESENTATIVE SCOTT OGAN
Alaska State Legislature
State Capitol, Room 409
Juneau, Alaska 99801-1182
Telephone: 465-3878
POSITION STATEMENT: Offered sponsor statements HB 83, HJR 8

JOHN B. "JACK" COGHILL, Consultant
Coghill, Wilcox & Associates
904 Calhoun
Juneau, Alaska 99802

Telephone: 463-5153
POSITION STATEMENT: Supported HB 83

ROBERT SCHMACHER
POSITION STATEMENT: Supported HB 83, HJR 8

GENE OTTENSTROER, Self
Post Office Box 1059
Delta Junction, Alaska 99737
Telephone: 895-4805
POSITION STATEMENT: Supported HB 83

SCOTT HAMANN
Alaskan Bikers Advocating Training
and Education (ABATE)
Post Office Box 934
Kenai, Alaska 99611
Telephone: 283-4481
POSITION STATEMENT: Supported HB 83 with concern

GARY SUPERMAN, Self
Post Office Box 8475
Nikiski, Alaska 99635
Telephone: 776-8448
POSITION STATEMENT: Supported HB 83

MIKE SEAMAN, Self
408 N. Gill Street
Kenai, Alaska 99611
Telephone: 283-4970
POSITION STATEMENT: Supported HB 83

SEYMOUR MILLS, Self
Post Office Box 51
Sterling, Alaska 99672
Telephone: 262-9289
POSITION STATEMENT: Supported HB 83

JACK KREINHEDER, Senior Policy Analyst
Office of Management and Budget
Office of the Governor
Post Office Box 110020
Juneau, Alaska 99811-0020
Telephone: 465-4676
POSITION STATEMENT: Supported HB, HJR 8, HJR 20

ELMER LINDSTROM, Special Assistant
Department of Health and Social Services
Office of the Commissioner
Post Office Box 110601
Juneau, Alaska 99811-0601
Telephone: 465-3030

POSITION STATEMENT: Offered to look at fiscal note for HB 83

GORDON EPPERLY, Self
Post Office Box 34358
Juneau, Alaska 99803
Telephone: 789-5659
POSITION STATEMENT: Supported HB 83

BRIAN WEBERG, Program Director
Legislative Management
National Conference of State Legislators
1500 Broadway Suite 700
Denver, Colorado 80202
Telephone: (303) 830-2200
POSITION STATEMENT: Supported HJR 20

PREVIOUS ACTION

BILL: HB 83
SHORT TITLE: REVIEW OF FEDERALLY MANDATED PROGRAMS
BILL VERSION:
SPONSOR(S): REPRESENTATIVE(S) OGAN, Porter, Kohring, Toohey, James

| JRN-PG | JRN-PG | | ACTION |
|---|---|---|---|
| 01/13/95 | 42 | (H) | PREFILE RELEASED |
| 01/16/95 | 42 | (H) | READ THE FIRST TIME - REFERRAL(S) |
| 01/16/95 | 42 | (H) | WTR, STA, JUD |
| 01/25/95 | 136 | (H) | COSPONSOR(S): KOHRING |
| 01/25/95 | 136 | (H) | COSPONSOR(S): TOOHEY |
| 01/27/95 | 162 | (H) | COSPONSOR(S): JAMES |
| 01/31/95 | | (H) | WTR AT 05:00 PM CAPITOL 408 |

BILL: HJR 8
SHORT TITLE: OPPOSING FEDERAL MANDATES ON STATES
SPONSOR(S): REPRESENTATIVE(S) OGAN, Porter, Barnes, James, Toohey, Mulder, Kohring

| JRN-DATE | JRN-PG | | ACTION |
|---|---|---|---|
| 01/16/95 | 18 | (H) | READ THE FIRST TIME - REFERRAL(S) |
| 01/16/95 | 18 | (H) | WTR, STA, JUD |
| 01/18/95 | 73 | (H) | COSPONSOR(S): BARNES |
| 01/20/95 | 104 | (H) | COSPONSOR(S): JAMES, TOOHEY |
| 01/23/95 | 118 | (H) | COSPONSOR(S): MULDER |
| 01/25/95 | 135 | (H) | COSPONSOR(S): KOHRING |
| 01/31/95 | | (H) | WTR AT 05:00 PM CAPITOL 408 |

BILL: HJR 20
SHORT TITLE: CONFERENCE OF THE STATES
SPONSOR(S): REPRESENTATIVE(S) BARNES, Grussendorf, Foster, Mulder

| JRN-DATE | JRN-PG | | ACTION |
|---|---|---|---|
| 01/23/95 | 115 | (H) | READ THE FIRST TIME - REFERRAL(S) |
| 01/23/95 | 115 | (H) | WTR, STA |
| 01/31/95 | | (H) | WTR AT 05:00 PM CAPITOL 408 |

ACTION NARRATIVE

TAPE 95-2 SIDE A
Number 000

The meeting of the House Special Committee on World Trade and State/Federal Relations was called to order by Chairman Ramona Barnes at 5:05 p.m. Members present at the call to order were Representatives Barnes, Mulder, Williams, G. Davis, Mackie and Kubina. Members absent were Representative Phillips.

CHAIRMAN RAMONA BARNES stated that there is quorum present and noted the meeting was being teleconferenced to the Matanuska-Susitna Valley, Delta Junction and Kenai Peninsula.

Number 024

HB 83 - REVIEW OF FEDERALLY MANDATED PROGRAMS

REPRESENTATIVE SCOTT OGAN, sponsor of the measure, stated that HB 83 is a companion to HJR 8 and articulates that the citizens of Alaska stand against further attempts, by the federal government, to encroach upon our autonomy and rights as a state under the Tenth Amendment to the United States Constitution. It requires that any commissioner or agency head faced with implementing a federal mandate or condition must first carefully analyze the mandate for three specific difficulties before making any efforts at compliance. First, is the federal policy or legislation an unconstitutional abrogation of state power? Second, is it in conflict with state policy? And third, is the federal mandate a cost effective method in this of dealing with the problem it addresses. Representative Ogan said the agency head or commissioner will present his findings in the form of a written report to the Governor, the Legislative Budget and Audit Committee, and the House and Senate Judiciary Committees. The two legislative committees receiving such reports shall review them and are authorized to research the legality of the mandate. Their conclusions shall be presented to the Governor, along with specific recommendations to the executive branch for compliance, modified compliance, or a legal challenge. He said that the resolution provides a mechanism to scrutinize efforts by the federal government to impose unsuitable policy on our state, and to assert our right to self-determination, a right purchased for us at high cost by our ancestors.

REPRESENTATIVE GAIL PHILLIPS arrived at 5:09 p.m.

Number 070

REPRESENTATIVE JERRY MACKIE inquired as to foreseen legal problems by not enacting federal mandates and what kind of money we would lose by not implementing some of these mandates.

REPRESENTATIVE OGAN responded by saying that he did not believe that there was an analysis done. The federal government has imposed some 192 mandates on our state. He stated that over a nine year period, environmental unfunded federal mandates have cost the Municipality of Anchorage nearly one-half billion dollars.

Number 114

REPRESENTATIVE MACKIE asked why are we doing this if the federal government is not going to give us the money. For instance, if we don't adhere to the federal mandates in the Department of Environmental Conservation (DEC) that we've got the Environmental Protection Agency (EPA) managing and different problems there. He said he would like to look at Medicaid and the other programs that have financial impact that affect us.

REPRESENTATIVE OGAN said he believes the bill would bring those sort of problems to the forefront. Currently, there's no modality to set up and analyze any of this. He says that he's sure that the federal government will take the loose funding for refusing to do a mandate into consideration. The federal government has the option to implement the mandate.

Number 140

REPRESENTATIVE GARY DAVIS stated that he's not aware of any federal mandate that the state has to spend money on. The state can reject any of them. There are several requirements that we are given as a time frame to implement, such as the "helmet law" last year. We had so (X-number of) many years to implement to it or lose a percentage of those federal dollars that would not be able to be spent on highway construction. The U.S. Senate just passed SB 1, which was their response to unfunded mandates and the House has a similar bill to be out soon. He believes there are some technical and legal questions that come up with this legislation.

Number 173

REPRESENTATIVE GAIL PHILLIPS responded by saying that she doesn't believe the state has an option on mandates that come down dealing with public education or special education. We have to handle those regardless.

REPRESENTATIVE MACKIE inquired if the bill was necessary or if the Administration has the ability to do this or if we have to give statutory authority to the Administration to use federal mandates.

CHAIRMAN BARNES said if the Administration were able to do this, surely they would have.

Number 190

REPRESENTATIVE OGAN says the federal government routinely "blackmails" us. It's a form of taxation that the federal government wants to pass a program, but they don't want to fund it, so they say that the states have to do this otherwise if we don't do it, we'll be blackmailed and they will withhold funds for this program or that program.

REPRESENTATIVE GENE KUBINA stated that the legislature is just as guilty as the federal government by requiring cities to do things, whether its senior citizen tax rebates we don't fund or whether its telling school districts to teach something else and then don't fund them or whether its telling each department to make out another report, even though they put out a zero fiscal note. I can tell you there's a cost to it and it coming out of somebody's budget. Every time we pass a law and direct anybody in the state, we are really doing the same thing.

Number 230

JOHN B. 'JACK' COGHILL, Consultant, Coghill, Wilcox and Associates, says the bill relieves the policymaker, which is the legislature, in directing the Administration and the people within the agencies to give a report so that the legislature can act accordingly. It puts lawmakers right in the driver's seat. This issue has been around at least since 1981, and this is the first time he's seen anyone focus on it to the point where we'll be able to do something about it.

ROBERT SCHMACHER, testifying from the Mat-Su Borough, said the bill is something that the Alaska Independence Party has talked about many times. He said as an individual he feels the bill is a very important issue for the committee to consider. He urged that the bill be moved in its current form.

Number 290

GENE OTTENSTROER, testified, via teleconference, from Delta Junction. He said he feels in general it's a good bill. As the bottom line, he was concerned about how much freedom we would have to give up.

SCOTT HAMANN, Alaskan Bikers Advocating Training and Education (ABATE), testified, via teleconference, from Kenai. He said he supports the bill but, addressed the problem of implementing the mandate first and then having review after the year's done. We need to have a vehicle, in place, to review the program before the mandate is in place to see if we want the program.

GARY SUPERMAN, testifying via teleconference from Kenai, said he's surprised at the number of Tenth Amendment resolutions and bills that have cropped up. He said he questions about the legislative review being to open ended. He would like the legislature to incorporate the bill with that of the Senate bill in Colorado.

Number 351

REPRESENTATIVE PHILLIPS pointed out that if there was one thing that people were talking about during this past interim around the Kenai Peninsula, it was the legislature taking action on this type of legislation. She said she appreciates very much the input from the general public during the interim.

MIKE SEAMAN, testifying via teleconference from Kenai, said he thinks a bill is needed, but was hesitant to say whether this was the right way to go.

SEYMOUR MILLS, testifying via teleconference from Kenai, felt that any bill that passes out would need a review to check to see that it fits under Article I, Section 8 of the U.S. Constitution, before anything ever happens. If it doesn't fit, then it should be rejected.

JACK KREINHEDER, Senior Policy Analyst, Office of Management and Budget (OMB), Office of the Governor, said although he had not been informed about a position pro or con of the Knowles Administration, he talked with Pat Pourchot, Legislative Liaison, who said that the Governor certainly supported the intent of these measures with more flexibility to deal with our unique circumstances. The Administration has some concern about the requirement to review. He said apparently every federal program has this requirement and that the Administration's position is that it may be better to concentrate our resources on the programs that are identified by the legislature and the Administration, as the ones with the biggest fiscal impacts or that present the biggest problems to the state rather running through the whole laundry list of programs, some of which may not present a problem.

Number 425

REPRESENTATIVE MACKIE made a motion to move Amendment 1, which was offered by Representative Ogan.

> On page 2, lines 13 through 15, delete "The commissioner of each department or head of another agency in the Executive Branch shall annually review each program administered by that department or agency. Insert, "The Office of Management and Budget shall annually review each program administered by each department or agency of the Executive Branch."

On page 2, line 16, delete "The commissioner or agency head," and insert "The Office of Management and Budget."

On page 2, line 19, delete "commissioner or agency head" and insert "Office of Management and Budget."

On page 3, line 18, following "governor," insert "and the Alaska Congressional delegation."

MR. KREINHEDER, OMB, said he feels that on the surface, he sees no problem with the amendment and that in concept, it makes sense to let more than one agency do the review.

Number 455

ELMER LINDSTROM, Special Assistant, Department of Health and Social Services, admits to being a guilty party of high fiscal notes. The department is subject to federal mandates and it will need additional resources as to what programs they need to look at if OMB is going to be directing.

CHAIRMAN BARNES asked for a roll call on the amendment. Representatives Mackie, Kubina, Williams, Davis, Mulder, Phillips, and Barns all voted in favor of the adoption of Amendment 1. It passed unanimously.

REPRESENTATIVE PHILLIPS made a motion to move CSHB 83(WTR) out of committee with individual recommendations.

CHAIRMAN BARNES asked if there was an objection. Hearing none, the motion passed.

REPRESENTATIVE MACKIE was excused from the meeting.

HJR 8 - OPPOSING FEDERAL MANDATES ON STATES

Number 500

HJR 8 was the next order of business to come before the committee.

REPRESENTATIVE OGAN, sponsor, stated that HJR 8 is a means of articulating the resolve of the citizens of Alaska to stand against further attempts by the federal government to encroach upon our autonomy and rights, as a state, under the Tenth Amendment to the U.S. Constitution. A prime example of this abuse, the federal management of fish and wildlife resources within the state, is specifically addressed in HJR 8. Nowhere in the U.S. Constitution is either Congress or the Executive Branch given authority to regulate or manage fish and game, except to the extent these resources enter the flow of interstate commerce.
GORDON EPPERLY, spoke in support of HJR 8. He pointed out there is a little known historical problem with the Tenth Amendment of the

Constitution. As a result of the United States bankruptcy in 1993, Congress declared that the nation shall be in a state of National Emergency. When that happens, the Constitution is suspended and the sovereign rights of the states temporarily cease to exist. It was under the declared emergency that the U.S. swayed the states to contract away most of their sovereign powers. Mr. Epperly said that State of Emergency still exists.

TAPE 95-2, SIDE B
Number 000

ROBERT SCHMACHER, testified from the Mat-Su Valley, in support of HJR 8. He said it reaffirms the Tenth Amendment Right. Mr. Shoemaker said he realizes that fish and game tends to be a hot issue. He noted he has been upset about the position that the Governor has taken.

There being no further testimony, REPRESENTATIVE MULDER moved and asked unanimous consent to pass HJR 8 out of committee with the accompanying fiscal notes. Hearing no objection, it was so ordered.

HJR 20 - CONFERENCE OF THE STATES

The final measure to come before the committee was HJR 20, sponsored by CHAIRMAN BARNES. She stated that this resolution authorizes the state of Alaska to send an official delegation to represent the people of Alaska at a Conference of the States, in 1996. This conference would be the first formal meeting of the 50 states since 1786. She noted that the conference will convene no later than 270 days after at least 26 legislatures adopt similar resolutions and that Alaska would be represented by five voting members consisting of the governor and four legislators, two from each body. The action plan to be voted on at this conference will be called a States' Petition. It will be presented to each state in the form of a resolution for ratification, then presented to Congress as the will of the states of the Union. Chairman Barnes said that since 1990 alone, the federal government has enacted over 40 major statutes imposing expensive regulations and requirements on state and local governments. This is first step toward reversing the trend and restoring the balanced system of government envisioned by the Tenth Amendment.

Number 100

BRIAN WEBERG, Program Director, Legislative Management, National Conference of State Legislators (NCSL), supports the measure and added that three states, Kentucky, Utah, Virginia, as of January 27, 1995, had passed this resolution. In six other states, it has passed at least one house chamber and has been introduced in 19 other states. He said he anticipates more states becoming interested in this type of legislation.

MR. WEBERG stated that many states have Tenth Amendments on their agendas and the bill is a way to bring the issues forward in a coordinated way.

Number 142

CHAIRMAN BARNES added that she's pleased to see NCSL take a more active part in state's rights' issues.

REPRESENTATIVE ELDON MULDER echoed Chairman Barnes remarks about the leadership role that NCSL has taken in regards to states' rights.

Number 155

REPRESENTATIVE PHILLIPS asked what kind of feedback had NCSL received from Congress.

MR. WEBERG reported that Congress was very receptive to this kind of initiative. He stated that a meeting would take place in March, in Washington, D.C. He said state legislators, with the new congressional leaders and Administration, will get a good notion of how they feel and, probably at that point, NCSL would know if this is going to go forward.

MR. WEBERG also said that since no states' conference of this nature had taken place in over 200 years, both the press and public would be focused on this. If a unified opinion comes out of this, it's going to be heard.

Number 188

MR. KREINHEDER, OMB, offered a statement of support from the Knowles Administration for HJR 20. The Administration believes some of the important areas would be welfare reform, education, environmental protection and health care. In many other cases, what works for some states will not work in some places.

CHAIRMAN BARNES expressed to Mr. Kreinheder how appreciative she was of the Administration's support and asked him to convey her sentiments to the Administration.

Number 214

REPRESENTATIVE MULDER voiced concern that the proposed convention through this legislation was a viable alternative to a Constitutional Convention.

REPRESENTATIVE DAVIS made the motion to move HJR 20 out of committee.

CHAIRMAN BARNES asked if there was an objection. Hearing none, it

was so ordered.

Number 230

CHAIRMAN BARNES announced that the next World Trade committee meeting will be a joint committee meeting with International Trade and Tourism on Thursday, February 9, 1995 at 5 p.m. in the Butrovich Room. We will hear from John Sibert, Executive Director of the Alaska Science and Technology Foundation.

ADJOURNMENT

There being no further business to come before the House Special Committee on World Trade and State/Federal Relations, CHAIRMAN BARNES adjourned the meeting at 6:08 p.m.

Anchorage
P.O. Box 103382
Anchorage, AK 99510
(907) 337-7737
(907) 258-8163

State Capitol
Juneau, AK 99801-1182
(907) 465-3438

# Alaska State Legislature

**Office of World Trade**
**And**
**State/Federal Relations**

Official Business

COMMITTEES
Natural Resources
Legislative Council

REPRESENTATIVE
**RAMONA L. BARNES**
District 22

## House Special Committee on World Trade and State/Federal Relations

## February 9, 1995 5 p.m.
## Capitol, Butrovich Room (205)

## AGENDA

I. CALL TO ORDER

II. ROLL CALL

III. COMMITTEE CALENDAR

1. Joint meeting with Special Committee on International Trade & Tourism.
2. Overview by the Department of Commerce & Economic Development from Commissioner-designate Willie Hensley.
3. Testimony by John Sibert, Executive Director, Alaska Science & Technology Foundation.
4. Testimony from Laurie Cunningham, Acting Director, Office of International Trade & Development.
5. Testimony from Mary Pignalberi, Director, Division of Tourism, Department of Commerce & Economic Development.

IV. OLD BUSINESS

V. NEW BUSINESS

VI. ADJOURNMENT

VII. REMINDER: Next meeting---Tuesday, February 14, 1995, Capitol Room 408

(* First public hearing)

* HJR 12 "A resolution supporting line item veto power for the President of the United States".
* HJR 22 "A resolution relating to the maritime boundary between Alaska and the former Union of Soviet Socialst Republics".
* HJR 26 "A resolution urging the United States Congress to uphold Alaska's right to 90 percent of the royalties from oil, gas, and coal leasing on state land as provided by the Statehood Compact adopted by a vote of the people on April 24, 1956".

JOINT HOUSE SPECIAL COMMITTEES ON
WORLD TRADE AND STATE/FEDERAL RELATIONS AND
INTERNATIONAL TRADE AND TROURISM
February 9, 1994
5:10 p.m.

WORLD TRADE AND STATE/FEDERAL RELATIONS MEMBERS PRESENT

Representative Ramona Barnes, Chairman
Representative Gail Phillips, Vice Chairman
Representative Bill Williams
Representative Eldon Mulder
Representative Gary Davis
Representative Jerry Mackie
Representative Gene Kubina

INTERNATIONAL TRADE AND TOURISM MEMBERS PRESENT

Representative Beverly Masek, Chairman
Representative Alan Austerman, Vice Chairman
Representative Jeannette James
Representative Irene Nicholia
Representative Caren Robinson

WORLD TRADE AND STATE/FEDERAL RELATIONS MEMBERS ABSENT

None

INTERNATIONAL TRADE AND TOURISM MEMBERS ABSENT

Representative Brian Porter
Representative Pete Kott

COMMITTEE CALENDAR

Department Overview from Willie Hensley, Commissioner-Designate, Commerce and Economic Development.

WITNESS REGISTER

WILLIE HENSLEY, Commissioner-Designate
Department of Commerce and Economic Development
Post Office Box 110800
Juneau, Alaska 99811-0800
Telephone: 465-2500
POSITION STATEMENT: Gave overview of the Department of Commerce and Economic Development

JOHN SIBERT, Executive Director
Alaska Science and Technology Foundation
4500 Diplomacy Drive, Suite 515

Anchorage, Alaska 99508-5918
Telephone: 272-4333
POSITION STATEMENT: Participated in overview of agency

ROBERT HARRIS, Director
Technology
Alaska Science and Technology Foundation
4500 Diplomacy Drive, Suite 515
Anchorage, Alaska 99508-5918
Telephone: 272-4333
POSITION STATEMENT: Participated in overview of office

LAURIE CUNNINGHAM, Acting Director
Office of International Trade and Development
Department of Commerce and Economic Development
3601 C Street, Suite 798
Anchorage, Alaska 99503-5934
Telephone: 561-5585
POSITION STATEMENT: Participated in overview of the Department of Commerce and Economic Development

MARY PIGNALBERI, Director
Division of Tourism
Department of Commerce and Economic Development
Post Office Box 110801
9th Floor State Office Building
Juneau, Alaska 99811-0801
Telephone: 465-2012
POSITION STATEMENT: Gave overview of the Division of Tourism

ACTION NARRATIVE

TAPE 95-3, SIDE A
Number 000

The Joint Meeting of the House Special Committees on World Trade and State/Federal Relations and International Trade and Tourism was called to order by Chairman Ramona Barnes at 5:10 p.m. Members present at the call to order were Representatives Barnes, Mulder, Williams, Kubina, Mackie, Masek, Austerman, James, Robinson and Nicholia. Members absent were Phillips, G. Davis, Kott and Porter.

Number 007

WILLIE HENSLEY, Commissioner-Designate, Department of Commerce and Economic Development, said he was pleased to come before the joint committees. He introduced his staff and people within the department.

REPRESENTATIVE G. DAVIS arrived at 5:14 p.m.

Number 047

COMMISSIONER HENSLEY stated that the international trading activity is a very critical portion of Alaska's economic health. In 1993, the total value of Alaska's overseas exports was $2.6 billion. A very high percentage of our non-oil products is destined for overseas markets. The top exports include fish and seafood which amounted to a billion-and-a-half dollars; timber and forest products, $646 million; mineral, such as lead, zinc and coal, $126 million. Our most important foreign markets in terms of value are Japan with $1.9 billion, of which $1.4 billion of that in fish and seafood products; South Korea with $230 million; Canada, $73.9 million; Taiwan $65 million; and China $58 million. They foresee great growth potential and some serious threats to our existing markets. Commissioner Hensley cited the export of Alaska products to Japan has declined by $180 million between 1991 and 1993. It is partially attributed to the decline in value in salmon in the Japanese market. The decline can also be blamed partially on the rising markets of China and Taiwan.

COMMISSIONER HENSLEY said that we need to have people in state government who are familiar with the laws and customs of these countries who can help Alaska business persons connect with potential customers. It also involves working with businesses to develop product forms which meet the needs of our customers in these markets as well as working with their governments to insure we have a positive government-to-government relationship. These markets offer opportunities for the sale of oil, gas, forest products and seafood.

Number 127

COMMISSIONER HENSLEY briefly touched on the Office of International Trade, saying that it presently operates in some capacity in the foreign countries of Japan, Korea, Taiwan and Russia. It has two distinct roles, as an industrial match-maker and as an advocate.

COMMISSIONER HENSLEY conveyed that the tourism promotion programs are managed by the Division of Tourism and Alaska Tourism Marketing Council (ATMC). The ATMC folks are the generic marketing of Alaska in the United States and Canada. The Tourism Division manages the state's international tourism marketing effort, highway tourism, local tourism development and operates the state's film office. The office is largely responsible for increased foreign visitors to Alaska from approximately 27,000 in 1986, to 65,000 in 1994. It has foreign contractors in Japan, Germany, Australia and the United Kingdom.

COMMISSIONER HENSLEY said the Division of Economic Development focuses on the domestic side of the Alaska-international trade equation. The division works with Alaskans on the processing of

Alaska's natural resources and the production of goods and services. Other state divisions and offices market these products internationally. The division has close working relations and expertise in mining, forest products and commercial fishing industries. He then addressed the function of the Alaska Seafood Marketing Institute (ASMI). It represents an excellent working model of a state industry partnership. Almost all of its funding is derived from federal grants or program receipts from the seafood industry. They have a relatively small budget. In FY 95, the unrestricted general fund budget for economic development programs is about $11.5 million. ATMC gets about $3.4 million and $1 million to ASMI.

Number 173

COMMISSIONER HENSLEY briefly described a new initiative being discussed which includes performance-based budgeting; streamlining services in a program called "Marketing Alaska".

REPRESENTATIVE GAIL PHILLIPS arrived at 5:20 p.m.

Number 200

COMMISSIONER HENSLEY pointed out that this is a cabinet-member group, whose mission is to develop or coordinate the effort to "market" Alaska. The state needs to assert itself as a contributing member of a competitive global economy so that investments in Alaska compete with projects around the globe. It will be a program that develops as many of our industry sectors as possible. For instance, in our film marketing effort, he sees some real potential. We should develop Alaska as a research place, because much of Arctic research is done in Antarctica, Canada, and Colorado and there's an opportunity to promote as well. It's envisioned to be a four year program.

Number 225

COMMISSIONER HENSLEY noted that part of the World Trade Committee's responsibility is with federal/state relations. He pointed out that when the department made its contacts with the heads of ARCO, British Petroleum, Exxon and UNOCAL and talked specifically about the oil export ban, interestingly enough, each company had a different point of view. They also talked about the Arctic National Wildlife Refuge to see that there is responsible oil drilling there and they have potential in renewing the Magnuson Act in working with our delegation in the area of fisheries and they support the notion of Community Development Quota (CDQ) Program, which provides capital in an area of the state that is in real need.

Number 260

CHAIRMAN BARNES said this committee looks forward to having a partnership with the commissioner and his department. Chairman Barnes introduced John Sibert.

Number 270

JOHN SIBERT, Executive Director, Alaska Science and Technology Foundation (ASTF), testified via teleconference from Anchorage, that one of the problems they frequently run into is, that people who come to them for funding, this belief that in the better "mousetrap" or "a field of dreams", the idea that if we build it they will come. He hopes they have learned that lesson. It's very important to understand that in order to develop or diversify an economy, one has to understand that economy.

Number 300

MR. SIBERT said it's very important to develop partnerships or strategical alliances, not only between the people of Alaska and those outside, but also partnerships within the state. For example, ASFT has many fisheries projects. It's connecting people who know how to use the technology. One of the problems is the lack of cold storage to pack fish products in the frozen North during the summer time in Kotzebue. They worked with the Department of Energy and the Energy Authority. The technology (ice maker) worked well and is now operating in the Gulf of Alaska and Southeast.

REPRESENTATIVES MACKIE and KUBINA left at 5:25 p.m.

Number 360

MR. SIBERT mentioned that there is a great deal of federal technology that needs to be developed in the state. He introduced Mr. Robert Harris.

Number 399

ROBERT HARRIS, Director, Technology, ASTF, testified via teleconference from Anchorage, stating that part of the effort with the National Governor's Association is to give the state a voice in what's happening in terms of design of federal programs, how decisions are made on what to fund, and where the funding goes. The ice-maker is a good example of something that was created in a federal lab and would not have come to fruition if it weren't for people talking on the state and federal levels.

Number 418

CHAIRMAN BARNES introduced Laura Cunningham.

LAURA CUNNINGHAM, Acting Director, International Trade and

Development, Department of Commerce and Economic Development, stated that she was not prepared to address the committee.

CHAIRMAN BARNES asked Ms. Cunningham, if the division was in "competition or in partnership" with the legislative branch of government.

Ms. Cunningham answered "in partnership."

Number 435

CHAIRMAN BARNES quizzed Ms. Cunningham about how she felt if one of Ms. Cunningham's employees called one of the heads of an oil company and said that the governor would find it highly offensive if that company were to invite a legislator to the Sakhalin Islands, for example. She asked if she thought it would be appropriate for her to ask anyone in a foreign country to have a legislative delegation "watched" and reported on.

MS. CUNNINGHAM responded by saying absolutely not. They arrange all work with the foreign government, the itinerary, and we make sure that a delegation is taken care of from beginning to end. We are a support agency.

Number 465

CHAIRMAN BARNES inquired about a seafood delegation from Taipei that visited Southeast Alaska in the summer of 1994.

MS. CUNNINGHAM stated that we have three companies in Southeast Alaska that are selling salmon to Taipei, as well as a company from Bristol Bay that is selling. She said there is another Alaska seafood delegation going out.

Number 474

REPRESENTATIVE PHILLIPS recalled her trip that she made with Chairman Barnes in October of 1994, that was very productive, but said that one of the greatest complaints they heard from the president to the congressional delegation and from people in the fish industry is that the ONLY fish product they received from Alaska was "fishmeal" which was from Dutch Harbor. They are crying, begging, pleading for salmon, crab or whatever we have from our state. Representative Phillips found it very distressing that since we have a direct flight to Taiwan and we have one of the richest fish resources in the world, that the only thing we ship to them is fishmeal. They told Representative Phillips that Japanese brokers are "tying up" these products.

Number 495

MS. CUNNINGHAM said she would provide both committees with

details of our export and that we do have salmon and crab going into that market and it's increasing every year. Most of the salmon which goes to that region is Norwegian.

REPRESENTATIVE MACKIE returned to the meeting at 5:55 p.m.

CHAIRMAN BARNES echoed the feelings of Representative Phillips. Chairman Barnes also understood that there is a large conglomerate there that wanted to buy Alaskan coal.

COMMISSIONER HENSLEY remarked that his department felt an obligation to look into Taiwan's demands for coal.

COMMISSIONER HENSLEY told of a trip to Seoul and mentioned that it is an entirely different kind of environment to function in contrast to American style of marketing.

REPRESENTATIVE PHILLIPS stated that she was totally shocked and mortified that the President of Taiwan would have to be in a position to beg Alaska to export seafood to their country.

Number 545

COMMISSIONER HENSLEY would like to see a trade delegation of seafood producers go to Taipei within the year.

CHAIRMAN BARNES said that her and Representative Phillips also met with Taiwan's National Petroleum Institute and they were very interested helping to co-fund the building of a gas pipeline.

TAPE 95-3, SIDE B
Number 000

COMMISSIONER HENSLEY remarked that there should be a good opportunity for the production of that gas.

CHAIRMAN BARNES said not only would they help fund building of the line, but also would buy as much of the gas that Alaska wanted to sell.

Number 019

MARY PIGNALBERI, Director, Division of Tourism, Department of Commerce and Economic Development, handed out to committee members an overview of the division. She said the film program is alive and well. In the first month of this year, they had three national television commercials filming in the state. We have been successful in attracting a Canadian production company to shoot a beer commercial.

REPRESENTATIVE BEVERLY MASEK wanted to know what kind of new Alaskan programs were discussed in a trip to Germany.

Number 080

MS. PIGNALBERI will furnish that information, but said that it's mostly trade shows, tour operators and travel agents.

REPRESENTATIVE MASEK mentioned that during a trade show to Florida by the division, the focus was that of tour passages and wanted to know if there were any other "messages" getting out to the rest of the nation.

MS. PIGNALBERI said they try to promote the entire state as a package.

Number 150

REPRESENTATIVE ALAN AUSTERMAN noted a concern he has heard that these trade shows overemphasize these big "POWWOW" shows.

REPRESENTATIVE JERRY MACKIE was perplexed about the misperception about how Alaska was seen, not only internationally, but in the Lower 49 as well.

Number 209

REPRESENTATIVE PHILLIPS reflected that on her trip to Taiwan, most of the people there understood Alaska to be much too cold with ice and snow year round to travel to. We need to have all the agencies pulling together in order for us to change the world's perception. Representative Phillips wanted to know what the division was doing to rectify a situation that would attract more frequent and more countries to more direct air service in to Alaska.

MS. PIGNALBERI said they have tried to work closely with the Anchorage International Airport and with the Alaska Industrial Economic Development Corporation (AIEDC). The division has been working more in a support capacity.

Number 248

COMMISSIONER HENSLEY said the Anchorage International Airport itself is responsible for its own marketing. The convention and visitors bureaus have a function. The Anchorage bureau has a plan to spend a substantial amount of money just in Taiwan.

REPRESENTATIVE PHILLIPS found it appalling that the Anchorage International Airport to be one of the most uncomfortable, people unfriendly international terminals that she had ever been in and if we are going to be using that facility for attracting tourism, we're going to have to do some major re-thinking about that facility.

Number 280

REPRESENTATIVE MACKIE was irritated by the fact that a few years ago our own State Department in the U.S. government issued a travel warning advisory and they listed the ALCAN Highway as one of the most dangerous places to be due to lack of facilities. He hoped somehow they could become educated that it was not primitive land anymore. Representative Mackie said it was ranked up there with Iraq and other places as the worst spots to go and that was definitely the wrong message to send. We should work with the Department of Transportation and other agencies in how to improve services. He also pointed out that the previous Administration, it seemed was at odds with the visitor's industry and he would like to see this adverse relationship between agencies turn into a more positive one.

Number 309

MS. PIGNALBERI informed the committees that the department, along with the U.S. Forest Service, was going to be hosting a two-day conference at the end of March, a symposium on tourism on public lands in which one of the purposes is to bring together all of the federal and state land users, land owners, et cetera, to meet with the providers of tourism products and try to resolve some of the issues revolving around permits and other visitor functions on state and federal land.

REPRESENTATIVE PHILLIPS took note that "ECO-tourism" is a growing phenomenon in the Lower 48 and would like to know if it was catching on in Alaska.

MS. PIGNALBERI said that they had already been doing that and had been on the "cutting edge" before it became a buzzword.

COMMISSIONER HENSLEY referred back to a comment of Representative Phillips about the level of ignorance concerning Alaska. It's not only a national phenomenon, it's an international one. It's still broad and deep. So when compounding that with a foreign language, it amounts to a large barrier.

Number 330

CHAIRMAN BARNES addressed the fact that in spite of spending hundreds and hundreds of millions of dollars to promote Alaska, people still see us as a frozen iceberg.

COMMISSIONER HENSLEY countered by saying that globally, it is very competitive and that other states spend a lot more promotional money then we do. He pointed out that the diminishing number of international stopovers is due in part to better aircraft being able to make longer flights and not being required to stop in Alaska. Commissioner Hensley said they are

working with an airline that proposes to stop in Anchorage.

Number 374

REPRESENTATIVE ELDON MULDER inquired about how Alaska ranks with the other 49 states in terms of money spent on tourism.

MS. PIGNALBERI said that at one time we ranked in the top five and now were somewhere around 15-16, maybe even lower, in the country. We have dropped significantly. She added that the city of Las Vegas alone has a $98 million marketing budget.

Number 390

REPRESENTATIVE JEANNETTE JAMES felt that it's not just spending the money on promoting, but we have to have the facilities in place and things for the visitors to do in order to attract more of them. She cited the example of people that come to see Mt. McKinley. It takes a "total" park experience in order for people to spread the word about having a good time. We have to address the expense side of the ledger when we talk about tourism.

REPRESENTATIVE AUSTERMAN commented that friends of his from Kodiak who made a trip to California, had been told several times that they don't eat salmon anymore because they are an endangered species and this related directly back to the perception problem of Alaska.

REPRESENTATIVE MACKIE cited a problem within the industry in Alaska, using the example of advertisement in which a seiner pulled in crabs with a net, and suggested that we take a hard look at ourselves before we try to convince those abroad about some of those things. He also said he would like to see something more of a concerted effort in creativity.

Number 470

REPRESENTATIVE CAREN ROBINSON noted many people are coming to Alaska and spending a tremendous amount of money to go Extreme Skiing and skiing at lodges and taking helicopter rides. She wondered what the state had been doing in terms of winter marketing.

MS. PIGNALBERI said that's probably where the international marketing comes into play. A lot of the appeal for the foreign visitor is the winter season. The ATMC has fall, winter, spring committee that addresses through the public relations contract and has helped the Iditarod Race.

Number 480

REPRESENTATIVE ROBINSON felt that many people up north have never

been to the southern parts of Alaska and vice-versa. She asked if the state was doing anything as far as "interstate promoting."

MS. PIGNALBERI said that since 1975, when the convention and visitors bureaus and other regional marketing groups came on board, the division has somewhat turned that end of the business over to them to market their own regions. The focus of the division now is really out of state.

CHAIRMAN BARNES announced that the next World Trade Committee meeting will be held on Tuesday, February 14, 1995, at 5 p.m. in Room 408. We will to hear HJR 12, HJR 22 and HJR 26.

ADJOURNMENT

There being no further business to come before the House Special Committees on World Trade and State/Federal Relations and International Trade and Tourism, CHAIRMAN BARNES adjourned the meeting at 6:35 p.m.

Alaska State Legislature

Office of World Trade
And
State/Federal Relations

Official Business

COMMITTEES
Natural Resources
Legislative Council

REPRESENTATIVE
RAMONA L. BARNES
District 22

Anchorage
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State Capitol
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# House Special Committee on World Trade and State/Federal Relations

## February 14, 1995 5 p.m.
## Capitol, Room 408

# AGENDA

I. CALL TO ORDER

II. ROLL CALL

III. COMMITTEE CALENDAR

(* First public hearing)

* HJR 22 "A Resolution relating to the maritime boundary between Alaska and the former Union of Soviet Socialist Republics".
Testimony, via teleconference from Carl Olson, Chairman, and Mark Seidenberg, Vice Chairman, State Department Watch.

* HJR 12 "A Resolution supporting line item veto power for the President of the United States".

* HJR 26 "A Resolution urging the United States Congress to uphold Alaska's right to 90% of the royalties from oil, gas and coal leasing on state land as provided by the Statehood Compact adopted by a vote of the people on April 24, 1956".

IV. OLD BUSINESS

V. NEW BUSINESS

VI. ADJOURNMENT

# Alaska State Legislature

## HOUSE OF REPRESENTATIVES

**Representative Norman Rokeberg**

Official Business

State Capitol
Juneau, AK 99801-1182

TO: Representative Ramona Barnes, Chair
House Committee on World Trade & State/Federal Relations

FROM: Representative Norman Rokeberg HJNR

DATE: February 11, 1995

SUBJECT: HJR 26 - A Resolution supporting Alaska's right to 90 percent of the royalties from oil, gas and coal leasing

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Attached is a packet of materials for your committee hearing on HJR 26. I want to thank the committee for scheduling a hearing on this resolution.

Attachment

# Alaska State Legislature

## HOUSE OF REPRESENTATIVES

**Representative Norman Rokeberg**

Official Business

State Capitol
Juneau, AK 99801-1182


## SPONSOR STATEMENT

HJR 26 - A Resolution supporting Alaska's right to 90 percent of the royalties from oil, gas and coal leasing

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HJR 26 is a statement by the Alaska Legislature that the United States cannot unilaterally amend the Statehood Act. Alaska has tried since statehood to avoid a confrontation over issues by working with Congress to ensure that any post-statehood amendments to the Statehood Act did not materially diminish the rights conferred to the State of Alaska by the act of admission into the United States.

There is no question that an act of Congress admitting a new state to the Union constitutes a compact, a legally enforceable contract, between the citizens of the new state and the United States. The first line of Section 4 of PL 85-508, the Alaska Statehood Act , states in part, " As a compact with the United States said State and its people do agree...." Provisions contained in this act that conferred rights to the State of Alaska are valid and can be enforced against the United States.

Section 28, (a) Mines and Mining, of the Alaska Statehood Act states clearly the formula for sharing bonuses, royalties and rentals under leases shall be distributed 90 percent to the State of Alaska and 10 percent to the Treasury of the United States. 48 U.S.C. 439 dated October 20, 1914, was amended to include the above formula.

HJR 26 seeks to reinforce the people of Alaska's resolve to protect our right to the 90-10 sharing formula granted by the United States Congress on July 7, 1958.

# HOUSE JOINT RESOLUTION NO. 26

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES ROKEBERG, Ogan, Navarre

Introduced: 2/1/95
Referred: House Special Committee on World Trade and State/Federal Relations, House Special Committee on Oil and Gas

## A RESOLUTION

**Urging the United States Congress to uphold Alaska's right to 90 percent of the royalties from oil, gas, and coal leasing on state land as provided by the Statehood Compact adopted by a vote of the people of Alaska on April 24, 1956.**

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

**WHEREAS** the Congress of the United States, by the Alaska Statehood Act approved on July 7, 1958, accepted, ratified, and confirmed the state constitution that had been adopted by a vote of the people of Alaska in the election held on April 24, 1956; and

**WHEREAS** the Alaska Statehood Act provided for the admission of the State of Alaska into the Union on an equal footing with the other states of the Union, upon compliance with certain procedural requirements specified in that Act; and

**WHEREAS** the Alaska Statehood Act contains a binding contract between the people of Alaska and the federal government that the state will receive 90 percent of all oil, gas, and coal leasing royalties from federal land in Alaska; and

**WHEREAS** the State of Alaska had 35 years from the date of admission into the Union to select public land that was vacant, unappropriated, and unreserved in order to establish communities and recreational areas and promote economic development; and

**WHEREAS** the federal government has both a moral and legal duty to honor the obligations set out in the several acts admitting Alaska into the Union; and

**WHEREAS** the people of the State of Alaska relied on that royalty-sharing provision in ratifying the Alaska Statehood Act on April 24, 1956; and

**WHEREAS** the United States Congress included the 90-10 royalty-sharing formula in the compact because Alaska, unlike all other public land states, was not covered by the federal Reclamation Act and did not derive benefits from that Act; and

**WHEREAS** the Congress intended the 90-10 royalty-sharing provision to pay for the costs of providing the services of state government; and

**WHEREAS** the Congress also intended in the Alaska Statehood Act to compensate Alaska for the large federal land reservations that stifle economic development; and

**WHEREAS** the Congress is considering legislation to reduce Alaska's royalty-sharing percentage for development on federal land; and

**WHEREAS** any reduction in the royalty-sharing percentage will infringe on Alaska's constitutional rights; and

**WHEREAS** Alaska opposes any unilateral reductions in royalty revenue from federal land exploration and development;

**BE IT RESOLVED** that any attempts by the United States Congress or the President of the United States to coerce the State of Alaska into accepting less than what was promised at statehood penalizes the people of Alaska; and be it

**FURTHER RESOLVED** that the United States Congress join with the state in upholding the Alaska Statehood Compact.

**COPIES** of this resolution shall be sent to the Honorable Bill Clinton, President of the United States; the Honorable Al Gore, Jr., Vice-President of the United States and President of the U.S. Senate; the Honorable Newt Gingrich, Speaker of the U.S. House of Representatives; the Honorable Bob Dole, Senate Majority Leader; the Honorable Bruce Babbitt, Secretary of the Interior; the Honorable Frank Murkowski, Chair of the Senate Committee on Energy and Natural Resources; the Honorable Don Young, Chair of the House Committee on Public Lands and Resources; the Honorable Ted Stevens, U.S. Senator, member of the Alaska delegation in Congress; and to the governors of the states and to the presiding officers of the houses of the state legislatures.

[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. 888, 101 S. Ct. 244, 66 L. Ed. 2d 113 (1980).

# FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HJR 26

Revision Date: 2/6/95
Dept. Affected: Revenue
Title: A Resolution urging the U.S. Congress to uphold Alaska's 90% share of Federal oil and mineral royalties in Alaska
BRU:
Component:
Sponsor: Rokeberg, Ogan, & Navarre
Requester: Rokeberg
COMPONENT SERIAL NO.

**Expenditures/Revenues** (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 96 | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 |
|---|---|---|---|---|---|---|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| CAPITAL EXPENDITURES | | | | | | |
| CHANGE IN REVENUES ( ) | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

**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 (FY95) cost: $

**POSITIONS**

| | | | | | | |
|---|---|---|---|---|---|---|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

**ANALYSIS:** (Attach a separate page if necessary)

This resolution urges the U.S. Congress to uphold Alaska's right to 90 percent of the Federal royalties from the production of oil, gas and coal in Alaska. This issue is often mentioned in connection with the possible opening of the Arctic National Wildlife Refuge (ANWR) to oil and gas exploration and development. Given the long lead times for developing major resource extraction on Federal land in Alaska, this resolution will have no revenue impact on the state over the period of this fiscal note. However, the issue of the royalty split could be a major revenue issue in the fight to open ANWR to exploration and development. At current prices, discovery of a 1.0 billion oil field with a conventional 12.5% royalty and the 90% royalty share would mean something on the order of $1.125 billion over the life of the field or as much as $125 million a year at peak production. A 50% share would reduce this to approximately $70 million a year. Regardless of royalty share, the state would continue to assess production taxes on any oil and gas produced within state sovereign territory.

Prepared by:
Division: Oil and Gas Audit Division
Phone: 277-5627
Date: 2/6/95

Approved by Commissioner:
Agency:
Date: 2/6/95

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# FISCAL NOTE

STATE OF ALASKA — BILL NO. HJR26

1995 LEGISLATIVE SESSION

Revision Date: Original — Dept Affected: Natural Resources

Title: A Resolution Urging the United States Congress — BRU: Resource Development

to uphold Alaska's right to 90 percent of the royalties from oil, gas... — Component: Oil & Gas Development

Sponsor: Representative Rokeberg, Ogan, Navarre

Requestor: — Component Serial No. 439

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY96 | FY97 | FY98 | FY99 | FY00 | FY01 |
|---|---|---|---|---|---|---|
| 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 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| CHANGE IN REVENUES ( ) | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

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 (FY95) cost: $ None

POSITIONS

| | | | | | | |
|---|---|---|---|---|---|---|
| FULL-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| TEMPORARY | 0 | 0 | 0 | 0 | 0 | 0 |

ANALYSIS: (Attach a separate page if necessary)

There is no fiscal impact associated with passage of this resolution.

Prepared by: Jim Eason, Director — Phone: 762-2547

Division: Oil & Gas — Date: 2-Feb-95

Approved by Commissioner: Jim Eason for M. Rutherford, Act. Comm — Date: 2-5-95

Agency: Natural Resources

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Opinion # 3

# STATE OF ALASKA

**DEPARTMENT OF LAW**

*OFFICE OF THE ATTORNEY GENERAL*

*JAY S. HAMMOND, GOVERNOR*

*POUCH K – STATE CAPITOL*
*JUNEAU, ALASKA 99811*
*PHONE: (907) 465-3600*

April 2, 1981

The Honorable Hugh Malone
House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Legality of unilateral changes to Statehood Act by United States Congress. Our file J-66-556-81

Dear Representative Malone:

On February 24, 1981, you requested that we review subsections 906(f)(3) and 906(p) of the Alaska National Interest Lands Conservation Act (hereafter "ANILCA"), Public Law 96-487, 94 Stat. 2371. Those two subsections, as well as subsection 906(a), amend certain provisions in Section 6 of the Alaska Statehood Act, 48 U.S.C. note preceding Section 21. Subsection 906(f)(3) of ANILCA amends Section 6(g) of the Statehood Act to give the Secretary of the Interior discretionary authority to waive the minimum tract selection size set out therein where such a waiver "would be in the national interest and would result in a better land ownership pattern." Subsection 906(p) removes the requirement of Presidential approval of selections north and west of the so-called "PYK line" described in Section 10 of the Statehood Act for lands conveyed to the state by the terms of subsections 906(c), (d) and (g) of ANILCA. Subsection 906(a) extends the time within which the state may

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make selections under Sections 6(a) and 6(b) from 25 to 35 years.

Your inquiry is whether there are legal grounds for the United States unilaterally to amend the provisions of the Statehood Act. There is no clear legal answer where, as here, the amendments enacted by Congress do not defeat or materially diminish rights conferred on the state by the act of admission but, instead, actually benefit the state (see pp. 6-7, infra). What is clear is that the United States cannot unilaterally amend the Statehood Act to the state's detriment without the state's consent or acquiescence. 1/

The state's position has always been that the United States cannot unilaterally amend the Statehood Act. However, the state has avoided a confrontation over the issue by working with Congress to ensure that any post-statehood amendments to the Statehood Act are beneficial to the state and not inimical to its interests.

At the same time, there are indications in decisions of the United States Supreme Court that the United States may

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1/ At least two provisions of the Alaska Native Claims Settlement Act -- the Section 9 2% override on royalties due the state and the Section 11(a) withdrawal of state-selected lands for Native village conveyance -- were unilateral amendments to the Statehood Act, albeit by implication, which were detrimental to the state's interest. To ensure prompt resolution of pending Native claims, Governor Egan, on behalf of the state, consented to those amendments and the state did not litigate the issue within the time specified by Section 10 of ANCSA.

unilaterally amend certain provisions in a statehood act. However, such amendments would be effective only if they did not defeat or materially diminish rights conferred on the state by the act of admission.

Summarizing, it is not clear as a matter of law whether the United States may unilaterally amend the Statehood Act or whether some parallel state action is also required. Under either approach, however, the practical effect is that the state's rights under the Statehood Act cannot be diminished without the state's consent.

There can be no question that an act of Congress admitting a new state to the Union constitutes a compact, a legally enforceable contract, between the citizens of the new state and the United States. See Stearns v. Minnesota ex rel. Marr, 179 U.S. 223, 244-245 (1900). Such compacts do not impose obligations only on one of the parties; rather, the obligations are imposed on both the new state and the United States. See the Public Land Law Review Commission's Report to Congress, One-Third of the Nations's Land (1971), at 244. The terms of such compacts constitute the conditions of admission of the new state, obligatory on both the state and the United States 2/, and subsequently

2/ This assumes, of course, that the conditions are constitutional. Provisions which purport to limit or qualify the political rights and obligations -- i.e., the sovereignty -- of a state are unconstitutional because enforcing them would result in the state being admitted on a less-than-equal footing than other states. Cf. Coyle v. Smith, 221 U.S. 559 (1911) (a provision in the act admitting Oklahoma to the Union providing that the capital of Oklahoma could not be moved held unenforceable because such decisions, after a state is admitted, are the exclusive province of the state).

cannot be unilaterally amended by either party without the consent or acquiescence of the other. Beecher v. Wetherby, 95 U.S. (5 Otto) 517 (1877).

Provisions regarding grants of federal land generally are considered terms and conditions of a statehood compact and are enforceable both against the state and the United States. For example, in Stearns v. Minnesota ex rel. Marr, supra, the Court held that Congress can convey land to states in trust, and states accepting that land are bound by the terms of the trust, even where this may contravene the state constitution. In Cooper v. Roberts, 59 U.S. (18 How.) 173 (1856), the Court held that a statehood act grant of unspecified lands is binding on the United States and depends only on subsequent identification by survey of the lands granted. The Court also indicated that post-statehood acts of Congress should be construed as recognizing that a compact existed as of the date of statehood, and not as creating subsequent legal impediments to fulfillment of that prior agreement. In Beecher v. Wetherby, supra, the Court held that no post-statehood act of Congress could defeat an appropriation of land made earlier by Congress in a statehood act. The lands at issue in that case were subject to a reservation for the benefit of Indians at the time Wisconsin was admitted to the Union. The Court concluded that a statehood act conveyance from the United States to Wisconsin

was effective as to the fee interest in those lands, although Wisconsin took the lands subject to the Indians' existing right of occupancy as long as that occupancy continued. However, the Court held that a post-statehood Congressional act authorizing the sale of lands occupied by Indians could not affect the title to the lands previously granted to the state. Accordingly, a subsequent United States patent to those lands conveyed no title because title already had vested in the state.

The general rule, then, is that provisions in statehood acts conferring rights on the state are valid and enforceable against the United States, and may not be unilaterally amended by post-statehood federal legislation.

However, this may not mean that no provision in a statehood act may ever be unilaterally amended by Congress. Where such amendments merely amend the procedures which must be followed to transfer title from the United States to the state, and do not materially diminish the rights granted to the state as conditions of its admission, it may be permissible for Congress to amend those provisions unilaterally. In Pollard's Lessee v. Hagan, 44 U.S. (3 How.) 211 (1845), the Court stated that Congress can reserve power over federal public lands in an act admitting a new state, although it need not do so because it possesses that power even in the

absence of such a provision. 3/ Therefore, Congress' exercise of power over federal public lands in a state after admission, standing alone, may not violate the statehood compact unless it defeats or materially diminishes rights conferred on the new state by the act of admission.

The provisions of the Alaska Statehood Act amended by ANILCA all deal with the terms and conditions under which title to lands owned by the United States will pass to the state. Moreover, those amendments benefit the state rather than defeating or materially diminishing any rights the state possessess under the Statehood Act. Section 906(a) extends the time within which the state may make selections under Sections 6(a) and 6(b) of the Statehood Act from 25 years to 35 years. Section 906(f)(3) gives the Secretary of the Interior discretion to waive the minimum tract selection size previously imposed by the Statehood Act. Absent such authority, the state would be required to file selections no smaller than the minimum size specified; under the amendment, if the state decides it wishes to file

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3/ The Pollard case is more generally cited for the proposition that Congress cannot reserve power over the lands underlying navigable waters within a new state because, under the equal footing doctrine, new states are vested with title to those lands to the same extent that the original 13 states possessed such a title, and the original 13 states never relinquished such title to the United States.

smaller selections, the Secretary of the Interior is given discretionary authority to accept those selections. Finally, Section 906(p) removes the proviso in Section 6(b) of the Statehood Act regarding presidential approval of state selections north and west of the so-called "PYK line" for prior state selections which now are confirmed to the state under subsections (c), (d) and (g) of Section 906; absent this provision, such approval would be required for all those prior selections.

Although these amendments, on their face, appear to be unilateral action by Congress since no state consent (either through the legislature or the executive) is required, they comprise one of the "seven consensus points" which the state desired in any Alaska lands legislation ultimately passed by Congress. They were initially suggested and drafted by the state, and were actively supported by the state throughout the Congressional deliberations on the bill. Accordingly, the state has maintained that they are bilateral amendments to the Statehood Act and have been concurred in by the state.

Alternatively, the Statehood Act amendments could be viewed as a permissible exercise of Congress' plenary power over the administration of federal lands. Had Congress attempted to diminish any of the State's rights under the Statehood Act, we believe it would have been acting outside

the scope of its authority. However, where, as here, Congress has made amendments to the Statehood Act which benefit the state and concern only the procedures for conveyance of land to the state rather than the quantity or availability of granted lands, Congress has not intruded on any state interest and is merely exercising its constitutional authority over federal lands within the binding framework of the existing statehood compact.

Under either approach, we believe the result is that the amendments to the Statehood Act which are part of ANILCA are effective and enforceable by the state. If you have further questions, please contact us at your convenience. We will be happy to meet with you or any member of your staff to discuss this opinion in greater detail.

Sincerely,

WILSON L. CONDON
ATTORNEY GENERAL

By: G. Thomas Koester
G. Thomas Koester
Assistant Attorney General

GTK:dlm

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# STATE OF ALASKA

KEITH H. MILLER, GOVERNOR

**DEPARTMENT OF LAW**

OFFICE OF THE ATTORNEY GENERAL

POUCH K, STATE CAPITOL — JUNEAU 99801

1969 Opinions of the
Attorney General No. 6

September 5, 1969

The Honorable Wayne N. Aspinall, Chairman
Committee on Interior and Insular Affairs
House of Representatives
Washington, D. C. 20510

Dear Mr. Aspinall:

This opinion is in response to the request of the Committee during the recent hearings on Alaska Native Land claims for a legal memorandum of the Department of Law of the State of Alaska on certain issues which were raised by the Position Paper of the Alaska Federation of Natives ("A.F.N.").

The A.F.N. proposed "an overriding gross royalty of 2% of all proceeds from any state and federal lands. . ." See A.F.N. Position Paper, p. 10.

Governor Miller stated during his testimony that "the 2 per cent proposal conflicts with the Statehood Act and the province of the Alaska State Legislature. . ." The purpose of this memorandum is to explain the legal basis of the statement of Governor Miller.

The questions to be answered in this memorandum are several. First, does the 2% overriding gross royalty provision conflict with the provisions of the Alaska Statehood Act? Second, if there is such a conflict, would incorporation of such a royalty provision into a settlement enacted into law by Congress conflict with the United States Constitution?

The overriding gross royalty of 2% will be looked at both from the perspective of 2% of the current 12 1/2% ~~of oil royalty and as 2% on~~ top of the current 12 1/2%. The A.F.N. has stated that the memorandum should be presented in that light.

## I. STATUTORY CITATIONS

The citations to pertinent provisions of the Alaska Statehood Act and other legislation are the following (the statutes are quoted in Appendix A).

1. The grant to the State of 90% of all money received by the United States pursuant to the mineral leasing laws in Alaska. The Alaska Statehood Act, 72 Stat. 339, Sec. 28(b).

2. The federal legislation which was confirmed and amended by the Statehood Act, Sec. 28(b). It provides that the State receives 90% of all money received by the United States pursuant to the mineral leasing laws in Alaska, 37 1/2% thereof for the construction of public roads or schools and 52 1/2% for the disposition of the State Legislature. 30 U.S.C. 191.

3. The federal legislation applicable to oil and gas leases of the United States provides for a minimum 12 1/2% royalty. 30 U.S.C. 226.

4. The state legislation applicable to oil and gas leases of the State of Alaska provides for a basic minimum 12 1/2% royalty, although, in the case of first discovery, there is a royalty of 5%. AS 38.05.180.

5. The disclaimer clause of the Alaska Statehood Act. 72 Stat. 339, Sec. 4.

## II. DEFINITIONS

The logical point to begin the discussion of the question is with a definition of the term "overriding gross royalty." A leading text in the field describes the term in the following way.

> "Perhaps the only safe way to define the term 'overriding royalty' is to say that it is a fractional interest in the gross production of oil and gas, in addition to the usual royalties paid to the lessor. The term my (sic) be used in referring to a nonparticipating royalty interest in perpetuity or for a term of years created by the land or mineral owner

> prior to a lease for oil and gas. Grants by a lessee of a share of per cent of the production from a lease are sometimes called overriding royalties. A prospective lessee may agree to pay an overriding royalty, a certain share of the production, to another person as consideration for his services in procuring a lease on certain lands. Perhaps the most common use of the term is to indicate a share of the oil or gas produced reserved in an assignment, part assignment or sublease of an oil and gas lease, and payable to the assignor by the assignee, over and above the royalty reserved in the lease payable to the lessor." Summers Oil and Gas, Vol. 3, Sec. 554, pp. 624-626.

It is also necessary to note the following distinction between a "royalty" and an "overriding royalty."

> "The question presented here is not who is entitled to a 'royalty' but who is entitled to an 'overriding royalty'. There is a difference. 'Royalty' generally means that fractional interest in the production of oil or gas which was created by the owner of the land either by reservation when the mineral lease was entered into or by direct grant to a third person. An 'overriding royalty' is a given percentage of the gross production payable to some person other than the lessor or persons claiming under him. Such interest develops where an owner of the working interest (as Texaco is here) contracts to deliver a part of the gross production to another, usually his assignor (the Trustee here)." Texaco v. Pigott, 235 F.Supp. 458, 464 (D.C. Miss. 1964).

## III. STATE LEASES

The 2% overriding gross royalty cannot apply to a State of Alaska oil and gas lease issued pursuant to AS 38.05.180. This is true whether or not the 2% is a diversion of State revenues from the present 12 1/2% royalty or if the 2% is added to the present 12 1/2% royalty to make it a 14 1/2% royalty.

The real conflict between the 2% overriding gross royalty and the 12 1/2% royalty stated in AS 38.05.180 and included as a provision of state oil and gas leases is readily apparent. This is the case regardless of whether the 2% overriding royalty is retrospective so as to affect leases in existence at the time of the effective date of the settlement legislation or if it is prospective so as to affect only leases issued subsequent to the effective date of the legislation.

It is clear that Congress has no authority under the United States Constitution to amend State legislation and State contracts on matters within the province of State law. It is a fundamental principle of American jurisprudence that the supremacy clause of the United States Constitution is applicable only if the particular act of Congress is within the jurisdiction of Congress.

> "In discussing these questions, the conflicting powers of the general and state governments must be brought into view, and the supremacy of their respective laws, when they are in opposition, must be settled.
>
> If any one proposition could command the universal assent of mankind, we might expect it would be this--that the government of the Union, though limited in its powers, is <u>supreme within its sphere of action</u>. This would seem to result necessarily from its nature. It is the government of all; its powers are delegated by all; it represents all, and acts for all. Though any one state may be willing to control its operations, no state is willing to allow others to control them. The nation, on those subjects on which it can act, must necessarily bind its component parts. But this question is not left to mere reason; the people have, in express terms, decided it by saying, 'this constitution, and the laws of the United States, which shall be made in pursuance thereof,' 'shall be the supreme law of the land,' and by requiring that the members of the state legislatures, and the officers of the executive and judicial departments of the states shall take the oath of fidelity to it.

> The government of the United States, then, though limited in its powers, is supreme; and its laws, when made in pursuance of the constitution, form the supreme law of the land, 'anything in the constitution or laws of any state to the contrary notwithstanding." McCulloch v. The State of Maryland, 4 Wheat. 316, 405-406 (1819). (Emphasis added.)

Conversely, it is equally clear that a State has the authority under the Tenth Amendment to the United States Constitution to regulate those activities which occur within the State if Congress has not been granted such authority by the Constitution.

> "We choose rather to plant ourselves on what we consider impregnable positions. They are these: that a State has the same undeniable and unlimited jurisdiction over all persons and things within its territorial limits, as any foreign nation, where that jurisdiction is not surrendered or restrained by the Constitution of the United States. That, by virtue of that, it is not only the right, but the bounden and solemn duty of a State, to advance the safety, happiness and prosperity of its people, and to provide for its general welfare, by any and every act of legislation which it may deem to be conducive to these ends; where the power over the particular subject, or the manner of its exercise is not surrendered or restrained, in the manner just stated. That all those powers which relate to merely municipal legislation, or what may, perhaps, more properly be called internal police, are not thus surrendered or restrained; and that consequently, in relation to these, the authority of a State is complete, unqualified and exclusive.
>
> We are aware that it is at all times difficult to define any subject with proper precision and accuracy; if this be so in general, it is emphatically so in relation to a subject so diversified and multifarious as the one

> which we are now considering." New York v. Miln, 11 Pet. 102, 138 (1937). (Emphasis added.)

The State of Alaska is entitled to the same rights as other states under the United States Constitution by virtue of the Statehood Act, Section 1, which provides that the State is on an "equal footing with the other states in all respects whatever. . ."

The Alaska State Legislature has properly determined what oil royalty rate should be charged lessees of State lands. The rates specified by the Legislature have been embodied in the respective leases entered into by the State and are a necessary condition of the State's contractual commitment. Neither Congress nor the Alaska State Legislature has the power to interfere with or ignore that commitment. Naturally, the Alaska Legislature can increase the royalty rates to be charged in future oil and gas leases, but it does not follow that Congress may do likewise. Congress may only supercede State legislation if it does not violate the Tenth Amendment to the United States Constitution.

There is no question that 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.

> "The paramount public interest of the state in the conservation of these natural resources, the right of the Legislature to enact reasonable laws having reasonable relation to that end, and of the Commission under the authority of those laws to make regulations to carry them into effect, have been uniformly recognized and sustained in the numerous litigations that have arisen in state and federal courts, in connection with state enforcement." Griswold v. The President of the United States, 82 F.2d 922, 925 (C.A. 5, 1936).

The royalty provisions of a mineral leasing act are related to conservation of natural resources.

> "The purpose of the Mineral Leasing Act was not to obtain sales for the gas from these reserves on Government land at any price. The Act was intended to promote wise development of these natural resources and to obtain for the public a reasonable financial return on assets that "belong" to the public. The Secretary of the Interior is the statutory guardian of this public interest. He has a responsibility to insure that these resources are not physically wasted and that their extraction accords with prudent principles of conservation. To protect the public's royalty interest he may determine that minerals are being sold at less than reasonable value. Under existing regulations he can restrict a lessee's production to an amount commensurate with market demand, and thus protect the public's royalty interest by preventing depression of the market. He may also establish "reasonable values" for royalty purposes. Of course his duties have another aspect. The public does not benefit from resources that remain undeveloped, and the Secretary must administer the Act so as to provide some incentive for development. He has statutory power to prescribe regulations to effectuate the purposes of the Act." California Company v. Udall, 296 F.2d 384, 388 (C.A.D.C., 1961). (Emphasis added.)

The conservation rationale behind royalty provisions has also been recognized by the State courts.

> "That the operation may be conducted by a lessee required to pay royalties to the State does not destroy its public use character or render it a private enterprise. The end to be served is the conversion of public resources and the avoidance of waste thereof and the leasehold method must be viewed as no more than a means to that end." Opinion of the Justices, 216 A.2d 656, 660 (Me. 1966).

Furthermore, assuming for the purpose of argument that the royalty provision is a tax measure and not a conservation measure, the same principle of state sovereignity is applicable. "The States have a very wide discretion in the laying of their taxes. When dealing with their proper domestic concerns, and not trenching upon the prerogatives of the National Government or violating the guarantees of the Federal Constitution, the States have the attribute of sovereign powers in devising their fiscal systems to insure revenue and foster their local interests." Allied Stores of Ohio v. Bowers, 358 U.S. 522, 526 (1959).

A diversion of revenues which may be due to the State by virtue of State law and State leases is a flagrant violation of the United States Constitution. It not only goes beyond the scope of the supremacy clause of the Constitution, but it also takes the property of the people of the State of Alaska in violation of the due process clause of the Fifth Amendment to the Constitution. A provision of that nature constitutes a serious threat to any state government because it apparently recognizes a right of the federal government to control the finances and treasury of state government.

In accordance with the principle that the paramount interest in conservation or local taxation is with the states, the United States, under the Tenth Amendment to the Constitution of the United States, has no authority to legislate on state royalty provisions and state oil and gas leases.

## IV. FEDERAL LEASES

The 2% overriding gross royalty cannot apply to a federal lease on public lands within the State of Alaska. This is true whether or not the royalty is retrospective or prosepective from the effective date of the legislation.

The first case to examine is that of a 2% overriding gross royalty which would be supplementary to the current 12 1/2% federal royalty. This would result in a 14 1/2% royalty on federal oil and gas leases in Alaska, although 30 U.S.C. 226 provides for a minimum 12 1/2% royalty throughout the United States. It is apparent that such legislation would violate not only the "equal footing"

doctrine, but that it would also violate the equal protection and due process clauses of the U. S. Constitution to the extent that a lessee would not be accorded uniform treatment under federal legislation. It is true that federal legislation need not be uniform in its application throughout the United States, but it is equally true that the principle embodied within the legislation should be uniform.

> "So far as uniformity is concerned, there is no question that the act uniformly applies to the conditions which call its provisions into play,--that its provisions apply to all the states,--so that the question really is a complaint as to the want of uniform existence of things to which the act applies, and not to an absence of uniformity in the act itself. But, aside from this, it is obvious that the argument seeks to engraft upon the Constitution a restriction not found in it; that is, that the power to regulate conferred upon Congress obtains subject to the requirement that regulations enacted shall be uniform throughout the United States." James Clark Distilling Co. v. Western Maryland R. Co., 242 U.S. 311, 327, 37 S.Ct. 180, 185, 61 L.Ed. 326 (1917).

Also see St. Mary's Sewer P. Co. v. Director of U. S. Bureau of Mines (C.A.3, 1959), 262 F.2d 378. If there were no requisite that federal legislation be uniform throughout the United States, the result would be a gerrymandering of special legislation on not only minerals but also labor, banking, civil rights, and so forth.

The second case to examine is that of a 2% gross overriding royalty which would constitute a diversion of the current 12 1/2% federal royalty. Pursuant to the Alaska Statehood Act, Sec. 28(b), and 30 U.S.C. 191, the State of Alaska receives 37 1/2% and 52 1/2%, or a total of 90%, of "All money received from . . . royalties . . . of public lands under the provisions of sections . . . 226 . . . of this title . . ." If there were a diversion of 2% of the 12 1/2% royalty before the apportionment of the share of the State, the State would in effect be deprived of its 90% share of the 2% which had been diverted to the Alaska Natives. This is in conflict with the Alaska Statehood Act, and is discussed in the next section of this opinion.

V. THE ALASKA STATEHOOD ACT

The question which is raised by the conflict of the 2% royalty with the Alaska Statehood Act is the following. May the United States unilaterally enact legislation in direct conflict with the Statehood Act?

The answer to this is that 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.

First, the federal government may not unilaterally amend the Statehood Act. Beecher v. Wetherby (1877), 95 U.S. 440, held that the State of Wisconsin acquired title to lands formerly occupied by Indians by virtue of the grant of these lands to the State in the Statehood Act and that this title could not subsequently be divested by the federal government on the basis of other legislation. The court, at 441, with reference to the provision of the Statehood Act which granted the land to the State, said: "It was, therefore, an unalterable condition of the admission, obligatory upon the United States. . . ." Metlakatla Indian Com., Annette Island Res. v. Egan (Alaska 1961), 362 P.2d 901, reversed by 369 U.S. 45 on other grounds, held the Omnibus Act invalid to the extent it amended the Statehood Act. The court, at 911, stated: "Appellants argue that the amendment is part of the compact and merely clarified the original intent of Congress. We cannot accept this reasoning. It is our view that the amendment forms no part of the compact between Alaska and the United States."

Second, the state government may not unilaterally amend the Statehood Act. State v. Commissioners of the Land Office, (Okl. 1956), 301 P.2d 655, held that Oklahoma could not change by an amendment to its constitution and by statute a provision of the Statehood Act which provided for a trust fund of the proceeds of the sale of lands granted to the State for school purposes. The court, at 659, stated: "We hold the regulations in the Oklahoma Enabling Act . . . may not be modified, restricted or changed by an Act of the Oklahoma legislature or the people of Oklahoma in amendment of the Oklahoma Constitution."

Merrill v. Bishop (Wyoming 1955), 287 P.2d 620, held that the Wyoming Statehood Act legally abridged Indian water rights, and, at 625, said: ". . . the compact between the United States and Wyoming is unalterable and obligatory." Also see Boeing Aircraft Co. v. Reconstruction Finance Corp. (Wash. 1946) 181 P.2d 838, 842 (". . . each government was bound by the provisions of the Enabling Act."), State v. Reynolds, (N.M. 1963)378 P.2d 622, 627. ("Section 10 of the Statehood Act became a part of our fundamental law to the same extent as if it had been directly incorporated into the Constitution when thus expressly consented to by the State and its people in Article XXI, Section 9 of the Constitution.") Opinion of the Judges (S.D. 1966) 140 N.W.2d 34, 36 ("It cannot be revoked without the consent of the United States.") United States v. 111.2 Acres of Land in Ferry County, Wash., 293 F.Supp. 1042 (1968). ("The consent of the United States has not been manifested by amendment of the Enabling Act or by legislation inconsistent with Section 11 of that Act.")

Third, 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. The Alaska Statehood Act, Sec. 8(b) provided that the people of the State approve the Statehood Act at an election, and stated that an affirmative vote on the question would constitute an amendment to the State Constitution:

> "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."

The Constitution of the State of Alaska, Art. XIII, provides that amendments to the Constitution must be ratified by the people. State v. Paul, 337 P.2d 33 (Wash. 1959), which held that the Washington Enabling Act could be amended by the State Legislature is distinguishable because the court explicitly noted that the Constitution of the State of Washington at the time of the Enabling Act provided for no initiative or referendum.

Fourth, the argument that Congress has the authority to enact Indian legislation in Alaska which will override the Statehood Act because of the "supremacy clause" principle is without merit. An inference of this argument is that the United States may be about to enter into a treaty with the Alaska Natives. The inference is unwarranted. "The use of the treaty lawmaking power to deal with Indians as dependent alien nationalities, and to adjust their problems, as proper matters of international concern, was halted by Congress in 1871." Federal Indian Law, U. S. Department of the Interior, 1958, p. 25. Another inference may be that the "plenary" federal power over Indian affairs places federal Indian law apart from the United States Constitution. Again, the inference is unwarranted.

> "Thus in United States v. Kagama the Supreme Court found that the protection of the Indians constituted a national problem and referred to the practical necessity of protecting the Indians and the withholding of such a power from the States. This is the basis for the so-called "plenary" power of Congress over the Indians, or, more qualifiedly, over "Indian tribes" or "tribal Indians," so frequently used in recent cases. It may seem captious to point out that there is authority for the view that Congress has no constitutional power over Indians except what is specifically conferred by the commerce clause and implied in other clauses of the Constitution. The most famous defender of Federal power over Indians, Chief Justice Marshall, declared:
>
> . . .That instrument [the Constitution] confers on congress the powers of war and peace; of making treaties, and of regulating commerce with foreign nations, and among the several states, and with the Indian tribes. These powers comprehend all that is required for the regulation of our intercourse with the Indians. They are not limited by any restrictions on their free actions; the shackles imposed on this power, in the confederation, are discarded (p. 559).

> Whatever [illegible] of the possibility or danger of [illegible] arising from "necessity, [illegible] that the powers mentioned by [illegible] Marshall proved to be so [illegible] that the Federal powers exercised over Indian affairs are as wide as State [illegible] over non-Indians, and therefore [illegible] in characterizing such Federal [illegible] plenary." This does not mean, however, that Congressional power over Indians is [illegible] to express constitutional [illegible], such as the Bill of Rights [illegible] American Indian Law, infra, p. 24. (Emphasis added.)

The "plenary" power [illegible] means that the United States has extensive power over American Indians in certain circumstances, and it does not mean that the United States has an authority in Indian affairs that is so absolute that it may disregard the United States Constitution. The Congress, pursuant to the United States Constitution, Article IV, Sec. 3, enacted the Alaska Statehood Act, and the State of Alaska is now on an "equal footing" with the other states. The "plenary" Indian power of the United States does not recognize in Congress the authority to abrogate the Statehood Act.

Fifth, the [illegible] clause of the Alaska Statehood Act, Section 4, does not constitute authority in Congress to legislate in derogation of the Statehood Act. That clause simply provides that the State disclaims all right and title to any lands or other property which "may" be held by Alaska Natives. The legal question which arises from that involves the selection by the State of lands claimed by Alaska Natives, and not the question of revenue sharing proposals which properly relate to monetary compensation alone. The legal question of the selection rights of the State of land claimed by Alaska Natives is discussed in Kake Village v. Egan, 369 U.S. 60, at 65-66 (1962).

> "Section 4 must be construed in light of the circumstances of its formulation and enactment. See Alaska Pacific Fisheries v. United States, 248 U.S. 78, 87. Congress was aware that few such rights existed in Alaska. Its concern was to preserve the status quo with

respect to aboriginal and possessory Indian claims, so that statehood would neither extinguish them nor recognize them as compensable. See, e.g., House Hearings, supra, 130, 384 (1955) (Delegate Bartlett); Hearings Before Senate Committee on Interior and Insular Affairs on S. 50, 83rd Cong., 2d Sess. 227 (Senator Jackson), 260-261 (1954). 1/

Discussion during hearings on the 1955 House bill affords further evidence that claims not based on federal law are included. Section 205 of that bill (like sec. 6 of the bill as enacted) authorized Alaska to select large tracts of United States land for transfer to state ownership. It was understood that the disclaimer provision left the State free to choose Indian "property" if it desired, but that such a taking would leave unimpaired the Indians' right to sue the United States for any compensation that might later be established to be due. See House Hearings, supra, 135 (1955) (Delegate Bartlett). Feeling that experience had shown this procedure too slow to give prompt relief to the Indians, Oklahoma's Representative Edmondson proposed to exempt Indian property from the State's selection. Id. at 381. This was rejected as virtually destroying Alaska's right to select lands. For, although Representative Edmondson pointed

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1/ In 1948 a statehood bill requiring disclaimer of "all lands . . . owned or held by any . . . natives, the right or title to which shall have been acquired through or from the United States or any prior sovereignty," was favorably reported with this explanation: "As proposed to be amended, this paragraph would preserve all existing valid native property rights in Alaska, including those derived from use or occupancy, together with all existing authority of the Congress to provide for the determination, perfection or relinquishment of native property rights in Alaska. It would neither add to nor subtract from such rights and such authority, but would simply maintain the status quo." H.R. Rep. No. 1731, 80th Cong., 2d Sess. 15 (1948).

To the same effect, see H.R. Rep. No. 255, 81st Cong., 1st Sess. 13 (1949).

> out that the disclaimer extended only to property owned by Indians or held in trust for them, four representatives clearly stated their belief that the disclaimer included not just the new Alaska reservations, but also the aboriginal or other unproved claims in dispute, which covered most if not all of Alaska. Id., at 381 (Representative Engle Dawson, [illegible]). (Empnasis added.)

There is, therefore, no merit to the argument that Congress may re-write the Statehood Act because of the Section 4 disclaimer clause. The inclusion of that clause in the Statehood Act did not make that Act an open-ended document which may be unilaterally amended by Congress. A contrary assertion ignores the basic significance of a statehood act. The precise question of the effect of the disclaimer clause has been considered by the U. S. Supreme Court, and that Court has said that the Congress only intended the disclaimer clause to leave unimpaired possible future rights of the Alaskan Natives to compensation from the United States. The method of the compensation, of course, must be within the principles of the United States Constitution.

## VI. CONCLUSION.

The State of Alaska, pursuant to the Alaska Statehood Act, does have rights under the United States Constitution. The argument that the supremacy clause of the United States Constitution places rights in Congress over Indians of such an extent that Congress may enact legislation which abrogates the constitutional rights of a State or of any person is clearly erroneous. The ultimate criterion of legitimacy in the American system is not the supremacy clause in itself, but the supremacy clause in the context of the United States Constitution. The clearest and most forceful statement of the applicability of the supremacy clause in the present case is not that Congress may violate the Constitutional rights of a State, but that it might extinguish Indian title without compensation.

> "In 1941 a unanimous Court wrote, concerning Indian title, the following:

> 'Extinguishment of Indian title based on aboriginal possession is of course a different matter. The power of Congress in that regard is supreme. The manner, method and time of such extinguishment raise political, not justiciable, issues.' United States v. Santa Fe Pacific R. Co., 314 U.S. 339, 347, 86 L.ed. 260, 270, 62 S.Ct. 248.
>
> No case in this Court has ever held that taking of Indian title or use by Congress required compensation. The American people have compassion for the descendants of those Indians who were deprived of their homes and hunting grounds by the drive of civilization. They seek to have the Indians share the benefits of our society as citizens of this Nation. Generous provision has been willingly made to allow tribes to recover for wrongs, as a matter of grace, not because of legal liability. 60 Stat. 1050." Tee-Hit-Ton Indians v. United States, 348 U.S. 272, 281 (1955). (Emphasis added.)

The real effect of the Section 4 disclaimer clause was to insure that Congress in no way affected whatever claims Alaska Natives might have against the United States for monetary compensation.

The State of Alaska supports the principle of compensation to Alaskan Natives, but only to the extent that there is no interference with the rights of the State under the Statehood Act. The 2% overriding gross royalty is in conflict with the Statehood Act and principles of constitutional law, and Congress has no authority under the United States Constitution to enact such legislation.

Respectfully,

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APPENDIX A

1. The grant to the State of 90% of all money received by the United States pursuant to the mineral leasing laws in Alaska. The Alaska Statehood Act. 72 Stat. 339, Sec. 28(b).

> "(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 (41 Stat. 450), is hereby amended by inserting immediately before the colon preceding the first proviso thereof the following: ", and of those from Alaska 52 1/2 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof". 72 Stat. 339, Sec. 28(b).

2. The federal legislation which was confirmed and amended by the Statehood Act, Sec. 28(b). It provides that the State receives 90% of all money received by the United States pursuant to the mineral leasing laws in Alaska, 37 1/2% thereof for the construction of public roads or schools and 52 1/2% for the disposition of the State Legislature. 30 U.S.C. 191.

> "All money received from sales, bonuses, royalties, and rentals of public lands under the provisions of sections 181-184, 185-188, 189-192, 193, 194, 201, 202-209, 211-214, 223, 224-226, 226-2, 227-229a, 241, 251, and 261-263 of this title shall be paid into the Treasury of the United States; 37 1/2 per centum thereof shall be paid by the Secretary of the Treasury as soon as practicable after December 31 and June 30 of each year to the State or the Territory of Alaska within the boundaries of which the leased lands or deposits are or were located; said moneys to be used by such State, Territory, or subdivision thereof for the construction and maintenance of public roads or for the support of public schools or other public educational institutions, as the legislature of the State or Territory may direct; and, excepting those from Alaska, 52 1/2 per centum thereof shall be paid into, reserved and appropriated, as a part of the reclamation fund created by sections 372, 373, 381, 383, 391, 392, 411, 416, 419, 421, 431, 432, 434, 439, 461, 491, and 498 of Title 43, and of those from Alaska 52 1/2 per centum thereof

shall be paid to the State of Alaska for disposition by the legislature thereof: Provided, That all moneys which may accrue to the United States under the provisions of sections 181-184, 185-188, 189-192, 193, 194, 201, 202-209, 211-214, 223, 224-226, 226-2, 227-229a, 241, 251, and 261-263 of this title not otherwise disposed of by this section shall be credited to miscellaneous receipts. As amended May 27, 1947, c. 83, 61 Stat. 119; Aug. 3, 1950, c. 527, 64 Stat. 402; July 10, 1957, Pub.L. 85-508, Secs. 6(k), 28(b), 72 Stat. 343, 351." 30 U.S.C. 191. (Emphasis added.)

3. The federal legislation applicable to oil and gas leases of the United States provides for a minimum 12 1/2% royalty. 30 U.S.C. 226.

"(a) All lands subject to disposition under sections 181-184, 185-188, 189-192, 193, 194, 201, 202-209, 211-214, 223, 224-226, 226-2, 227-229a, 241, 251, 261-263 of this title which are known or believed to contain oil or gas deposits may be leased by the Secretary.

Lands within known geologic structure of a producing oil or gas field; competitive bidding

(b) If the lands to be leased are within any known geological structure of a producing oil or gas field, they shall be leased to the highest responsible qualified bidder by competitive bidding under general regulations in units of not more than six hundred and forty acres, which shall be as nearly compact in form as possible, upon the payment by the lessee of such bonus as may be accepted by the Secretary and of such royalty as may be fixed in the lease, which shall not be less than 12 1/2 per centum in amount or value of the production removed or sold from the lease.

Lands not within geologic structure of a producing oil or gas field; first qualified applicant

(c) If the lands to be leased are not within any known geological structure of a