ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6358 SENATE JUDICIARY

762

technology had not yet converted every local problem into a national one. A conflict has now emerged, and the Court today retreats rather than reconcile the Constitution's dual concerns for federalism and an effective commerce power.

[426 US 862]

We would do well to recall the constitutional basis for federalism and the development of the commerce power which has come to displace it. The text of the Constitution does not define the precise scope of state authority other than to specify, in the Tenth Amendment, that the powers not delegated to the United States by the Constitution are reserved to the States. In the view of the Framers, however, this did not leave state authority weak or defenseless; the powers delegated to the United States, after all, were "few and defined." The Federalist No. 45, p 313 (J. Cooke ed 1961). The Framers' comments indicate that the sphere of state activity was to be a significant one, as Justice Powell's opinion clearly demonstrates, ante at 570-572, 83 L Ed 2d, at 1046-1047. The States were to retain authority over those local concerns of greatest relevance and importance to the people. The Federalist No. 17, pp 106-108 (J. Cooke ed 1961). This division of authority, according to Madison, would produce efficient government and protect the rights of the people:

> "In a single republic, all the power surrendered by the people, is submitted to the administration of a single government, and usurpations are guarded against by a division of the government into distinct and separate departments. In the compound republic of America, the power surrendered by the people, is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other; at the same time that each will be controuled by itself." The Federalist No. 51, pp 350-351 (J. Cooke ed 1961).

See Nagel, Federalism as a Fundamental Value: National League of Cities in Perspective, 1981 S Ct Rev 81, 88.

Of course, one of the "few and defined" powers delegated to the National Congress was the power "To regulate Commerce

[426 US 863]

with foreign Nations, and among the several States, and with the Indian Tribes." U. S. Const. Art. I, § 8, cl 3. The Framers perceived the interstate commerce power to be important but limited, and expected that it would be used primarily if not exclusively to remove interstate tariffs and to regulate maritime affairs and large-scale mercantile enterprise. See Abel, The Commerce Clause in the Constitutional Convention and in Contemporary Comment, 25 Minn L Rev 432 (1941). This perception of a narrow commerce power is important not because it suggests that the commerce power should be so narrowly construed today. Rather, it explains why the Framers could believe the Constitution assured significant state authority even as it bestowed a range of powers, including the commerce power, on the Congress. In an era when interstate commerce represented a tiny fraction of economic activity and most goods and services were produced and consumed close to home, the interstate commerce power left a broad range of activities beyond the reach of Congress.

In the decades since ratification of the Constitution, interstate economic activity has steadily expanded due to industrialization, coupled with advances in transportation and communications, has created a national economy in which virtually every activity occurring within the borders of a State plays a part. The expansion and integration of the national economy brought with it a considerable expansion in the scope of national problems. This Court has been increasingly generous in its interpretation of the commerce power of Congress, primarily to assure that the National Government would be able to deal with national economic problems. Most significantly, the Court in NLRB v Jones & Laughlin Steel Corp. 301 U. S. 1, 81 L Ed 893, 57 S Ct 615, 108 ALR 1352 (1937), and United States v Darby, 312 US 100, 85 L Ed 609, 61 S Ct 451, 132 ALR 1430 (1941), rejected its previous interpretations of the commerce power which had stymied New Deal legislation. Jones & Laughlin and Darby embraced the notion that Congress can regulate intrastate activities that affect

[426 US 864]

interstate commerce as surely as it can regulate interstate commerce directly. Subsequent decisions indicate that Congress, in order to regulate an activity, needs only a rational basis for a finding that the activity affects interstate commerce. See Heart of Atlanta Motel, Inc. v United States, 379 US 241, 258, 13 L Ed 2d 258, 85 S Ct 348 (1964). Even if a particular individual's activity has no perceptible interstate effect, it can be reached by Congress through regulation of that class of activity in general as long as that class, considered as a whole, affects interstate commerce. Fry v United States, 421 US 542, 44 L Ed 2d 363, 95 S Ct 1792 (1975); Perez v United States, 402 US 146, 28 L Ed 2d 686, 91 S Ct 1357 (1971).

Incidental to this expansion of the commerce power, Congress has been given an ability it lacked prior to the emergence of an integrated national economy. Because virtually every *state* activity, like virtually every activity of a private individual, arguably "affects" interstate commerce, Congress can now supplant the States from the significant sphere of activities envisioned for them by the Framers. It is in this context that recent changes in the workings of Congress, such as the direct election of Senators and the expanded influence of national interest groups, see ante, at 544, n 9, 83 L Ed 2d, at 1043 (Powell, J., dissenting), become relevant. These changes may well have lessened the weight Congress gives to the legitimate interests of States as States. As a result, there is now a real risk that Congress will gradually erase the division of power between State and Nation on which the Framers based their faith in the efficiency and vitality of our Republic.

It would be erroneous, however, to conclude that the Supreme Court was blind to the threat to federalism when it expanded the commerce power. The Court based the expansion on the authority of Congress, through the Necessary and Proper Clause, "to resort to all means for the exercise of a granted power which are appropriate and plainly adapted to the permitted end." United States v Darby, supra, at 121, 85 L Ed 609, 61 S Ct 451, 132 ALR 1430. It is through this reason-

ing that an intrastate activity "affecting" interstate commerce can be reached through the

[469 US 555]

commerce power. Thus, in United States v. Wrightwood Dairy Co., 315 US 110, 119, 86 L Ed 726, 62 S Ct 523 (1942), the Court stated:

> "The commerce power is not confined in its exercise to the regulation of commerce among the states. It extends to those activities intrastate which so affect interstate commerce, or the exertion of the power of Congress over it, as to make regulation of them appropriate means to the attainment of a legitimate end, the effective execution of the granted power to regulate interstate commerce. See McCulloch v. Maryland, 4 Wheat 316, 421 [4 L Ed 579]."

United States v. Wrightwood Dairy Co. was heavily relied upon by Wickard v. Filburn, 317 US 111, 124, 87 L Ed 122, 63 S Ct 82 (1942), and the reasoning of these cases underlies every recent decision concerning the reach of Congress to activities affecting interstate commerce. See, e.g., Fry v. United States, supra, at 547, 44 L Ed 2d 363, 95 S Ct 1792; Perez v. United States, supra, at 151–152, 28 L Ed 2d 686, 91 S Ct 1357; Heart of Atlanta Motel, Inc. v. United States, supra, at 258–259, 13 L Ed 2d 258, 85 S Ct 348.

It is worth recalling the cited passage in McCulloch v. Maryland, 4 Wheat 316, 421, 4 L Ed 579 (1819), that lies at the source of the recent expansion of the commerce power. "Let the end be legitimate, let it be within the scope of the constitution," Chief Justice Marshall said, "and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter *and spirit* of the constitution, are constitutional" (emphasis added). The *spirit* of the Tenth Amendment, of course, is that the States will retain their integrity in a system in which the laws of the United States are nevertheless supreme. Fry v. United States, supra, at 547, n 7, 44 L Ed 2d 363, 95 S Ct 1792.

It is not enough that the "end be legitimate"; the means to that end chosen by Congress must not contravene the spirit of the Constitution. Thus many of this Court's decisions acknowledge that the means by which national power is exercised must take into account concerns for state autonomy. See, e.g., Fry v. United States, supra, at 547, n 7, 44 L Ed 2d 363, 95 S Ct 1792; New

[469 US 556]

York v. United States, 326 US 572, 586–587, 90 L Ed 326, 66 S Ct 310 (1946) (Stone, C. J., concurring); NLRB v. Jones & Laughlin Steel Corp. supra, at 37, 81 L Ed 893, 57 S Ct 615, 108 ALR 1352 ("Undoubtedly, the scope of this [commerce] power must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government"); Santa Cruz Fruit Packing Co. v. NLRB, 303 US 453, 466–467, 82 L Ed 954, 58 S Ct 656 (1938). See also Sandalow, Constitutional Interpretation, 79 Mich L Rev 1033, 1055 (1981) ("The question, always, is whether the exercise of power is consistent with the entire Constitution, a question that can be

answered only by taking into account, so far as they are relevant, all of the values to which the Constitution as interpreted over time gives expression"). For example, Congress might rationally conclude that the location a State chooses for its capital may affect interstate commerce, but the Court has suggested that Congress would nevertheless be barred from dictating that location because such an exercise of a delegated power would undermine the state sovereignty inherent in the Tenth Amendment. Coyle v. Oklahoma, 221 US 559, 565, 55 L Ed 853, 31 S Ct 688 (1911). Similarly, Congress in the exercise of its taxing and spending powers can protect federal savings and loan associations, but if it chooses to do so by the means of converting quasi-public state savings and loan associations into federal associations, the Court has held that it contravenes the reserved powers of the States because the conversion is not a reasonably necessary exercise of power to reach the desired end. Hopkins Federal Savings & Loan Assn. v. Cleary, 296 US 315, 80 L Ed 251, 56 S Ct 235, 100 ALR 1403 (1935). The operative language of these cases varies, but the underlying principle is consistent: state autonomy is a relevant factor in assessing the means by which Congress exercises its powers.

[469 US 557]

This principle requires the Court to enforce affirmative limits on federal regulation of the States to complement the judicially crafted expansion of the interstate commerce power. National League of Cities v. Usery represented an attempt to define such limits. The Court today rejects National League of Cities and washes its hands of all efforts to protect the States. In the process, the Court opines that unwarranted federal encroachments on state authority are and will remain "horrible possibilities that never happen in the real world." Ante, at 556, 83 L Ed 2d, at 1037, quoting New York v. United States, supra, at 583, 90 L Ed 326, 66 S Ct 310 (opinion of Frankfurter, J.). There is ample reason to believe to the contrary.

The last two decades have seen an unprecedented growth of federal regulatory activity, as the majority itself acknowledges. Ante, at 544–545, n 10, 83 L Ed 2d, at 1030. In 1954, one could still speak of a "burden of persuasion on those favoring national intervention" in asserting that "National action has . . . always been regarded as exceptional . . . our polity, an intrusion to be justified by some necessity, the special rather than the ordinary case." Wechsler, The Political Safeguards of Federalism: The Role of the States in the Composition and Selection of the National Government, 54 Colum L Rev 543, 544–545 (1954). Today, as federal legislation and coercive grant programs have expanded to embrace innumerable activities that were once viewed as local, the burden of persuasion has surely shifted, and the extraordinary has become ordinary. See Engdahl, Sense and Nonsense About State Immunity, 2 Constitutional Commentary 93 (1985). For example, recently the Federal Government has, with this Court's blessing, undertaken to tell the States the age at which they can retire their law enforcement officers, and the regulatory standards, procedures, and even the agenda which their utilities commissions must consider and follow. See EEOC v. Wyoming, 460 US 226, 75 L Ed 2d 18, 103 S Ct 1054 (1983); FERC v. Mississippi, 456 US 742, 72 L Ed 2d 532, 102 S Ct 2126 (1982). The political

process

[469 US 558]

has not) protected against these encroachments on state activities, even though they directly impinge on a State's ability to make and enforce its laws. With the abandonment of National League of Cities, all that stands between the remaining essentials of state sovereignty and Congress is the latter's underdeveloped capacity for self-restraint.

The problems of federalism in an integrated national economy are capable of more responsible resolution than holding that the States as States retain no status apart from that which Congress chooses to let them retain. The proper resolution, I suggest, lies in weighing state autonomy as a factor in the balance when interpreting the means by which Congress can exercise its authority on the States as States. It is insufficient, in assessing the validity of congressional regulation of a State pursuant to the commerce power, to ask only whether the same regulation would be valid if enforced against a private party. That reasoning, embodied in the majority opinion, is inconsistent with the spirit of our Constitution. It remains relevant that a State is being regulated, as National League of Cities and every recent case have recognized. See EEOC v. Wyoming, supra; Transportation Union v. Long Island R. Co. 455 US 678, 684, 71 L. Ed. 2d 547, 102 S. Ct. 1349 (1982); Hodel v. Virginia Surface Mining & Recl. Assn. 452 U.S. 264, 287-288, 69 L. Ed. 2d 1, 101 S. Ct. 2352 (1981); National League of Cities, 426 US, at 841-846, 49 L. Ed. 2d 245, 96 S. Ct. 2465. So far as the Constitution is concerned, a State should not be equated with any private litigant. Cf. Nevada v. Hall, 440 US 410, 428, 59 L. Ed. 2d 416, 99 S. Ct. 1182 (1979) (Blackmun, J., dissenting) (criticizing the ability of a state court to treat a sister State no differently than a private litigant). Instead, the autonomy of a State is an essential component of federalism. If state autonomy is ignored in assessing the means by which Congress regulates matters affecting commerce, then federalism becomes irrelevant simply because the set of activities remaining beyond the reach of such a commerce power "may well be negligible." Ante, at 545, 83 L. Ed. 2d, at 1030.

It has been difficult for this Court to craft bright lines defining the scope of the state autonomy protected by National

[469 US 559]

League of Cities. Such difficulty is to be expected whenever constitutional concerns as important as federalism and the effectiveness of the commerce power come into conflict. Regardless of the difficulty, it is and will remain the duty of this Court to reconcile these concerns in the final instance. That the Court shuns the task today by appealing to the "essence of federalism" can provide scant comfort to those who believe our federal system requires something more than a unitary, centralized government. I would not shirk the duty acknowledged by National League of Cities and its progeny, and I share Justice Rehnquist's belief that this Court will in time again assume its constitutional responsibility.

I respectfully dissent.

EDITOR'S NOTE

An annotation on "Validity of federal regulation of wage rates and hours of service as affected by commerce clause of Federal Constitution (Art. I, § 8, cl. 3)—Supreme Court cases," appears p. 1163, infra.

Survey, Briefs, Annos

SURVEY OF THE TERM,

ANNOTATIONS AND BRIEFS

FOR CASES REPORTED IN THIS VOLUME

The annotations herein, prepared by the Editors, are indexed in the "Index to Decisions and Annotations" appearing at the end of this volume. For additional annotation references, consult the separate Index to Annotations volume of U.S. Supreme Court Reports, Lawyers' Edition, the "Index to Cases and Annotations" in the U.S. Supreme Court, Lawyers Edition 24 Desk Book or appropriate topics and sections in the U.S. Supreme Court Digest, Lawyers' Edition.

Selected summaries of briefs are by the publisher's staff.

STATE OF SOUTH CAROLINA, Plaintiff

v

JAMES A. BAKER, III, Secretary of the Treasury of the United States

485 US —, 99 L. Ed. 2d 592, 108 S. Ct. —

[No. 94, Orig.]

Argued December 7, 1987. Decided April 20, 1988.

Decision: 26 USCS § 103(j)(1), which subjects interest on unregistered state or local bonds to federal income tax, held not to violate (1) Tenth Amendment or (2) intergovernmental tax immunity doctrine.

SUMMARY

Section 310(b)(1) of the Tax Equity and Fiscal Responsibility Act of 1982 (26 USCS § 103(j)(1)) removes the federal income tax exemption for interest earned on publicly offered long-term bonds issued by state and local governments unless those bonds are issued in registered form. The state of South Carolina, invoking the original jurisdiction of the United States Supreme Court, claimed that § 310(b)(1) was invalid under the Federal Constitution as a violation (1) of the Tenth Amendment and related constitutional principles of federalism, because § 310(b)(1) effectively required state and local governments to issue only registered bonds, and (2) of the doctrine of intergovernmental tax immunity, which had been held in Pollock v. Farmers' Loan & Trust Co. (1895) 157 US 429, 39 L. Ed. 759, 15 S. Ct. 673, mod. 158 US 601, 39 L. Ed. 1108, 15 S. Ct. 912, to bar federal taxation of any interest earned on a state bond. The Supreme Court (1) granted the state leave to file a complaint against the United States Secretary of the Treasury and (2) appointed a Special Master. The Special Master found that § 310(b)(1) did have the effect of requiring bonds to be issued in registered form; but he nevertheless determined that § 310(b)(1) was constitutional, and he recommended that judgment be entered for the Secretary. South Carolina and an intervenor filed exceptions to various factual findings of the Special Master and to the Master's legal conclusions regarding their constitutional challenges.

On exceptions to the report of the Special Master, the United States Supreme Court overruled the exceptions and approved the Master's recommendation to enter judgment for the Secretary. In an opinion by BRENNAN, J., joined by WHITE, MARSHALL, BLACKMUN, and STEVENS, JJ., and joined in part (as to holding 2 below) by Scalia, J., it was held that § 310(b)(1) is not unconstitutional, because (1) the federal imposition of a bond registration requirement on state and local governments does not violate the Tenth Amendment, where the national political process did not operate in a defective manner in regard to its enactment, and (2) a nondiscriminatory federal tax on the interest earned on state and local government bonds does not violate the intergovernmental tax immunity doctrine—overruling Pollock v. Farmers' Loan & Trust Co., supra.

STEVENS, J., concurred, expressing the view that the Court's decision does not express any opinion about the wisdom of taxing the interest on bonds issued by state or local governments.

SCALIA, J., concurred in part and concurred in the judgment, expressing the view (1) that precedents applying the Tenth Amendment do not support the proposition (a) that the national political process is the states' only constitutional protection, and (b) that nothing except the demonstration of some extraordinary defects in the operation of that process can justify judicial relief; but (2) that the federal constitutional structure does not prohibit what the Federal Government has done by enacting § 310(b)(1).

REHNQUIST, Ch. J., concurred in the judgment, expressing the view (1) that § 310(b)(1) does not contravene the doctrine of intergovernmental tax immunity, and (2) that the Special Master's finding that § 310(b)(1) has had no substantive effect on states' political processes or ability to raise debt capital was sufficient to establish its validity under the Tenth Amendment.

O'CONNOR, J., dissented, expressing the view that the Tenth Amendment and principles of federalism inherent in the Federal Constitution prohibit Congress from taxing or threatening to tax the interest paid on state and municipal bonds.

KENNEDY, J., did not participate.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

States, Territories, and Possessions § 37 — federal regulation of state and local bonds

1a-1f. Assuming that § 310(b)(1) of the Tax Equity and Fiscal Responsibility Act of 1982 (26 USCS § 103(j)(1)), which removes the federal tax exemption for interest earned on certain bonds issued by state and local governments unless those bonds are registered, directly regulates those governments by effectively requiring them to issue bonds in registered rather than bearer form, then such a requirement does not violate the Tenth Amendment to the Federal Constitution or principles of federalism derived generally from the Constitution, where the national political process did not operate in a defective manner in regard to the enactment of § 310(b)(1), there is no merit in the argument that it is unconstitutional to commandeer the state or local legislative and administrative process by coercing state or local governments into enacting legislation which authorizes bond registration and into administering the registration scheme.

Income Taxes § 12 — federal tax power — interest on state and local bonds

2a-2e. A nondiscriminatory federal tax on the interest earned on bonds issued by state or local governments does not violate the intergovernmental tax immunity doctrine, and § 310(b)(1) of the Tax Equity and Fiscal Responsibility Act of 1982 (26 USCS § 103(j)(1)), which removes the federal tax exemption for interest earned on publicly offered long-term bonds issued by state and local governments unless those bonds are registered, thus is not unconstitutional as a violation of that doctrine, given (1) that § 310 imposes no direct tax on state or local governments, because the tax is imposed on and collected from bondholders and any increased administrative costs incurred by state and local governments in implementing the registration system are not "taxes" within the meaning of the tax immunity doctrine, and (2) that § 310(b)(1) does not discriminate against state and local governments, because other provisions of § 310 seek to assure that all publicly offered long-term bonds are issued in registered form; the holding in Pollock v Farmers' Loan & Trust Co. (1895) 157 US 429, 39 L Ed 759, 15 S Ct 673, mod 158 US 601, 39 L Ed 1108, 15 S Ct 912, that state bond interest is immune from a nondiscriminatory federal tax is overruled; the owners of state or local bonds have no constitutional entitlement not to pay taxes on income which they earn from such bonds. (O'Connor, J., dissented from this holding.)

Records and Recording Laws § 18 — transfer of registered bond

3a, 3b. A transfer of record ownership of a registered bond requires entering the change on the central registration list; however, since the record owner of a registered bond may sometimes differ from the beneficial owner, sellers can transfer beneficial ownership of most types of registered bonds without entering a change on the central list.

Bonds § 7; Evidence § 308 — ownership of bearer bond

4. Ownership of a bearer bond is presumed from possession and is transferred by physically handing over the bond.

States, Territories, and Possessions §§ 12, 37 — federal regulation of state activities — taxation of state bond interest

5a, 5b. The limits imposed on Congress' authority to regulate state activities under (1) the Federal Constitution's Tenth Amendment, or (2) principles of federalism derived generally from the Constitution, are structural, not substantive—that is, state and local governments must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable activity; although it is possible that some extraordinary defects in the national political process might render congressional regulation of state activities invalid under the above constitutional rules, there is no merit in a state's argument that § 310(b)(1) of the Tax Equity and Fiscal Responsibility Act of 1982 (26

USCS § 103(j)(1)—which removes the federal tax exemption for interest earned on certain bonds issued by state and local governments unless those bonds are registered and thus allegedly forces such governments to issue only registered bonds—is the result of a failure in the national political process and therefore violates those constitutional rules, where the state does not allege that it was deprived of any right to participate in the national political process or that it was singled out in a way that left it politically isolated and powerless, but alleges only that § 310(b)(1) was imposed by the vote of an uninformed Congress which, in adopting that statute to combat alleged concealment of taxable income using bearer bonds, relied upon incomplete information and chose an ineffective remedy; courts are not authorized under the above constitutional principles to second-guess the substantive bases for congressional legislation.

States, Territories, and Possessions § 12 — state response to federal regulations

6. The fact that a state wishing to engage in certain activity must take administrative and sometimes legislative action to comply with federal standards regulating that activity presents no federal constitutional defect.

Internal Revenue § 4; United States § 15 — validity of conditional tax — power of Congress

7. The United States cannot convert an unconstitutional tax into a constitutional one simply by making the tax conditional; whether Congress could have imposed the condition by direct regulation is irrelevant, as Congress cannot employ unconstitutional means to reach a constitutional end.

Internal Revenue § 11.5; Taxes § 81 — state and federal tax immunities

8a, 8b. The immunity of the states from federal taxation arises from the federal constitutional structure and a concern for protecting state sovereignty, whereas the Federal Government's immunity from state taxation arises from the supremacy clause of the Federal Constitution (Art VI, cl 2).

Taxes §§ 68, 82 — state and federal governments — tax immunization of others

9a, 9b. The Federal Government has the power to enact statutes immunizing those with whom it deals from state taxation even if intergovernmental tax immunity doctrine would not otherwise confer an immunity; but the states lack any such power.

Internal Revenue § 11.4; Taxes §§ 81, 82 — taxes on governments and government contractors

10a-10c. State and local governments can never tax the United States directly but can tax any private parties with whom the United States does business, even though the financial burden falls on the United States, as long as the tax does not discriminate against the United States or those with whom it deals; a tax is considered to be directly on the Federal Government only when the levy falls on the United States itself, or on an agency or instrumentality so closely connected to that government that the two cannot realistically be viewed as separate entities; the rule with respect to state tax immunity is essentially the same, except that at least some nondiscriminatory federal taxes can be collected directly from state and local governments even though a parallel state or local tax could not be collected directly from the Federal Government, the issue whether a nondiscriminatory federal tax might nonetheless violate state tax immunity does not arise unless the Federal Government seeks to collect the tax directly from a state or local government. (O'Connor, J., dissented in part from this holding.)

Income Taxes §§ 10, 12 — construction of Sixteenth Amendment — taxation of state bond interest

11a, 11b. The legislative history of the Sixteenth Amendment to the Federal Constitution—which authorizes Congress to collect taxes on income "from whatever source derived" without apportionment—does not manifest an intent to freeze into the Constitution the tax immunity for state bond interest that existed in 1913, but merely shows (1) that the words "from whatever source derived" were not affirmatively intended to authorize Congress to tax state bond interest or to have any other effect on the question of which incomes were subject to federal taxation, and (2) that the sole purpose of the Sixteenth Amendment was to remove the apportionment requirement for whichever incomes were otherwise taxable.

Bonds §§ 74, 155 — state and local bonds — interest rates

12. State and local governments have no federal constitutional entitlement to issue bonds paying lower interest rates than other issuers.

Income Taxes § 23 — government bond interest

13. Only state and local government bonds enjoy any exemption from the federal income tax on bond interest.

Income Taxes § 22 — corporate bond interest

14. Corporate bond interest is subject to federal income tax.

Internal Revenue § 11 — validity of tax

15a, 15b. Because Congress could have prohibited state and local governments from issuing any unregistered bonds by direct regulation, there is no merit in the argument that § 310(b)(1) of the Tax Equity and Fiscal Responsibility Act of 1982 (26 USCS § 103(j)(1))—which removes the federal tax exemption for interest earned on certain bonds issued by state and local governments unless those bonds are registered—is an impermissible regulatory tax because it imposes a tax on activities that are not subject to federal regulatory power; the fact that § 310(b)(1) is purely regulatory in purpose and effect and was never intended to raise any federal revenue does not alone render it unconstitutional.

Supreme Court of the United States § 68 — original action by state against United States

16. In an action wherein a state invoked the original jurisdiction of the United States Supreme Court and filed a complaint against the United States Secretary of the Treasury, which complaint challenged the constitutionality of § 310(b)(1) of the Tax Equity and Fiscal Responsibility Act of 1982 (26 USCS § 103(j)(1)), which removes the federal tax exemption for interest earned on certain bonds issued by state and local governments unless those bonds are registered, the Su-

preme Court—having found no merit in the state's claims that § 310(b)(1) violates various particular rules under the Federal Constitution—will (1) overrule the state's exceptions to the report of a Special Master who concluded that § 310(b)(1) was constitutional, and (2) approve the Special Master's recommendation to enter judgment for the Secretary.

SYLLABUS BY REPORTER OF DECISIONS

Section 310(b)(1) of the Tax Equity and Fiscal Responsibility Act of 1982 removes the federal income tax exemption for interest earned on publicly offered long-term bonds (hereinafter referred to as bonds) issued by state and local governments (hereinafter referred to collectively as States) unless those bonds are issued in registered (as opposed to bearer) form. South Carolina invoked this Court's original jurisdiction, contending that § 310(b)(1) is constitutionally invalid under the Tenth Amendment and the doctrine of intergovernmental tax immunity. A Special Master was appointed. After conducting hearings and taking evidence, he concluded that § 310(b)(1) is constitutional and recommended entering judgment for the defendant. South Carolina and the National Governors' Association (NGA), as an intervenor, filed exceptions to various factual findings of the Master and to his legal conclusions concerning their constitutional challenges.

Held:

1. Section 310(b)(1) does not violate the Tenth Amendment or constitutional principles of federalism by effectively compelling States to issue bonds in registered form.

(a) The Tenth Amendment limits on Congress' authority to regulate state activities are structural, not substantive—that is, the States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity. In this case, South Carolina has not even alleged that it was deprived of any right to participate in the national political process or that it was singled out in a way that left it politically isolated and powerless. The allegations South Carolina does make—that Congress was uninformed and chose an ineffective remedy—do not amount to an allegation that the political process operated in a defective manner.

(b) NGA's contention that § 310 is invalid because it commandeers the state legislative and administrative process by coercing States into enacting legislation authorizing bond registration and into administering the registration scheme finds no support in the claim left open by FERC v Mississippi, 456 US 742, 72 L Ed 2d 532, 102 S Ct 2126. Section 310 regulates state activities; it does not, as did the statute in FERC, seek to control or influence the manner in which States regulate private parties. That a State wishing to engage in certain activity must take administrative and sometimes legislative action to comply with federal standards regulating that activity is a commonplace that presents no constitutional defect. Moreover, under NGA's theory, any State could immunize its activities from federal regulation by simply codifying the manner in which it engages in those activities.

2. Section 310(b)(1) does not violate the doctrine of intergovernmental tax immunity by taxing the interest

earned on unregistered state bonds. Section 310(b)(1) is inconsistent with this Court's holding in Pollock v Farmers' Loan & Trust Co., 157 US 429, 39 L Ed 759, 15 S Ct 673, that state bond interest was immune from a nondiscriminatory federal tax, but that decision has been effectively overruled by subsequent case law. Under the intergovernmental tax immunity jurisprudence prevailing at Pollock's time, neither the Federal nor the State Governments could tax income that an individual directly derived from *any* contract with the other government. This general rule was based on the rationale that any tax on income a party received under a contract with the government was a tax on the contract and thus a tax "on" the government because it burdened the government's power to enter into the contract. That rationale has been repudiated by modern intergovernmental tax immunity case law, and the government contract immunities have been, one by one, overruled. The owners of state bonds have no constitutional entitlement not to pay taxes on income they earn from the bonds, and States have no constitutional entitlement to issue bonds paying lower interest rates than other issuers. The nondiscriminatory tax under § 310 is imposed on and collected from bondholders, not States, and any increased administrative costs incurred by States in implementing the registration system are not "taxes" within the meaning of the tax immunity doctrine. Moreover, the provisions of § 310 seek to assure that *all* publicly offered long-term bonds are issued in registered form, whether issued by state or local governments, the Federal Government, or private corporations.

Exceptions to Special Master's Report overruled, and judgment entered for defendant.

Brennan, J., delivered the opinion of the Court, in which White, Marshall, Blackmun, and Stevens, JJ., joined, and in which Scalia, J., joined except for Part II. Stevens, J., filed a concurring opinion. Scalia, J., filed an opinion concurring in part and concurring in the judgment. Rehnquist, C. J., filed an opinion concurring in the judgment. O'Connor, J., filed a dissenting opinion. Kennedy, J., took no part in the consideration or decision of the case.

APPEARANCES OF COUNSEL

John P. Linton argued the cause for plaintiff.

Lewis B. Kaden argued the cause for the National Governors' Association, as plaintiff-in-intervention by special leave of court.

Solicitor General Charles Fried argued the cause for defendant.

OPINION OF THE COURT

Justice Brennan delivered the opinion of the Court.

[1a, 2a] Section 310(b)(1) of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. 97-248, 96 Stat. 596, 26 USC § 103(j)(1) [26 USCS § 103(j)(1)], removes the federal income tax exemption for interest earned on publicly offered long-term bonds issued by state and local governments unless those bonds are

issued in registered form.[1] This original jurisdiction case presents the issues whether § 310(b)(1) of TEFRA either (1) violates the Tenth Amendment and constitutional principles of federalism by compelling States to issue bonds in registered form or (2) violates the doctrine of intergovernmental tax immunity by taxing the interest earned on unregistered state bonds.

I

[3a, 4] Historically, bonds have been issued as either registered bonds or bearer bonds. These two types of bonds differ in the mechanisms used for transferring ownership and making payments. Ownership of a registered bond is recorded on a central list, and a transfer of record ownership requires entering the change on that list.[2] The record owner automatically receives interest payments by check or electronic transfer of funds from the issuer's paying agent. Ownership of a bearer bond, in contrast, is presumed from possession and is transferred by physically handing over the bond. The bondowner obtains interest payments by presenting bond coupons to a bank that in turn presents the coupons to the issuer's paying agent.

In 1982, Congress enacted TEFRA, which contains a variety of provisions, including § 310, designed to reduce the federal deficit by promoting compliance with the tax laws. Congress had become concerned about the growing magnitude of tax evasion; Internal Revenue Service (IRS) studies indicated that unreported income had grown from an estimated range of $31.1 billion to $32.2 billion in 1973 to a range of $93.3 billion to $97 billion in 1981. Compliance Gap: Hearing before the Subcommittee on Oversight of the Internal Revenue Service of the Senate Committee on Finance, 97th Cong, 2d Sess, 126 (1982). Unregistered bonds apparently became a focus of attention because they left no paper trail and thus facilitated tax evasion. Then Assistant Secretary of the Treasury for Tax Policy John Chapoton testified before the House Ways and Means Committee that a registration requirement would help prevent tax evasion because bearer bonds often represent unreported and untaxed income that, without a system of recorded ownership, the IRS has difficulty reconstructing. Hearings on HR 6300 before the House Committee on Ways and Means, 97th Cong, 2d Sess, 35 (1982). He also expressed concern that bearer bonds were being used to avoid estate and gift taxes and as a medium of exchange in the illegal sector. Ibid. In reporting out the bill containing the provision that eventually became § 310 of TEFRA, the Senate Finance Committee Report expressed the same concerns:

> "The committee believes that a fair and efficient system of information reporting and withholding cannot be achieved with respect to interest-bearing obligations as long as a significant volume of long-term bearer instruments is issued. A system of book-entry registration will preserve the liquidity of obligations while requiring the creation of ownership records that can produce useful information reports with respect to both the payment of interest and the sale of obligations prior to maturity through brokers. Furthermore, registration will reduce the ability of noncompliant taxpayers to conceal income and property from the reach of the income, estate, and gift taxes. Finally, the registration requirement may reduce the volume of readily negotiable substitutes for cash available to persons engaged in illegal activities." S Rep No. 97-494, Vol 1, p 242 (1982).

Section 310 was designed to meet these concerns by providing powerful incentives to issue bonds in registered form.

Because § 310 aims to address the tax evasion concerns posed generally by unregistered bonds, it covers not only state bonds but also bonds issued by the United States and private corporations. Section 310(a) requires the United States to issue publicly offered bonds with a maturity of one year or more in registered form.[3] With respect to similar bonds issued by private corporations, §§ 310(b)(2)-(6) impose a series of tax penalties on nonregistration. Corporations declining to issue the covered bonds in registered form lose tax deductions and adjustments for interest paid on the bonds, §§ 310(b)(2) and (3), and must pay a special excise tax on the bond principal, § 310(b)(4). Holders of these unregistered corporate bonds generally cannot deduct capital losses or claim capital-gain treatment for any losses or gains sustained on the bonds. §§ 310(b)(5) and (6). Section 310(b)(1) completes this statutory scheme by denying the federal income tax exemption for interest earned on state bonds to owners of long-term publicly offered state bonds that are not issued in registered form.

South Carolina invoked the original jurisdiction of this Court, contending that § 310(b)(1) is constitutionally invalid under the Tenth Amendment and the doctrine of intergovernmental tax immunity. We granted South Carolina leave to file the instant complaint against the Secretary of the Treasury of the United States, South Carolina v Regan, 465 US 367, 79 L Ed 2d 372, 104 S Ct 1107 (1984), and appointed as Special Master the Honorable Samuel J. Roberts, 466 US 948, 80 L Ed 2d 535, 104 S Ct 2148 (1984). The National Governors' Association (NGA) intervened. After conducting hearings and taking evidence, the Special Master concluded that § 310(b)(1) was constitutional and recommended entering judgment for the defendant. South Carolina and the NGA filed exceptions to various factual findings of the Special Master and to the Master's legal conclusions concerning their constitutional challenges.

II

[1b] We address the claim that § 310(b)(1) violates the Tenth

1. For simplicity, we will refer to state and local governments collectively as "States" and will refer to publicly offered long-term bonds as "bonds."

2. [3b] The record owner of a registered bond may sometimes differ, however, from the beneficial owner, and sellers can transfer beneficial ownership of most types of registered bonds without entering a change on the central list.

3. Section 310 also provides various special exceptions to the registration requirements and incentives provided under subsections (a) and (b) for long-term publicly offered bonds issued by private corporations and federal and state governments, but those exceptions are not relevant here.

Amendment first.[4] South Carolina and the NGA contend, and the Master found, that § 310 effectively requires States to issue bonds in registered form, noting that if States issued bonds in unregistered form, competition from other nonexempt bonds would force States to increase the interest paid on state bonds by 28-35%, and that even though almost all state bonds were issued in bearer form before § 310 became effective, since then no State has issued a bearer bond. Report of Special Master pp 2, 23-24. South Carolina and the NGA thus argue that, for purposes of Tenth Amendment analysis, we must treat § 310 as if it simply banned bearer bonds altogether without giving States the option to issue nonexempt bearer bonds. The Secretary does not dispute the finding that § 310 effectively requires registration, see Brief for Defendant p 19 (urging the Court to adopt all the Master's findings), preferring to argue that § 310 survives Tenth Amendment scrutiny because a blanket prohibition by Congress on the issuance of bearer bonds can apply to States without violating the Tenth Amendment. For the purposes of Tenth Amendment analysis, then, we treat § 310 as if it directly regulated States by prohibiting outright the issuance of bearer bonds.[5]

A

[5a] The Tenth Amendment limits on Congress' authority to regulate state activities are set out in Garcia v San Antonio Metropolitan Transit Authority, 469 US 528, 83 L Ed 2d 1016, 105 S Ct 1005 (1985). Garcia holds that the limits are structural, not substantive—i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity. Id., at 537-554, 83 L Ed 2d 1016, 105 S Ct 1005. South Carolina contends that the political process failed here because Congress had no concrete evidence quantifying the tax evasion attributable to unregistered state bonds and relied instead on anecdotal evidence that taxpayers have concealed taxable income using bearer bonds. It also argues that Congress chose an ineffective remedy by requiring registration because most bond sales are handled by brokers who must file information reports regardless of the form of the bond and because beneficial ownership of registered bonds need not necessarily be recorded.

[1c, 5b] Although Garcia left open the possibility that some extraordinary defects in the national political process might render congressional regulation of state activities invalid under the Tenth Amendment, the Court in Garcia had no occasion to identify or define the defects that might lead to such invalidation. See id., at 556, 83 L Ed 2d 1016, 105 S Ct 1005. Nor do we attempt any definitive articulation here. It suffices to observe that South Carolina has not even alleged that it was deprived of any right to participate in the national political process or that it was singled out in any way that left it politically isolated and powerless. Cf. United States v Carolene Products Co., 304 US 144, 152, n 4, 82 L Ed 2d 1234, 58 S Ct 778 (1938). Rather, South Carolina argues that the political process failed here because § 310(b)(1) was "imposed by the vote of an uninformed Congress relying upon incomplete information." Brief for Plaintiff 101.[6] But nothing in Garcia or the Tenth Amendment authorizes courts to second-guess the substantive basis for congressional legislation. Cf. Minnesota v Clover Leaf Creamery Co., 449 US 456, 464, 66 L Ed 2d 659, 101 S Ct 715 (1981). Where, as here, the national political *process* did not operate in a defective manner, the Tenth Amendment is not implicated.

B

[1d] The NGA argues that § 310 is invalid because it commandeers the state legislative and administrative process by coercing States into enacting legislation authorizing bond registration and into administering the registration scheme. They cite FERC v Mississippi, 456 US 742, 72 L Ed 2d 532, 102 S Ct 2126 (1982), which left open the possibility that the Tenth Amendment might set some limits on Congress' power to compel States to regulate on behalf of federal interests, id., at 761-764, 72 L Ed 2d 532, 102 S Ct 2126. The extent to which the Tenth Amendment claim left open in FERC survives Garcia or poses constitutional limitations independent of those discussed in Garcia is far from clear. We need not, however, address that issue because we find the claim discussed in FERC inapplicable to § 310.

The federal statute at issue in FERC required state utility commissions to do the following: (1) adjudicate and enforce federal standards, (2) either consider adopting certain federal standards or cease regulating public utilities, and (3) follow certain procedures. The Court in FERC first distinguished National League of Cities v Usery, 426 US 833, 49 L Ed 2d 245, 96 S Ct 2465 (1976), noting that the statute in National League of Cities presented questions concerning "the extent to which state sovereignty shields the States from generally applicable federal regulations," whereas the statute in FERC "attempts to use state regulatory machinery to advance federal goals."

4. We use "the Tenth Amendment" to encompass any implied constitutional limitation on Congress' authority to regulate state activities, whether grounded in the Tenth Amendment itself or in principles of federalism derived generally from the Constitution.

5. Given our holding infra, at ——, 99 L Ed 2d ——, that a federal tax on the interest paid on state bonds does not violate the intergovernmental tax immunity doctrine, one could argue that any law exempting state bond interest from the tax applicable to interest on other bonds is, in effect, a subsidy, and that Congress' decision to subsidize only registered state bonds must be judged under our Spending Clause cases. See generally South Dakota v Dole, 483 US ——, —— —, 97 L Ed 2d 171, 107 S Ct 2793 (1987) (stating that "a perceived Tenth Amendment limitation on congressional regulation of state affairs did not consistently limit the range of conditions legitimately placed on federal grants," but that at some point "the financial inducement offered by Congress might be so coercive" as to be unconstitutional). The parties have not, however, chosen to attack or defend § 310(b)(1) based on a Spending Clause theory, and we decline to address the unlitigated issues of whether Spending Clause analysis applies or what its import would be in this case.

6. South Carolina also filed a number of exceptions to the Master's findings that the registration requirement imposed little financial or administrative burden on States and had little effect on States' ability to raise capital. These exceptions, and the NGA's exception to the Master's failure to find an interest rate differential between registered and bearer bonds, raise no issue concerning the operation of the national political process, and we need not address them here.

FERC, 456 US, at 759, 72 L Ed 2d 532, 102 S Ct 2126. The Court in FERC then concluded that, whatever constitutional limitations might exist on the federal power to compel state regulatory activity, Congress had the power to require that state adjudicative bodies adjudicate federal issues and to require that States regulating in a pre-emptible field consider suggested federal standards and follow federally mandated procedures. Id., at 759-767, 72 L Ed 2d 532, 102 S Ct 2126.

[1a, 6] Because, by hypothesis, § 310 effectively prohibits issuing unregistered bonds, it presents the very situation FERC distinguished from a commandeering of state regulatory machinery: the extent to which the Tenth Amendment "shields the States from generally applicable federal regulations." 456 US, at 759, 72 L Ed 2d 532, 102 S Ct 2126. Section 310 regulates state activities; it does not, as did the statute in FERC, seek to control or influence the manner in which States regulate private parties. The NGA nonetheless contends that § 310 has commandeered the state legislative and administrative process because many state legislatures had to amend a substantial number of statutes in order to issue bonds in registered form and because state officials had to devote substantial effort to determine how best to implement a registered bond system. Such "commandeering" is, however, an inevitable consequence of regulating a state activity. Any federal regulation demands compliance. That a State wishing to engage in certain activity must take administrative and sometimes legislative action to comply with federal standards regulating that activity is a commonplace that presents no constitutional defect. After Garcia, for example, several States and municipalities had to take administrative and legislative action to alter the employment practices or raise the funds necessary to comply with the wage and overtime provisions of the Federal Labor Standards Act.[7] Indeed, even the pre-Garcia line of Tenth Amendment cases recognized that Congress could constitutionally impose federal requirements on States that States could meet only by amending their statutes. See EEOC v Wyoming, 460 US 226, 253-254, and n 2, 75 L Ed 2d 18, 103 S Ct 1054 (1983) (Burger, C. J., dissenting) (citing state statutes from over half the States that did not comply with the federal statute upheld by the Court). Under the NGA's theory, moreover, any State could immunize its activities from federal regulation by simply codifying the manner in which it engages in those activities. In short, the NGA's theory of "commandeering" would not only render Garcia a nullity, but would restrict congressional regulation of state activities even more tightly than it was restricted under the now overruled National League of Cities line of cases. We find the theory foreclosed by precedent, and uphold the constitutionality of § 310 under the Tenth Amendment.

III

[2b] South Carolina contends that even if a statute banning state bearer bonds entirely would be constitutional, § 310 unconstitutionally violates the doctrine of intergovernmental tax immunity because it imposes a tax on the interest earned on a state bond. We agree with South Carolina that § 310 is inconsistent with Pollock v Farmers' Loan & Trust Co., 157 US 429, 39 L Ed 759, 15 S Ct 673 (1895), which held that any interest earned on a state bond was immune from federal taxation.

[7] The Secretary and the Master, however, suggest that we should uphold the constitutionality of § 310 without explicitly overruling Pollock because § 310 does not abolish the tax exemption for state bond interest entirely but rather taxes the interest on state bonds only if the bonds are not issued in the form Congress requires. In our view, however, this suggestion implicitly rests on a rather mischievous proposition of law. If, for example, Congress imposed a tax that applied exclusively to South Carolina and levied the tax directly on the South Carolina treasury, we would be obligated to adjudicate the constitutionality of that tax even if Congress allowed South Carolina to escape the tax by restructuring its state government in a way Congress found more to its liking. The United States cannot convert an unconstitutional tax into a constitutional one simply by making the tax conditional. Whether Congress could have imposed the condition by direct regulation is irrelevant; Congress cannot employ unconstitutional means to reach a constitutional end. Under Pollock, a tax on the interest income derived from any state bond was considered a direct tax on the State and thus unconstitutional. 157 US, at 585-586, 39 L Ed 759, 15 S Ct 673. If this constitutional rule still applies, Congress cannot threaten to tax the interest on state bonds that do not conform to congressional dictates. We thus decline to follow a suggestion that would force us to embrace implicitly a proposition of law far more controversial than the current validity of Pollock's ban on taxing state bond interest, and proceed to address whether Pollock should be explicitly overruled.[8]

Under the intergovernmental tax immunity jurisprudence prevailing at the time, Pollock did not represent a unique immunity limited to income derived from state bonds. Rather, Pollock merely represented one application of the more general rule that neither the federal nor the state governments could tax income an individual directly derived from *any* contract with another government.[9] Not only was it unconstitutional for the Federal Government to tax a bondowner on the interest she received on any state bond, but

7. See generally Hearings on S 1870 before the Subcommittee on Labor of the Senate Committee on Labor and Human Resources, 98th Cong. 1st Sess (1985); The Impact of the Supreme Court's Garcia Decision Upon States and Their Political Subdivisions: Hearing before the Subcommittee on Economic Goals and Intergovernmental Policy of the Joint Economic Committee Congress of the United States, 98th Cong. 1st Sess (1985).

8. The Secretary also argues that we need not reach the tax immunity issue on the ground that, because all state bonds have been issued in registered form since § 310 became effective, no federal tax on state bearer bond interest has ever actually been imposed. We see no reason, however, why South Carolina cannot bring a facial challenge to § 310 rather than an as-applied challenge.

9. Income indirectly derived from a contract with the government was treated differently. See, e.g., Willcuts v Bunn, 282 US 216, 227-230, 75 L Ed 304, 51 S Ct 125, 71 ALR 1260 (1931) (constitutional to tax capital gain on sale of state bond because State not a party to the sale contract); see also Greiner v Lewellyn, 258 US 384, 66 L Ed 676, 42 S Ct 324 (1922) (constitutional to tax transfer of estate even though state bonds are included in determining the value of the estate).

it was also unconstitutional to tax a state employee on the income earned from his employment contract, Collector v Day, 11 Wall 113, 20 L Ed 122 (1871), to tax a lessee on its income derived from lands leased from a State, Burnet v Coronado Oil, 285 US 393, 76 L Ed 815, 52 S Ct 443 (1932), or to impose a sales tax on proceeds a vendor derived from selling a product to a state agency, Indian Motocycle Co v United States, 283 US 570, 75 L Ed 1277, 51 S Ct 601 (1931). Income derived from the same kinds of contracts with the Federal Government were likewise immune from taxation by the States. See Weston v City Council of Charleston, 2 Pet 449, 7 L Ed 481 (1829) (federal bond interest immune from state taxation); Dobbins v Commissioners of Erie County, 16 Pet 435, 10 L Ed 1022 (1842) (federal employee immune from state tax on salary); Gillespie v Oklahoma, 257 US 501, 66 L Ed 338, 42 S Ct 171 (1922) (income derived from federal lease immune from state tax); Panhandle Oil Co. v Knox, 277 US 218, 72 L Ed 857, 48 S Ct 451, 56 ALR 583 (1928) (vendor immune from sales tax on vendor's proceeds from sale to the United States). Cases concerning the tax immunity of income derived from state contracts freely cited principles established in federal tax immunity cases, and vice versa. See, e.g., Coronado Oil, supra, at 398, 76 L Ed 816, 52 S Ct 443; Indian Motocycle, supra, at 575-579, 75 L Ed 1277, 51 S Ct 601; Pollock, supra, at 58639 L Ed 759, 15 S Ct 673. See generally Indian Motocycle, supra, at 575, 75 L Ed 1277, 51 S Ct 601 (immunity of States from federal tax equal to immunity of Federal Government from state tax); Metcalf & Eddy v Mitchell, 269 US 514, 521-522, 70 L Ed 384, 46 S Ct 172 (1926), Collector v Day, supra, at 127, 20 L Ed 122.

[8a, 9a] This general rule was based on the rationale that any tax on income a party received under a contract with the government was a tax on the contract and thus a tax "on" the government because it burdened the government's power to enter into the contract. The Court in Pollock borrowed its reasoning directly from the decision in Weston exempting federal bond interest from state taxation:

> "'The right to tax the contract to any extent, when made, must operate upon the power to borrow before it is exercised, and have a sensible influence on the contract. The extent of this influence depends upon the will of a distinct government. To any extent, however inconsiderable, it is a burthen on the operations of government. . . . The tax on government stock is thought by this court to be a tax on the contract, a tax on the [government's] power to borrow money . . . and consequently to be repugnant to the Constitution.'" Pollock, supra, at 586, 39 L Ed 759, 15 S Ct 673, quoting Weston, supra, at 467, 468, 7 L Ed 481.

Thus, although a tax was collected from an independent private party, the tax was considered to be "on" the government because the tax burden might be passed on to it through the contract. This reasoning was used to define the basic scope of both federal and state tax immunities with respect to all types of government contracts.[10] See, e.g., Coronado Oil, supra, at 400-401, 76 L Ed 816, 52 S Ct 443 ("Here the lease was an instrumentality of the State. . . . To tax the income of the lessee arising therefrom would amount to an imposition upon the lease itself"); Panhandle Oil, supra, at 222, 72 L Ed 857, 48 S Ct 451, 56 ALR 583 ("It is immaterial that the seller and not the purchaser is required to report and make payment to the State. Sale and purchase constitute a transaction by which the tax is measured and on which the burden rests"); Gillespie, supra, at 505-506, 66 L Ed 338, 42 S Ct 171 ("A tax upon the lessee is a tax upon the power to make them . . ." quoting Indian Territory Illuminating Oil Co v Oklahoma, 240 US 522, 530, 60 L Ed 779, 36 S Ct 453 (1916)). The commonality of the rationale underlying all these immunities for government contracts was highlighted by Indian Motocycle, supra. In that case, the Court reviewed the then current status of intergovernmental tax immunity doctrine, observing that a tax on interest earned on a state or federal bond was unconstitutional because it would burden the exercise of the government's power to borrow money and that a tax on the salary of state or Federal Government employee was unconstitutional because it would burden the government's power to obtain the employee's services. Id., at 576-578, 75 L Ed 1277, 51 S Ct 601. It then concluded that under the same principle a sales tax imposed on a vendor for a sale to a state agency was unconstitutional because it would burden the sale transaction. Id., at 579, 75 L Ed 1277, 51 S Ct 601.

[10a] The rationale underlying

10. **[8b, 9b]** The sources of the state and federal immunities are, of course, different. The state immunity arises from the constitutional structure and a concern for protecting state sovereignty whereas the federal immunity arises from the Supremacy Clause. The immunities have also differed somewhat in their underlying political theory and in their doctrinal contours. Many of this Court's opinions have suggested that the Constitution should be interpreted to confer a greater tax immunity on the Federal Government than on States because all the people of the States are represented in the Federal Government whereas all the people of the Federal Government are not represented in individual States. Helvering v Gerhardt, 304 US 405, 412, 82 L Ed 1427, 58 S Ct 969 (1938); McCulloch v Maryland, 4 Wheat 316, 435-436, 4 L Ed 579 (1819); New York v United States, 326 US 572, 577, and n 3, 90 L Ed 326, 66 S Ct 310 (1946) (Opinion of Frankfurter, J.). In fact, the federal tax immunity has always been greater than the States' immunity. The Federal Government, for example, possesses the power to enact statutes immunizing those with whom it deals from state taxation even if intergovernmental tax immunity doctrine would not otherwise confer an immunity. See, e.g., Graves v New York ex rel. O'Keefe, 306 US 466, 478, 83 L Ed 927, 59 S Ct 595, 120 ALR 1466 (1939). The States lack any such power. Also, although the Federal Government has always enjoyed blanket immunity from any state tax considered to be "on" the government under the prevailing methodology, the States have never enjoyed immunity from all federal taxes considered to be "on" a State. See infra, at ——, 99 L Ed 2d ——, and n 13. To some, Garcia v San Antonio Metropolitan Transit Authority, 469 US 528, 83 L Ed 2d 1016, 105 S Ct 1005 (1985), may suggest further limitations on state tax immunity. We need not, however, decide here the extent to which the scope of the federal and state immunities differ or the extent, if any, to which States are currently immune from direct nondiscriminatory federal taxation. It is enough for our purposes that federal and state tax immunity cases have always shared the identical methodology for determining whether a tax is "on" a government, and that this identity has persisted even though the methodology for both federal and state immunities has changed as intergovernmental tax immunity doctrine shifted into the modern era. See Graves, supra, at 486, 83 L Ed 927, 59 S Ct 595, 120 ALR 1466.

Pollock and the general immunity for government contract income has been thoroughly repudiated by modern intergovernmental immunity caselaw. In Graves v New York ex rel. O'Keefe, 306 US 466, 83 L Ed 927, 59 S Ct 595, 120 ALR 1466 (1939), the Court announced, "The theory . . . that a tax on income is legally or economically a tax on its source, is no longer tenable." Id., at 480, 83 L Ed 927, 59 S Ct 595, 120 ALR 1466. The Court explained,

> "So much of the burden of a non-discriminatory general tax upon the incomes of employees of a government, state or national, as may be passed on economically to that government, through the effect of the tax on the price level of labor or materials, is but the normal incident of the organization within the same territory of two governments, each possessing the taxing power. The burden, so far as it can be said to exist or to affect the government in any indirect or incidental way, is one which the Constitution presupposes . . . ." Id., at 487, 83 L Ed 927, 59 S Ct 595, 120 ALR 1466.

See also James v Dravo Contracting Co., 302 US 134, 160, 82 L Ed 155, 58 S Ct 208, 114 ALR 318 (1937) (the fact that a tax on a government contractor "may increase the cost to the Government . . . would not invalidate the tax"); Helvering v Gerhardt, 304 US 405, 424, 82 L Ed 1427, 58 S Ct 969 (1938). The thoroughness with which the Court abandoned the burden theory was demonstrated most emphatically when the Court upheld a state sales tax imposed on a government contractor even though the financial burden of the tax was entirely passed on, through a cost-plus contract, to the Federal Government. Alabama v King & Boozer, 314 US 1, 86 L Ed 3, 62 S Ct 43, 140 ALR 615 (1941). The Court stated:

> "The Government, rightly we think, disclaims any contention that the Constitution, unaided by Congressional legislation, prohibits a tax exacted from the contractors merely because it is passed on economically, by the terms of the contract or otherwise, as part of the construction cost to the Government. So far as such a non-discriminatory state tax upon the contractor enters into the cost of the materials to the Government, that is but a normal incident of the organization within the same territory of two independent taxing sovereignties. The asserted right of the one to be free of taxation by the other does not spell immunity from paying the added costs, attributable to the taxation of those who furnish supplies to the Government and who have been granted no tax immunity. So far as a different view has prevailed, we think it no longer tenable." Id., at 8-9, 86 L Ed 3, 62 S Ct 43, 140 ALR 615 (citations omitted).

King & Boozer thus completely foreclosed any claim that the nondiscriminatory imposition of costs on private entities that pass them on to States or the Federal Government unconstitutionally burdens state or federal functions. Subsequent cases have consistently reaffirmed the principle that a non-discriminatory tax collected from private parties contracting with another government is constitutional even though part or all of the financial burden falls on the other government. See

Washington v United States, 460 US 536, 540, 75 L Ed 2d 264, 103 S Ct 1344 (1983); United States v New Mexico, 455 US 720, 734, 71 L Ed 2d 580, 102 S Ct 1373 (1982); United States v County of Fresno, 429 US 452, 460-462, and n 9, 50 L Ed 2d 683, 97 S Ct 699 (1977); United States v City of Detroit, 355 US 466, 469, 2 L Ed 2d 424, 78 S Ct 474 (1958).

[11a] With the rationale for conferring a tax immunity on parties dealing with another government rejected, the government contract immunities recognized under prior doctrine were, one by one, eliminated. Overruling Burnet v Coronado Oil, 285 US 393, 76 L Ed 815, 52 S Ct 443 (1932), and Gillespie v Oklahoma, 257 US 501, 66 L Ed 338, 42 S Ct 171 (1922), the Court upheld the constitutionality of a federal tax on net income a corporation derived from a state lease in Helvering v Mountain Producers Corp., 303 US 376, 82 L Ed 907, 58 S Ct 623 (1938). See also Oklahoma Tax Comm'n v Texas Co., 336 US 342, 93 L Ed 721, 69 S Ct 561 (1949) (upholding constitutionality of federal tax on gross income derived from state lease). Later, the Court explicitly overruled Collector v Day, 11 Wall 113, 20 L Ed 122 (1871), and upheld the constitutionality of a nondiscriminatory state tax on the salary of a federal employee. Graves v New York ex rel. O'Keefe, 306 US 466, 83 L Ed 927, 59 S Ct 595, 120 ALR 1466 (1939).[11] And in the course of upholding a sales tax on a cost-plus government contractor, the Court in King & Boozer overruled Panhandle Oil Co. v Knox, 277 US 218, 72 L Ed 857, 48 S Ct 451, 56 ALR 583 (1928). See also James, supra (upholding state tax on gross income independent contractor received from Federal Government). The only premodern tax immunity for parties to government contracts that has so far avoided being explicitly overruled is the immunity for recipients of governmental bond interest.[12] That this Court has yet to overrule Pollock explicitly, however, is explained not by any distinction between the income derived from government bonds and the income derived from other government contracts, but by the historical fact that Congress has always exempted state bond interest from taxation by statute, beginning with the very first federal income

11. Prior to that the Court had already confined Collector v Day, 11 Wall 113, 20 L Ed 122 (1871), to its facts in Helvering v Gerhardt, 304 US 405, 82 L Ed 1427, 58 S Ct 969 (1938), which upheld the constitutionality of a federal tax on the salaries of state employees involved in state construction projects.

12. [11b] South Carolina and the Government Finance Officers Association as amicus curiae argue that the legislative history of the Sixteenth Amendment, which authorizes Congress to "collect taxes on incomes, from whatever source derived, without apportionment," manifests an intent to freeze into the Constitution the tax immunity for state bond interest that existed in 1913. We disagree. The legislative history merely shows that the words "from whatever source derived" of the Sixteenth Amendment were not affirmatively intended to authorize Congress to tax state bond interest or to have any other effect on which incomes were subject to federal taxation, and that the sole purpose of the Sixteenth Amendment was to remove the apportionment requirement for whichever incomes were otherwise taxable. 45 Cong Rec 2245-2246 (1910), id., at 2539; see also Brushaber v Union Pacific R. Co., 240 US 1, 17-18, 60 L Ed 493, 36 S Ct 236 (1916). Indeed, if the Sixteenth Amendment had frozen into the Constitution all the tax immunities that existed in 1913, then most of modern intergovernmental tax immunity doctrine would be invalid.

tax statute, Act of Oct. 3, 1913, ch 16, § II(B), 38 Stat 168.

[10b] In sum, then, under current intergovernmental tax immunity doctrine the States can never tax the United States directly but can tax any private parties with whom it does business, even though the financial burden falls on the United States, as long as the tax does not discriminate against the United States or those with whom it deals. See Washington, supra, at 540, 76 L Ed 2d 264, 103 S Ct 1344; County of Fresno, supra, at 460-463, 50 L Ed 2d 683, 97 S Ct 699; City of Detroit, supra, at 473, 2 L Ed 2d 424, 78 S Ct 474; Oklahoma Tax Comm'n, supra, at 359-364, 93 L Ed 721, 69 S Ct 561. A tax is considered to be directly on the Federal Government only "when the levy falls on the United States itself, or on an agency or instrumentality so closely connected to the Government that the two cannot realistically be viewed as separate entities." New Mexico, supra, at 735, 71 L Ed 2d 580, 102 S Ct 1373. The rule with respect to state tax immunity is essentially the same, see, e.g., Graves, supra, at 485, 83 L Ed 927, 59 S Ct 595, 120 ALR 1466; Mountain Producers Corp., supra, at 386-387, 82 L Ed 907, 58 S Ct 623, except that at least some nondiscriminatory federal taxes can be collected directly from the States even though a parallel state tax could not be collected directly from the Federal Government." See generally supra, at ——, n 10, 99 L Ed 2d ——.

13. [10c] All federal activities are immune from direct state taxation, see Graves, 306 US at 477, 83 L Ed 927, 59 S Ct 595, 120 ALR 1466, but at least some state activities have always been subject to direct federal taxation. For a time, only the States' governmental, as opposed to proprietary, activities enjoyed tax immunity, see e.g., Helvering v Powers, 293 US 214, 227, 79 L Ed 291, 55 S Ct 171 (1934); South Carolina v United States, 199 US 437, 454-463, 50 L Ed 261, 26 S Ct 110 (1905), but this distinction was subsequently abandoned as untenable by all eight justices participating in New York v United States, 326 US 572, 90 L Ed 320, 66 S Ct 310 (1946). See id., at 579-581, 583, 90 L Ed 326, 66 S Ct 310 (opinion of Frankfurter, J., joined by Rutledge, J.); id., at 586, 90 L Ed 326, 66 S Ct 310 (Stone, C. J., concurring, joined by Reed, Murphy and Burton, JJ.); id., at 591, 90 L Ed 326, 66 S Ct 310 (Douglas, J., dissenting, joined by Black, J.). Two justices reasoned that any nondiscriminatory tax on a State was constitutional, even if directly collected from the State. See id., at 582-584, 90 L Ed 326, 66 S Ct 310 (Frankfurter, J., joined by Rutledge, J.). Four other justices declined to hold that every nondiscriminatory tax levied directly on a State would be constitutional because "there may be nondiscriminatory taxes which, when laid on a State, would nevertheless impair the sovereign status of the State quite as much as a like tax imposed by a State on property or activities of the national government." Mayo v United States, 319 US 441, 447-448, 87 L Ed 1494, 63 S Ct 1137, 147 ALR 761. This is not because the tax can be regarded as discriminatory but because a sovereign government is the taxpayer, and the tax, even though nondiscriminatory, may be regarded as infringing its sovereignty. 326 US at 587, 90 L Ed 326, 66 S Ct 310 (Stone, C. J., concurring, joined by Reed, Murphy and Burton, JJ.) (emphasis added). The cited discussion from Mayo stressed the difference between levying a tax on a government and on those with whom the government deals; see also id., at 588, 90 L Ed 326, 66 S Ct 310 ("Only when and because the subject of taxation is State property or a State activity must we consider whether such a nondiscriminatory tax unduly interferes with the performance of the State's functions as government"). The four justices then concluded that the tax at issue was constitutional even though directly levied on the State because recognizing an immunity would "accomplish a withdrawal from the taxing power of the nation a subject of taxation of a nature which has been traditionally within that power from the beginning." Ibid. We need not concern ourselves here, however, with the extent to which, if any, States are currently immune from direct federal taxation. See supra, at ——, n 10, 99 L Ed 2d ——. For our purposes, the important principle New York

[2c, 12] We thus confirm that subsequent caselaw has overruled the holding in Pollock that state bond interest is immune from a nondiscriminatory federal tax. We see no constitutional reason for treating persons who receive interest on government bonds differently than persons who receive income from other types of contracts with the government, and no tenable rationale for distinguishing the costs imposed on States by a tax on state bond interest from the costs imposed by a tax on the income from any other state contract. We stated in Graves, "as applied to the taxation of salaries of the employees of one government, the purpose of the immunity was not to confer benefits on the employees by relieving them from contributing their share of the financial support of the other government, whose benefits they enjoy, or to give an advantage to a government by enabling it to engage employees at salaries lower than those paid for like services by other employers, public or private. . . ." 306 US, at 483, 83 L Ed 927, 59 S Ct 595, 120 ALR 1466. Likewise, the owners of state bonds have no constitutional entitlement not to pay taxes on income they earn from state bonds, and States have no constitutional entitlement to issue bonds paying lower interest rates than other issuers."

realizing is that the issue whether a nondiscriminatory federal tax might nonetheless violate state tax immunity does not even arise unless the Federal Government seeks to collect the tax directly from a State.

14. South Carolina distinguishes the taxes by arguing that the interest paid to a State's bondholders is more essential to the maintenance of a state government than the salaries paid to employees. This strikes us as counterintuitive in fact. More importantly, the essential/nonessential distinction it invokes is exactly the type of distinction we concluded was unworkable in Garcia, 469 US, at 542-547, 83 L Ed 2d 1016, 105 S Ct 1005 (rejecting rules of state immunity turning on whether a governmental function is "essential," "governmental" versus "proprietary," "traditional", "uniquely governmental", "necessary", or "integral").

"There is not, and there cannot be, any unchanging line of demarcation between essential and non-essential governmental functions. Many governmental functions of today have at some time in the past been non-governmental. The genius of our government provides that, within the sphere of constitutional action, the people, acting not through the courts but through their elected legislative representatives, have the power to determine as conditions demand, what services and functions the public welfare requires." Id., at 546, 83 L Ed 2d 1016, 105 S Ct 1005, quoting Gerhardt, 304 US, at 427, 82 L Ed 1427, 58 S Ct 969 (Black, J., concurring).

Similarly, Justice O'Connor would have us judge the constitutionality of each tax imposing an indirect burden on state and local governments by determining whether the tax had "substantial" adverse effects on those governments. Post, at —— ——, 99 L Ed 2d 616-616. We fail to see how this substantiality test distinguishes taxes on state bond interest from taxes on state employees' salaries. More importantly, we disagree with Justice O'Connor's apparent assumption that if this Court does not undertake the open-ended and administratively daunting inquiry required by her test, we leave States at the mercy of a congressional power to destroy them via excessive taxation. Post, at —— ——, 99 L Ed 2d 616-617. The nondiscrimination principle at the heart of modern intergovernmental tax immunity caselaw does not leave States unprotected from excessive federal taxation—it merely recognizes that the best safeguard against excessive taxation (and the most judicially manageable) is the requirement that the government tax in a nondiscriminatory fashion. For where a government imposes a nondiscriminatory tax, judges can term the tax "excessive" only by second-guessing the extent to which the taxing government and its people have taxed themselves, and the threat of destroying another government can be realized only if the taxing government is willing to impose taxes that will also destroy itself or its constituents.

Indeed, this Court has in effect acknowledged that a holder of a government bond could constitutionally be taxed on bond interest in Memphis Bank & Trust Co. v Garner, 459 US 392, 74 L Ed 2d 562, 103 S Ct 692 (1983), which involved a state tax on federal bond interest. Although that case involved an interpretation of 31 USC § 742 [31 USCS § 742], we premised our statutory interpretation on the observation that "[o]ur decisions have treated § 742 as principally a restatement of the constitutional rule." 459 US, at 397, 74 L Ed 2d 562, 103 S Ct 692. We then stated: "Where, *as here*, the economic but not the legal incidence of the tax falls upon the Federal Government, such a tax generally does not violate the constitutional immunity if it does not discriminate against holders of federal property or those with whom the Federal Government deals." Ibid. (emphasis added)

[2d, 13, 14] TEFRA § 310 thus clearly imposes no direct tax on the States. The tax is imposed on and collected from bondholders, not States, and any increased administrative costs incurred by States in implementing the registration system are not "taxes" within the meaning of the tax immunity doctrine. See generally United States v Mississippi Tax Comm'n., 421 US 599, 606, 44 L Ed 2d 404, 95 S Ct 1872 (1975) (describing tax as an enforced contribution to provide for the support of government). Nor does § 310 discriminate against States. The provisions of § 310 seek to assure that *all* publicly offered long-term bonds are issued in registered form, whether issued by state or local governments, the Federal Government, or private corporations. See *supra*, at ——, 99 L Ed 2d ——. Accordingly, the Federal Government has directly imposed the same registration requirement on itself that it has effectively imposed on States. The incentives States have to switch to registered bonds are necessarily different than those of corporate bond issuers because only state bonds enjoy any exemption from the federal tax on bond interest, but the sanctions for issuing unregistered corporate bonds are comparably severe. See ibid. Removing the tax exemption for interest earned on state bonds would not, moreover, create a discrimination between state and corporate bonds since corporate bond interest is already subject to federal tax.

IV

[1f, 2e, 15a, 16] Because the federal imposition of a bond registration requirement on States does not violate the Tenth Amendment and because a nondiscriminatory federal tax on the interest earned on state bonds does not violate the intergovernmental tax immunity doctrine, we uphold the constitutionality of § 310,[16] overrule the exceptions to the Special Master's Report, and approve his recommendation to enter judgment for the defendant.

[16. [15b] Because we hold that Congress could have prohibited States from issuing any unregistered bonds by direct regulation, we necessarily reject South Carolina's argument that § 310(b)(1) is an impermissible regulatory tax because it imposes a tax on activities not subject to federal regulatory power. That § 310(b) is purely regulatory in purpose and effect and was never intended to raise any federal revenue does not alone render it unconstitutional. See Minor v United States, 396 US 87, 98 n 11, 24 L Ed 2d 283, 90 S Ct 284 (1969).]

It is so ordered.

Justice Kennedy took no part in the consideration or decision of this case.

SEPARATE OPINIONS

Justice Stevens, concurring.

Although the Court properly finds Support for its holding in Garcia v San Antonio Metropolitan Transit Authority, 469 US 528, 83 L Ed 2d 1016, 105 S Ct 1005 (1985), the outcome of this case was equally clear well before that case was decided. See South Carolina v Regan, 465 US 367, 403-419, 79 L Ed 2d 372, 104 S Ct 1107 (1984) (Stevens, J., concurring in part and dissenting in part). It should be emphasized, however, that neither the Court's decision today, nor what I have written in the past, expresses any opinion about the wisdom of taxing the interest on bonds issued by state or local governments.

Justice Scalia, concurring in part and concurring in the judgment.

I join in the Court's judgment, and in its opinion except for Part II. I do not join the latter because, as observed by The Chief Justice, *post*, at ——, 99 L Ed 2d 614, it unnecessarily casts doubt upon FERC v Mississippi, 456 US 742, 72 L Ed 2d 532, 102 S Ct 2126 (1982), and because it misdescribes the holding in Garcia v San Antonio Metropolitan Transit Authority, 469 US 528, 83 L Ed 2d 1016, 105 S Ct 1005 (1985). I do not read Garcia as adopting—in fact I read it as explicitly disclaiming—the proposition attributed to it in today's opinion, *ante*, at —— —— ——, 99 L Ed 2d 602-603, that the "national political process" is the States' only constitutional protection, and that nothing except the demonstration of "some extraordinary defect" in the operation of that process can justify judicial relief. We said in Garcia: "These cases do not require us to identify or define what affirmative limits *the constitutional structure* might impose on federal action affecting the States under the Commerce Clause. See Coyle v Oklahoma, 221 US 559[55 L Ed 853, 31 S Ct 688] (1911)." See 469 US, at 556, 83 L Ed 2d 1016, 105 S Ct 1005 (emphasis added). I agree only that that structure does not prohibit what the Federal Government has done here.

Chief Justice Rehnquist, concurring in the judgment.

Today the Court reaches two results regarding § 310(b)(1) of TEFRA that I believe are analytically distinct. First, the Court finds that § 310(b)(1) does not violate the Tenth Amendment by compelling States to issue bonds in registered form. Second, the majority concludes that the statute also does not contravene the doctrine of intergovernmental tax immunity; in doing so, the majority overrules our decision in Pollock v Farmers' Loan & Trust Co., 157 US 429, 39 L Ed 759, 15 S Ct 673 (1895). While I agree that the principles of intergovernmental tax immunity are not threatened in this case, in my view the Court unnecessarily casts doubt on the protective scope of the Tenth Amendment in the course of upholding § 310(b)(1).

The Special Master appointed by the Court made a number of factual determinations about the impact that the TEFRA registration re-

quirements would have upon the States. Most notably, the Special Master found that the registration requirements have had no substantive effect on the abilities of States to raise debt capital, on the political processes by which States decide to issue debt, or on the power of the States to choose the purpose to which they will dedicate the proceeds of their tax-exempt borrowing. After an exhaustive investigation, the Special Master summarized: "TEFRA has not changed how much the States borrow, for what purposes they borrow, how they decide to borrow, or any other obviously important aspect of the borrowing process." Report of Special Master 118.

This well-supported conclusion that § 3(b)(1) has had a de minimis impact on the States should end, rather than begin, the Court's constitutional inquiry. Even the more expansive conception of the Tenth Amendment espoused in National League of Cities v Usery, 426 US 833, 49 L Ed 2d 245, 96 S Ct 2465 (1976), recognized that only congressional action that "operate[s] to directly displace the States' freedom to structure integral operations in areas of traditional governmental functions," runs afoul of the authority granted Congress. Id., at 852, 49 L Ed 2d 245, 96 S Ct 2465. The Special Master determined that no such displacement has occurred through the implementation of the TEFRA requirements; I see no need to go further, as the majority does, to discuss the possibility of defects in the national political process that spawned TEFRA, nor to hypothesize that the Tenth Amendment concerns voiced in FERC v Mississippi, 456 US 742, 72 L Ed 2d 532, 102 S Ct 2126 (1982), may not have survived Garcia v San Antonio Metropolitan Transit Authority, 469 US 528, 83 L Ed 2d 1016, 105 S Ct 1005 (1985). These issues, intriguing as they may be, are of no moment in the present case and are best left unaddressed until clearly presented.

Justice O'Connor, dissenting.

The Court today overrules a precedent that it has honored for nearly a hundred years and expresses a willingness to cancel the constitutional immunity that traditionally has shielded the interest paid on state and local bonds from federal taxation. Henceforth the ability of state and local governments to finance their activities will depend in part on whether Congress voluntarily abstains from tapping this permissible source of additional income tax revenue. I believe that state autonomy is an important factor to be considered in reviewing the National Government's exercise of its enumerated powers. Garcia v San Antonio Metropolitan Transit Authority, 469 US 528, 581, 83 L Ed 2d 1016, 105 S Ct 1005 (1985) (O'Connor, J., joined by Powell and Rehnquist, JJ., dissenting). I dissent from the decision to overrule Pollock v Farmers' Loan & Trust Co., 157 US 429, 39 L Ed 759, 15 S Ct 673 (1895), and I would invalidate Congress' attempt to regulate the sovereign States by threatening to deprive them of this tax immunity, which would increase their dependence on the National Government.

Section 310(b)(1) of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), 26 USC § 103(j)[126 USCS § 103(j)(1)], provides that the interest paid on state and local bonds will be subject to federal income tax unless the bonds are issued in registered

form. The Court readily concludes that Congress could have prohibited outright the issuance of bearer bonds without violating the Tenth Amendment. Ante, at ———, 99 L. Ed. 2d 602-603. But regardless of whether Congress could have required registration of the bonds directly under its commerce power, I agree with the Court that Congress may not accomplish the same end by an unconstitutional means. Ante, at ———, 99 L. Ed. 2d 604-605. In my view, the Tenth Amendment and principles of federalism inherent in the Constitution prohibit Congress from taxing or threatening to tax the interest paid on state and municipal bonds. It is also arguable that the States' autonomy is protected from substantial federal incursions by virtue of the Guarantee Clause of the Constitution, Art. IV, § 4. See Merritt, The Guarantee Clause and State Autonomy: Federalism for a Third Century, 88 Colum. L. Rev. 1, 70-73 (1988) (arguing that judicial enforcement of the Guarantee Clause is proper).

The Court never expressly considers whether federal taxation of state and local bond interest violates the Constitution. Instead, the majority characterizes the federal tax exemption for state and local bond interest as an aspect of intergovernmental tax immunity, and it describes the decline of the intergovernmental tax immunity doctrine in this century. But constitutional principles do not depend upon the rise or fall of particular legal doctrines. This Court has a continuing responsibility "to oversee the Federal Government's compliance with its duty to respect the legitimate interests of the States." Garcia, supra, at 581, 83 L. Ed. 2d 1016, 105 S. Ct. 1005 (O'Connor, J., joined by Powell and Rehnquist, JJ., dissenting). In my view, the Court shirks its responsibility because it fails to inquire into the substantial adverse effects on state and local governments that would follow from federal taxation of the interest on state and local bonds.

Long-term debt obligations are an essential source of funding for state and local governments. In 1974, state and local governments issued approximately $23 billion of new municipal bonds; in 1984, they issued $102 billion of new bonds. Report of Special Master 20. State and local governments rely heavily on borrowed funds to finance education, road construction, and utilities, among other purposes. As the Court recognizes, States will have to increase the interest rates they pay on bonds by 28-35% if the interest is subject to the federal income tax. Ante, at ——, 99 L. Ed. 2d 602. Governmental operations will be hindered severely if the cost of capital rises by one-third. If Congress may tax the interest paid on state and local bonds, it may strike at the very heart of state and local government activities.

In the pivotal cases which first set limits to intergovernmental tax immunity, this Court paid close attention to the practical effects of its decisions. The Court limited the government's immunity only after it determined that application of a tax would not substantially affect government operations. Thus in the first case to uphold federal income taxation of revenue earned by a state contractor, this Court observed that "neither government may destroy the other nor curtail in any substantial manner the exercise of its powers." Metcalf & Eddy v Mitchell, 269

US 514, 523-524, 70 L. Ed. 384, 46 S. Ct. 172 (1926). When this Court extended its holding to the case of a state tax on a federal contractor, it expressly noted that the tax "does not interfere in any substantial way with the performance of federal functions." James v. Dravo Contracting Co., 302 US 134, 161, 82 L. Ed. 155, 58 S. Ct. 208, 114 ALR 318 (1937). In upholding the application of the federal income tax to income derived from a state lease, this Court decided that mere theoretical concerns about interference with the functions of government did not justify immunity, but that "[r]egard must be had to substance and direct effects." Helvering v. Mountain Producers Corp., 303 US 376, 386, 82 L. Ed. 907, 58 S. Ct. 623 (1938). In Helvering v. Gerhardt, 304 US 405, 82 L. Ed. 1427, 58 S. Ct. 969 (1938), this Court upheld the application of the federal income tax to income earned by a state employee, because there is "[no] immunity when the burden on the state is so speculative and uncertain that if allowed it would restrict the federal taxing power without affording any corresponding tangible protection to the state government." Id., at 419-420, 82 L. Ed. 1427, 58 S. Ct. 969.

The instant case differs critically from the cases quoted above because the Special Master found that, if the interest on state and local bonds is taxed, the cost of borrowing by state and local governments would rise substantially. This certainly would affect seriously state and local government operations. The majority is unconcerned with this difference because it is satisfied with the formal test of intergovernmental tax immunity that can be distilled from later cases. Under this test, if a tax is not imposed directly on the government, and does not discriminate against the government, then it does not violate intergovernmental tax immunity. See ante, at ——— ———, 99 L. Ed. 2d 610.

I do not think the Court's bipartite test adequately accommodates the constitutional concerns raised by the prospect of applying the federal income tax to the interest paid on state and local bonds. This Court has a duty to inquire into the devastating effects that such an innovation would have on state and local governments. Although Congress has taken a relatively less burdensome step in subjecting only income from bearer bonds to federal taxation, the erosion of state sovereignty is likely to occur a step at a time. "If there is any danger, it lies in the tyranny of small decisions—in the prospect that Congress will nibble away at state sovereignty, bit by bit, until someday essentially nothing is left but a gutted shell." L. Tribe, American Constitutional Law 381 (2d ed. 1988).

Federal taxation of state activities is inherently a threat to state sovereignty. As Chief Justice Marshall observed long ago, "the power to tax involves the power to destroy." McCulloch v. Maryland, 4 Wheat. 316, 431, 4 L. Ed. 579 (1819). Justice Holmes later qualified this principle, observing that "[t]he power to tax is not the power to destroy while this Court sits." Panhandle Oil Co. v. Mississippi ex rel. Knox, 277 US 218, 223, 72 L. Ed. 857, 48 S. Ct. 451, 56 ALR 583 (1928) (Holmes, J., joined by Brandeis and Stone, JJ., dissenting). If this Court is the States' sole protector against the threat of crushing taxation, it must take seriously its responsibility to sit in judgment of federal tax initiatives. I do not think that the Court has lived up to its constitutional role in this case. The Court has failed to enforce the constitutional safeguards of state autonomy and self-sufficiency that may be found in the Tenth Amendment and the Guarantee Clause, as well as in the principles of federalism implicit in the Constitution. I respectfully dissent.

SJR

63

STEVE FRANK
DISTRICT K
SEAT A

119 N. Cushman, Rm. 213
Fairbanks, Alaska 99701

While in Juneau
P.O. Box V
Juneau, Alaska 99811
(907) 465-3709

Capitol Rm. 514

Alaska State Legislature

Senate

MEMBER
Finance Committee
Resources Committee
Legislative Council
Special Committee on Banking & Economic Development

VICE-CHAIR
Community & Regional Affairs Committee

M E M O R A N D U M

Date: January 12, 1990

To: Members of the Senate

From: Senator Steve Frank

Subject: Senate Joint Resolution proposing an amendment to the Constitution of the State of Alaska limiting regular session to ninety days.

I plan to introduce legislation to propose a constitutional amendment that will limit the legislative session to ninety days. I would welcome co-sponsors.

Since the 120 day session passed the fourteenth legislature, the legislature has successfully concluded its business within the constitutionally amended time frame.

Given the customary slow start of the first thirty days of session, I believe the legislative body can and should conclude its business within a ninety day legislative session.

Please contact my office if you wish to co-sponsor.

Section 7 - Salary and Expenses.

Legislators shall receive annual salaries. They may receive a per diem allowance for expenses while in session and are entitled to travel expenses going to and from sessions. Presiding officers may receive additional compensation.

Section 8 - Regular Sessions.

The legislature shall convene in regular session each year on the fourth Monday in January, but the month and day may be changed by law. The legislature shall adjourn from regular session no later than one hundred twenty consecutive calendar days from the date it convenes except that a regular session may be extended once for up to ten consecutive calendar days. An extension of the regular session requires the affirmative vote of at least two-thirds of the membership of each house of the legislature. The legislature shall adopt as part of the uniform rules of procedure deadlines for scheduling session work not inconsistent with provisions controlling the length of the session. [Amendment approved November 6, 1984 - Effective December 30, 1984]

Section 9 - Special Sessions.

Special sessions may be called by the governor or by vote of two-thirds of the legislators. The vote may be conducted by the legislative council or as prescribed by law. At special sessions called by the governor, legislation shall be limited to subjects designated in his proclamation calling the session, to subjects presented by him, and the reconsideration of bills vetoed by him after adjournment of the last regular session. Special sessions are limited to thirty days. [Amendment approved November 2, 1976 - Effective December 23, 1976]

Section 10 - Adjournment.

Neither house may adjourn or recess for longer than three days unless the other concurs. If the two houses cannot agree on the time of adjournment and either house certifies the disagreement to the governor, he may adjourn the legislature.

Section 11 - Interim Committees.

There shall be a legislative council, and the legislature may establish other interim committees. The council and other interim committees may meet between legislative sessions. They may perform duties and

Table 1
Number of Bills and Resolutions Passed During Last 14 Days of Session
Fifteenth Alaska Legislature - 2nd Session - 1988

Day	HOUSE NUMBER OF BILLS PASSED				SENATE NUMBER OF BILLS PASSED				BOTH* NUMBER OF BILLS PASSED			
	HB	SB	HR	SR	HB	SB	HR	SR	HB	SB	HR	SR
Session Total	134	94	45	36	88	135	33	62	84	92	34	43
107	4	1	0	2	2	1	0	1	0	0	0	0
108	2	1	3	1	0	3	1	1	0	0	0	1
109	6	2	1	0	0	1	3	0	0	0	0	0
110	4	5	0	0	1	5	0	1	0	3	0	0
111	6	3	0	0	1	4	0	2	0	1	0	0
112	0	0	0	0	0	0	0	0	0	0	0	0
113	5	0	0	0	0	4	0	0	0	1	0	0
114	4	4	2	0	1	5	0	0	0	0	0	0
115	1	3	1	1	2	11	0	0	0	4	0	0
116	4	5	0	2	7	2	0	0	3	0	0	0
117	1	6	0	1	11	3	3	3	3	3	1	1
118	6	16	2	7	9	10	3	3	4	14	2	3
119	6	11	0	1	8	3	1	1	6	4	1	2
120	18	25	2	3	31	17	7	3	19	21	5	3
14 Day Totals	67	82	11	18	73	69	18	15	35	51	9	10
Daily Percent of Total												
107	3.0	1.1	0.0	5.6	2.3	0.7	0.0	1.6	0.0	0.0	0.0	0.0
108	1.5	1.1	6.7	2.8	0.0	2.2	3.0	1.6	0.0	0.0	0.0	2.3
109	4.5	2.1	2.2	0.0	0.0	0.7	9.1	0.0	0.0	0.0	0.0	0.0
110	3.0	5.3	0.0	0.0	1.1	3.7	0.0	1.6	0.0	3.3	0.0	0.0
111	4.5	3.2	0.0	0.0	1.1	3.0	0.0	3.2	0.0	1.1	0.0	0.0
112	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
113	3.7	0.0	0.0	0.0	0.0	3.0	0.0	0.0	0.0	1.1	0.0	0.0
114	3.0	4.3	4.4	0.0	1.1	[illegible]	.0	0.0	0.0	0.0	0.0	0.0
115	0.7	3.2	2.2	2.8	2.3		0.0	0.0	0.0	4.3	0.0	0.0
116	3.0	5.3	0.0	5.6	8.0		0.0	0.0	3.6	0.0	0.0	0.0
117	0.7	6.4	0.0	2.8	12.5	[illegible]	9.1	4.8	3.6	3.3	2.9	2.3
118	4.5	17.0	4.4	19.4	10	.4	9.1	4.8	4.8	15.2	5.9	7.0
119	4.5	11.7	0.0	2.8	9	2.2	3.0	1.6	7.1	4.3	2.9	4.7
120	13.4	26.6	4.4	8.3	35	12.6	21.2	4.8	22.6	22.8	14.7	7.0
14 Day Totals	50.0	87.2	24.4	50.0	83.	51.1	54.5	24.2	41.7	55.4	26.5	23.3

*Bills which were passed out of both the House and Senate during the last 14 days o[illegible]on.

Prepared by the Legislative Research Agency, April 1990 (90.313A).

Table 2
Number of Bills and Resolutions Passed During Last 14 Days of Session
Sixteenth Alaska Legislature - 1st Session - 1989

Day	HOUSE NUMBER OF BILLS PASSED				SENATE NUMBER OF BILLS PASSED				BOTH* NUMBER OF BILLS PASSED			
	HB	SB	HR	SR	HB	SB	HR	SR	HB	SB	HR	SR
Session Total	98	60	39	42	59	95	31	54	59	95	31	54
107	3	0	0	0	0	2	0	0	0	0	0	0
108	0	1	2	0	2	1	1	0	0	0	0	0
109	5	2	0	0	1	1	1	1	0	0	0	0
110	3	1	4	0	1	1	0	1	1	0	0	0
111	4	1	1	1	1	6	0	0	1	0	0	0
112	0	0	0	0	0	0	0	0	0	0	0	0
113	3	2	1	0	1	3	1	0	0	0	0	0
114	2	2	1	0	1	1	0	1	0	0	0	0
115	5	1	3	0	2	0	0	2	0	0	0	1
116	1	2	1	2	1	2	2	2	0	1	0	0
117	6	2	3	2	4	1	2	0	4	2	3	0
118	3	5	0	2	9	1	1	0	1	0	0	0
119	6	8	1	5	4	7	4	4	5	4	5	2
120	11	7	1	2	19	0	0	0	12	0	0	0
121	5	15	3	1	4	12	2	4	4	17	2	4
14 Day Totals	57	49	21	15	50	38	14	15	28	24	10	7
Daily Percent of Total												
107	3.1	0.0	0.0	0.0	0.0	2.1	0.0	0.0	0.0	0.0	0.0	0.0
108	0.0	1.7	5.1	0.0	3.4	1.1	3.2	0.0	0.0	0.0	0.0	0.0
109	5.1	3.3	0.0	0.0	1.7	1.1	3.2	1.9	0.0	0.0	0.0	0.0
110	3.1	1.7	10.3	0.0	1.7	1.1	0.0	1.9	1.7	0.0	0.0	0.0
111	4.1	1.7	2.6	2.4	1.7	6.3	0.0	0.0	1.7	0.0	0.0	0.0
112	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
113	3.1	3.3	2.6	0.0	1.7	3.2	3.2	0.0	0.0	0.0	0.0	0.0
114	2.0	3.3	2.6	0.0	1.7	1.1	0.0	1.9	0.0	0.0	0.0	0.0
115	5.1	1.7	7.7	0.0	3.4	0.0	0.0	3.7	0.0	0.0	0.0	1.9
116	1.0	3.3	2.6	4.8	1.7	2.1	6.5	3.7	0.0	1.1	0.0	0.0
117	6.1	3.3	7.7	4.8	6.8	1.1	6.5	0.0	6.8	2.1	9.7	0.0
118	3.1	8.3	0.0	4.8	15.3	1.1	3.2	0.0	1.7	0.0	0.0	0.0
119	6.1	13.3	2.6	11.9	6.8	7.4	12.9	7.4	8.5	4.2	16.1	3.7
120	11.2	11.7	2.6	4.8	32.2	0.0	0.0	0.0	20.3	0.0	0.0	0.0
121	5.1	25.0	7.7	2.4	6.8	12.6	6.5	7.4	6.8	17.9	6.5	7.4
14 Day Totals	58.2	81.7	53.8	35.7	84.7	40.0	45.2	27.8	47.5	25.3	32.3	13.0

*Bills which were passed out of both the House and Senate during the last 14 days of session.

Prepared by the Legislative Research Agency, April 1990 (90.313B).

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

June 19, 1986

MEMORANDUM

TO: Representative Terry Martin

FROM: Gretchen Keiser G. Keiser
Legislative Analyst

RE: History of Legislative Adjournment
Research Request 86-213

You asked that we provide a history of the adjournment of the Alaska State Legislature. Specifically, you were interested in the time of adjournment and the number of bills passed by the House and Senate during the final day of each session, beginning with the Seventh Legislature in 1971. You requested that we provide additional detail during sessions when adjournment occurred late at night or early in the morning.

The attached table provides the adjournment information for the legislative sessions since 1971. You will note that additional details are provided for specific House and Senate adjournments, where appropriate. During the first session of the Ninth Legislature in 1975, for example, the House adjourned at 11:59 pm on June 6th (after passing 12 bills), was called to order at 12:11 am on June 7th, and adjourned at 2:43 am on June 7th (after passing 4 bills).

* * *

I hope this information is useful. Please contact me if you have any questions.

GK

Attachment

TABLE 1

HISTORY OF ADJOURNMENT OF THE ALASKA STATE LEGISLATURE: 1971 - 1986

Legislature/Year	Chamber	Date/Time of Adjournment	Number of Bills Passed During Final Day	Comments
Seventh/1971	House	5/11/71; 3:26 am	8	Adjourned 5/10 at 12 midnight (18 bills passed); call to order 5/11 at 12:01 am.
	Senate	5/11/71; 3:23 am	2	Adjourned 5/10 at 11:59 pm (11 bills passed); call to order 5/11 10am
Seventh/1972	House	6/18/72; 12:59 am	4	Adjourned 6/17 at 11:59 pm (17 bills passed); call to order 6/18 12:15am
	Senate	6/18/72; 12:50 am	3	Adjourned 6/17 at 11:59 am (12 bills passed); call to order 6/18 12:01am
Eighth/1973	House	4/7/73; 5:50 pm	20	Adjourned 4/6 at 11:59 pm; call to order 4/7 at 12:08 am.
	Senate	4/7/73; 5:45 pm	13	Adjourned 4/6 at 11:59 pm; call to order 4/7 at 12:05 am.
Eighth/1974	House	4/26/74; 8:25 pm	30	
	Senate	4/26/74; 8:21 pm	25	
Ninth/1975	House	6/7/75; 2:43 am	4	Adjourned 6/6 at 11:59 pm (12 bills passed); call to order 6/7 12:11 am
	Senate	6/7/75; 2:30 am	6	Adjourned 6/6 at 11:58 pm (22 bills passed); call to order 6/7 12:15 am
Ninth/1976	House	6/1/76; 8:14 am	14	Adjourned 5/31 at 12:45 am June 1st (26 bills passed 5/31); call to order 6/1 at 3:09 am.
	Senate	6/1/76; 8:19 am	9	Adjourned 5/31 at 11:55 pm (25 bills passed); call to order 6/1 1:45 am.

TABLE 1 (Continued)

Legislature/Year	Chamber	Date/Time of Adjournment	Number of Bills Passed During Final Day	Comments
Fourteenth/1985	House	5/12/85; 10:52 pm	37	
	Senate	5/12/85; 9:42 pm	34	
Fourteenth/1986	House	5/12/86; 11:59 pm	32	An additional 19 bills were passed after House clock was stopped at 11:59 pm; Representatives actually left House chamber 5/13 about 3 am.
	Senate	5/12/86; 11:54 pm	44	An additional 10 bills were passed after Senate clock was stopped at 11:54 pm; Senators left Senate chamber 5/13 about 3 am.

Source: House and Senate Journals: 1971 - 1986.

Prepared by the House Research Agency, June 1986.

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION CSSJR 63(St Affairs)
PUBLISH DATE

FISCAL NOTE

REQUEST:
Revision Date:
Title: Proposing an amendment...
... duration of a regular session.
Sponsor: Senator Frank
Requestor: Senate State Affairs

Affected Agency: Legislative Affairs Agency
BRU: Legislative Council
Components Session Expenses, Legal Services
Admin. Serv.,Public Serv.,Leg. Salaries&Allow

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY91	FY92	FY93	FY94	FY95	FY96
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants, Claims						
Miscellaneous	<1,000.0>	<1,000.0>	<1,000.0>	<1,000.0>	<1,000.0>	<1,000.0>
TOTAL OPERATING	<1,000.0>	<1,000.0>	<1,000.0>	<1,000.0>	<1,000.0>	<1,000.0>
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (THOUSANDS OF DOLLARS)

General Fund	<1,000.0>	<1,000.0>	<1,000.0>	<1,000.0>	<1,000.0>	<1,000.0>
Federal Fund	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	<1,000.0>	<1,000.0>	<1,000.0>	<1,000.0>	<1,000.0>	<1,000.0>

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)

CSSJR 63 (State Affairs) reduces the length of the legislative session from 120 days to 100 days. The estimated daily cost of the session is $50,000 a day. If the session is reduced by 20 days a savings of $1,000,000 is calculated.

Prepared By: Pamela A. Stoops, Director — Phone: 465-3850
Division: Administrative Services — Date: 4/11/90

Approved By: Warren Endicott, Executive Director
Agency: Legislative Affairs Agency — Date: 4/11/90

DISTRIBUTION (BY PREPARER)
LEGISLATIVE FINANCE
LEGISLATIVE SPONSOR

REQUESTOR
OFFICE OF MANAGEMENT & BUDGET
AGENCY (IES)

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION SJR 63
PUBLISH DATE

FISCAL NOTE

REQUEST:
Revision Date:
Title: Proposing an amendment...
... duration of a regular session.
Sponsor: Senator Frank
Requestor: Senate State Affairs

Affected Agency: Legislative Affairs Agency
BRU: Legislative Council
Components Session Expenses, Legal Services
Admin. Serv.,Public Serv.,Leg.Salaries&Allow

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY91	FY92	FY93	FY94	FY95	FY96
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants, Claims						
Miscellaneous	<1,500.0>	<1,500.0>	<1,500.0>	,500.0>	<1,500.0>	<1,500.0>
TOTAL OPERATING	<1,500.0>	<1,500.0>	<1,500.0>	<1,500.0>	<1,500.0>	<1,500.0>
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (THOUSANDS OF DOLLARS)

General Fund	<1,500.0>	<1,500.0>	<1.500.0>	<1,500.0>	<1,500.0>	<1,500.0>
Federal Fund	0	0	0	0	0	0
Other		0	0	0	0	0
TOTAL	<1,500.0>	<1,500.0>	<1,500.0>	<1,500.0>	<1,500.0>	<1,500.0>

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)

SJR 63 reduces the length of the legi[illegible]n from 120 days to 90 days.
The estimated daily cost of the session i[illegible]000 a day. If the session is reduced by 30 days a savings of $1,500,000 is calculated.

Prepared By: Pamela A. Stoops, Director — Phone: 465-3850
Division: Administrative Services — Date: 4/11/90

Approved By: Warren Endicott, Executive Director
Agency: Legislative Affairs Agency — Date: 4/11/90

DISTRIBUTION (BY PREPARER)
LEGISLATIVE FINANCE
LEGISLATIVE SPONSOR

REQUESTOR
OFFICE OF MANAGEMENT & BUDGET
AGENCY (IES)

SJR 70

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SJR 70
PUBLISH DATE: 2/8/90

FISCAL NOTE

REQUEST:

Revision Date: 2/12/90
Agency Affected: Office of the Governor
Title: To establish an Alaska environmental trust fund.
BRU: Elections
Sponsor: Sen. Halford
Requestor: Sen. Halford
Components: II- Primary & General Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	2.2*	-0-	-0-	-0-	-0-	-0-
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	2.2*	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	2.2*	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	2.2*	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The fiscal impact for FY 90 is -0-.

* Costs included cover 2 to 3 pages in each Official Election Pamphlet, for printing and typesetting, and costs estimated to cover computer programming requirements for vote counting purposes.

Prepared by: Linda Edgeworth
Phone: 465-4611
Division: Division of Elections
Date: 2/12/90

Approved by Commissioner:
Date: 2.12.90
Agency: Division of Elections

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

CONTINUATION OF FISCAL NOTE ANALYSIS

For Bill/Resolution No. SJR 70

However, these costs are based on the assumption that all candidates and issues will fit on three ballot cards, which is the norm. It should be noted, however that should the inclusion of this issue require a 4th ballot to be printed, the cost increase would have to be calculated at 16 cents per ballot x approximately 320,000 voters. The total cost of printing the additional ballot card would be $51.2

Under these circumstances the fiscal note would be:

53.4

Article IX

Finance and Taxation

Section 1 - Taxing Power.

The power of taxation shall never be surrendered. This power shall not be suspended or contracted away, except as provided in this article.

Section 2 - Nondiscrimination.

The lands and other property belonging to citizens of the United States residing without the State shall never be taxed at a higher rate than the lands and other property belonging to the residents of the State.

Section 3 - Assessment Standards.

Standards for appraisal of all property assessed by the State or its political subdivisions shall be prescribed by law.

Section 4 - Exemptions.

The real and personal property of the State or its political subdivisions shall be exempt from taxation under conditions and exceptions which may be provided by law. All, or any portion of, property used exclusively for non-profit religious, charitable, cemetery, or educational purposes, as defined by law, shall be exempt from taxation. Other exemptions of like or different kind may be granted by general law. All valid existing exemptions shall be retained until otherwise provided by law.

Section 5 - Interests in Government Property.

Private leaseholds, contracts, or interests in land or property owned or held by the United States, the State, or its political subdivisions, shall be taxable to the extent of the interests.

Section 6 - Public Purpose.

No tax shall be levied, or appropriation of public money made, or public property transferred, nor shall the public credit be used, except for a public purpose.

Section 7 - Dedicated Funds.

The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in Section 15 of this article or when required by the federal government for state participation in federal

programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska. [Amendment approved November 2, 1976 - Effective February 21, 1977]

Section 8 - State Debt.

No state debt shall be contracted unless authorized by law for capital improvements or unless authorized by law for housing loans for veterans, and ratified by a majority of the qualified voters of the State who vote on the question. The State may, as provided by law and without ratification, contract debt for the purpose of repelling invasion, suppressing insurrection, defending the State in war, meeting natural disasters, or redeeming indebtedness outstanding at the time this constitution becomes effective. [Amendment approved November 2, 1982 - Effective December 24, 1982]

Section 9 - Local Debts.

No debt shall be contracted by any political subdivision of the State, unless authorized for capital improvements by its governing body and ratified by a majority vote of those qualified to vote and voting on the question.

Section 10 - Interim Borrowing.

The State and its political subdivisions may borrow money to meet appropriations for any fiscal year in anticipation of the collection of the revenues for that year, but all debt so contracted shall be paid before the end of the next fiscal year.

Section 11 - Exceptions.

The restrictions on contracting debt do not apply to debt incurred through the issuance of revenue bonds by a public enterprise or public corporation of the State or a political subdivision, when the only security is the revenues of the enterprise or corporation. The restrictions do not apply to indebtedness to be paid from special assessments on the benefited property, nor do they apply to refunding indebtedness of the State or its political subdivisions.

Section 12 - Budget.

The governor shall submit to the legislature, at a time fixed by law, a budget for the next fiscal year setting forth all proposed expenditures and anticipated income of all departments, offices, and agencies of the State. The governor, at the same time, shall submit a general appropriation bill to authorize the proposed expenditures, and a bill or bills covering recommendations in the budget for new or additional revenues.

Section 13 - Expenditures.

No money shall be withdrawn from the treasury except in accordance with appropriations made by law. No obligation for the payment of money shall be incurred except as authorized by law. Unobligated appropriations outstanding at the end of the period of time specified by law shall be void.

Section 14 - Legislative Post-Audit.

The legislature shall appoint an auditor to serve at its pleasure. He shall be a certified public accountant. The auditor shall conduct post-audits as prescribed by law and shall report to the legislature and to the governor.

Section 15 - Alaska Permanent Fund.

At least twenty-five per cent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the State shall be placed in a permanent fund, the principal of which shall be used only for those income-producing investments specifically designated by law as eligible for permanent fund investments. All income from the permanent fund shall be deposited in the general fund unless otherwise provided by law. [Amendment approved November 2, 1976 - Effective February 21, 1977]

Section 16 - Appropriation Limit.

Except for appropriations for Alaska permanent fund dividends, appropriations of revenue bond proceeds, appropriations required to pay the principal and interest on general obligation bonds, and appropriations of money received from a non-State source in trust for a specific purpose, including revenues of a public enterprise or public corporation of the State that issues revenue bonds, appropriations from the treasury made for a fiscal year shall not exceed $2,500,000,000 by more than the cumulative change, derived from federal indices as prescribed by law, in population and inflation since July 1, 1981. Within this limit, at least one-

third shall be reserved for capital projects and loan appropriations. The legislature may exceed this limit in bills for appropriations to the Alaska permanent fund and in bills for appropriations for capital projects, whether of bond proceeds or otherwise, if each bill is approved by the governor, or passed by affirmative vote of three-fourths of the membership of the legislature over a veto or item veto, or becomes law without signature, and is also approved by the voters as prescribed by law. Each bill for appropriations for capital projects in excess of the limit shall be confined to capital projects of the same type, and the voters shall, as provided by law, be informed of the cost of operations and maintenance of the capital projects. No other appropriation in excess of this limit may be made except to meet a state of disaster declared by the governor as prescribed by law. The governor shall cause any unexpended and unappropriated balance to be invested so as to yield competitive market rates to the treasury. [Amendment approved November 2, 1982 - Effective December 24, 1982]

Article X

Local Government

Section 1 - Purpose and Construction.

The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.

Section 2 - Local Government Powers.

All local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only.

Section 3 - Boroughs.

The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.

Effect of amendments. — The 1989 amendment, effective June 2, 1989, added subsection (b).

Chapter 13. Alaska Permanent Fund.

Section
120. Investment responsibilities of the board

Sec. 37.13.120. Investment responsibilities of the board. (a) The prudent-man rule shall be applied by the board in the management and investment of Alaska permanent fund assets. The prudent-man rule as applied to investments of the corporation means that in making investments the board shall exercise the judgment and care under the circumstances then prevailing that an institutional investor of ordinary prudence, discretion, and intelligence exercises in the management of large investments entrusted to it not in regard to speculation but in regard to the permanent disposition of funds, considering probable safety of capital as well as probable income.

(b) The corporation assets shall only be used for income-producing investments.

(c) The board shall maintain a reasonable diversification among investments unless under the circumstances it is clearly prudent not to do so.

(d) The board shall submit long-range and quarterly investment reports to the Legislative Budget and Audit Committee.

(e) The corporation may not borrow funds or guarantee from principal of the Alaska permanent fund the obligations of others.

(f) The board may enter into and enforce all contracts necessary, convenient or desirable for purposes of the corporation.

(g) Subject to the limitations contained in this section, the board may invest corporation assets at the competitive national market rates or prices that are applicable to each investment only in

(1) obligations of, or obligations insured by or guaranteed by, the United States or agencies or instrumentalities of the United States;

(2) obligations secured by reserves paid in by the United States or agencies or instrumentalities of the United States or obligations of corporations in which the United States is a shareholder or member;

(3) certificates of deposit and term deposits of United States domestic banks that are members of the Federal Deposit Insurance Corporation and that may be readily sold in a secondary market at prices reflecting fair value or that are fully secured at all times as to payment of principal and interest as described in (m) of this section;

(4) certificates of deposit and term deposits of federally chartered savings and loan associations in Alaska that may be readily sold in a secondary market at prices reflecting fair value or that are fully se-

cured at all times as to payments of principal and interest as described in (m) of this section;

(5) certificates of deposit and term deposits of state chartered savings and loan associations in Alaska that may be readily sold in a secondary market at prices reflecting fair value or that are fully secured at all times as to payments of principal and interest as described in (m) of this section;

(6) certificates of deposit and term deposits of mutual savings banks in Alaska that may be readily sold in a secondary market at prices reflecting fair value or that are fully secured at all times as to payments of principal and interest as described in (m) of this section;

(7) fixed-term certificates of indebtedness of federally insured credit unions in Alaska that may be readily sold in a secondary market at prices reflecting fair value or that are fully secured at all times as to payments of principal and interest as described in (m) of this section;

(8) domestic corporate debt securities that are rated AA or better by a nationally recognized rating service, or nondomestic corporate debt securities of comparable quality;

(9) short-term

(A) domestic corporate promissory notes of the highest ratings assigned by a nationally recognized rating service, or

(B) nondomestic corporate promissory notes of comparable quality, the interest on which may be payable in either United States dollars or nondomestic currencies;

(10) bankers' acceptances drawn on and accepted by United States banks each of which has a combined capital and surplus aggregating at least $200,000,000;

(11) repurchase agreements, the securities underlying the agreements being any of the items in (1) — (3) and (8) — (10) of this subsection;

(12) the guaranteed portion of Federal Small Business Administration loans;

(13) the portion of first lien real estate mortgages guaranteed by the Federal Veterans Administration;

(14) the portions of business and industrial loans made under the Rural Development Act of 1972 that are guaranteed by the Farmers Home Administration;

(15) the guaranteed portion of Farmers Home Administration loans;

(16) notes secured by mortgages granting a first lien on commercial or residential real estate improved by completed buildings if the mortgages are insured by a private mortgage insurance corporation that is authorized to do business in Alaska and has combined capital and surplus aggregating at least $20,000,000, and if loan-to-value ratios do not exceed 75 percent for commercial mortgages and 90 percent for residential mortgages; however,

(A) mortgage insurance is not necessary for commercial loans having loan-to-value ratios of less than 50 percent and the minimum coverage of other commercial loans shall be 10 percent for those having a loan-to-value ratio of 50-60 percent and 15 percent for those having a loan-to-value ratio greater than 60 percent but no more than 75 percent; and

(B) mortgage insurance is not necessary for residential loans having a loan-to-value ratio of less than 70 percent and the minimum coverage of other residential loans shall be 10 percent for those having a loan-to-value ratio greater than 70 percent but less than 90 percent and 20 percent for those having a loan-to-value ratio of 90 percent;

(17) notes secured by mortgages granting a first lien on commercial real estate improved by completed buildings if the originating financial institution retains at least 25 percent of the mortgage until maturity;

(18) preferred and common stock of corporations incorporated in the United States;

(19) certificates of deposit, term deposits, or bankers' acceptances, that are issued by a United States or nondomestic bank or trust company located outside of the United States and are denominated in United States or nondomestic currency. if either (A) they may be readily sold in a secondary market at prices reflecting fair value, or (B) the issuing bank or trust company has capital, surplus, and retained earnings at the date of issue equaling at least $500,000,000; investments made under this paragraph are not subject to the collateral requirements for domestic certificates under (m) of this section;

(20) equity interests in, and debt obligations secured by mortgages granting a first lien on, real estate improved by completed and substantially rented buildings and located in the United States, if these investments are made

(A) in a corporation, partnership, trust, or other entity in which, at the conclusion of each investment transaction, at least 60 percent of the beneficial ownership interests are held by other institutional investors, and which is organized and operated for the purpose of making real estate investments by a bank, insurance company, or other manager of institutional funds that has had at least five years of experience in the management of real estate investments of institutional investors; or

(B) in conjunction with and on substantially the same terms as an entity described in (A) of this paragraph;

(21) securities of non-domestic governments and non-domestic government agencies, the principal of, or interest on, which is payable in either United States dollars or non-domestic currencies;

(22) securities of non-domestic corporations, including common and preferred stock, whose dividends, if any, may be payable in either United States dollars or non-domestic currencies.

(h) The board may enter into future contracts for the sale of investments purchased under (g) of this section, or for the sale of nondomestic currencies, only for the purpose of hedging an existing equivalent ownership position in these investments.

(i) The Alaska permanent fund may at no time own more than five percent of the voting stock of a corporation. Domestic stocks, except for bank and insurance company stocks, must be listed at the date of purchase on an exchange registered with the Securities and Exchange Commission. At the time of each investment, the aggregate investment of the fund in each stated category of investment may not exceed the following stated percentage of the total investments of the fund:

(1) mortgages under (g)(16) of this section — 15 percent;

(2) real estate investments under (g)(20) of this section — 15 percent;

(3) certificates of deposit, term deposit, or bankers' acceptances under (g)(19) of this section — 20 percent;

(4) securities of nondomestic governments, nondomestic government agencies, and nondomestic corporations under (g)(8), (21), and (22) of this section, domestic corporate stocks and debt securities under (g)(8) and (18) of this section, and short-term nondomestic corporate promissory notes under (g)(9)(B) of this section — 50 percent.

(j) The assets of the Alaska permanent fund may not be used for the purchase of bonds of a corporation, upon which any regular interest payment has been defaulted within five years before purchase, except bonds never in default but which have been outstanding for less than five years.

(k) The board shall establish and from time to time as necessary modify guidelines for the investment of the assets of the corporation. Before adoption of any guidelines the guidelines shall be reported to the Legislative Budget and Audit Committee for review and comment.

(*l*) The board shall invest the assets of the corporation in in-state investments to the extent in-state investments are available if the in-state investments

(1) have a risk level and expected yield comparable to alternate investment opportunities; and

(2) are included in the list of permissible investments in (g) of this section.

(m) Certificates of deposit or the equivalent instruments that are not of a quality that may be readily sold in a secondary market at prices reflecting fair value must be secured by a pledge as collateral of investments authorized for the Alaska permanent fund under (g)(1), (2), (8), or (12) — (17) of this section or by a pledge as collateral of obligations of the state or instrumentalities of the state that are rated at least "A" by a major bond rating service and have a demonstrated secondary market, which investments or obligations have value at least equal to the face value of the certificate of deposit. The board

may require substitution of collateral in order to ensure continued satisfaction of the requirements set out in this subsection. (§ 5 ch 18 SLA 1980; am §§ 5 — 7 ch 81 SLA 1982; am § 1 ch 83 SLA 1986; am §§ 1 — 6 ch 4 SLA 1989)

Effect of amendments. — The 1989 amendment, effective March 14, 1989, in subsection (g), added "domestic" to the beginning and "or nondomestic corporate debt securities of comparable quality" to the end of paragraph (8), rewrote paragraph (9), inserted "or nondomestic" in two places and substituted "outside of the United States" for "in a foreign country" and "capital, surplus, and retained earnings" for "capital and surplus" in paragraph (19), and added paragraphs (21) and (22); in subsection (h), inserted "or for the sale of nondomestic currencies" and substituted "investments" for "securities"; and in subsection (i), deleted the former first sentence, which was similar to the present last sentence, and added the present last sentence.

Legislative history reports. — For Senate letter of intent related to the 1989 amendments to this section by ch. 4, SLA 1989 (CSHB 69(SA)), see 1989 Senate Journal 621.

Chapter 14. Trust Funds.

Article
2. Public School Trust Fund (§ 37.14.110)
3. Alaska Children's Trust Fund (§ 37.14.210)

Article 2. Public School Trust Fund.

Section
110. Public school trust fund established

Sec. 37.14.110. Public school trust fund established. (a) There is established as a separate endowment trust fund the public school trust fund.

(b) The principal of the fund established in (a) of this section consists of

(1) the balance of the public school permanent fund on July 1, 1978; and

(2) sums transferred under AS 37.14.150.

(c) The commissioner of revenue shall determine the net income of the fund in accordance with investment accounting principles and in a manner that preserves the distinction between principal and income and that excludes capital gains or losses realized on principal. The principal of the fund and the capital gains or losses realized on principal shall be perpetually retained in the fund for investment purposes. (§ 4 ch 182 SLA 1978; am § 21, 22 ch 141 SLA 1988)

Editor's notes. — This section is set out above to correct a minor error in the main pamphlet.

Sec. 26.20.190. Liberality of construction. This chapter shall be construed liberally in order to carry out its purposes. (§ 23 ch 131 SLA 1951)

Sec. 26.20.200. Definitions. In this chapter unless the context otherwise requires

(1) "civil defense" means the protection and defense of the civilian population by the organized efforts of the residents of the state other than those in the military service, and includes without limitation, fire fighting, policing, rescue, air raid warning, communications, medical service, transportation, evacuation of persons, welfare aid, guard duty, anti-espionage and anti-sabotage service, construction of temporary housing and bomb proof shelters, and any other service necessary for the protection of and aid to the public not normally furnished by the military services;

(2) "department" means the Department of Military and Veterans' Affairs;

(3) "district" means an area or subdivision of the state designated as such by the department for administrative purposes. (§ 1 ch 131 SLA 1951; am E.O. No. 58, § 15 (1984))

Cross references. — See revisor's note to AS 26.20.020.

Effect of amendments. — The 1984 amendment inserted "and Veterans'" in paragraph (2).

NOTES TO DECISIONS

Cited in City of Seward v. Wisdom, Sup. Ct. Op. No. 342 (File No. 627), 413 P.2d 931 (1966).

Chapter 23. Alaska Disaster Act.

Section
10. Purposes
20. The governor and disaster emergencies
30. Creation of the Alaska division of emergency services
40. Duties of the Alaska division of emergency services
50. Financing
60. Local and interjurisdictional disaster agencies and services
70. Establishment of interjurisdictional disaster planning and service areas
80. Community disaster loans
90. State financial participation in grants to disaster victims
100. Temporary housing
110. Debris and wreckage removal in disaster emergency or major disaster
120. Intergovernmental arrangements
130. Interstate Civil Defense and Disaster Compact
140. Local disaster emergencies
150. Disaster prevention
160. Compensation
170. Communications
180. Mutual aid
190. Right of entry
200. Limitations
210. Relationship to civil defense statute
220. Administration
230. Definitions

Sec. 26.23.010. Purposes. The purposes of this chapter are to:

(1) reduce the vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from a disaster;

(2) prepare for the prompt and efficient rescue, care, and treatment of persons victimized or threatened by a disaster;

(3) provide a setting conducive to the rapid and orderly start of rehabilitation of persons and restoration of property affected by a disaster;

(4) clarify and strengthen the roles of the governor, state agencies, and local governments in prevention of, preparation for, response to and recovery from a disaster;

(5) authorize and provide for cooperation in disaster prevention, preparedness, response, and recovery;

(6) authorize and provide for the coordination of activities relating to disaster prevention, preparedness, response, and recovery by agencies and officers of the state, and similar state-local, inter-state, federal-state, and foreign activities in which the state and its political subdivisions may participate; and

(7) assist in the prevention of disasters caused or aggravated by inadequate planning for, and regulation of, public and private facilities and land use. (§ 3 ch 104 SLA 1977)

Cross references. — For disaster relief fund, see AS 44.19.048 et seq.

Sec. 26.23.020. The governor and disaster emergencies. (a) The governor is responsible for meeting the dangers presented by disasters to the state and its people.

(b) The governor may issue orders, proclamations, and regulations necessary to carry out the purposes of this chapter, and amend or rescind them. These orders, proclamations, and regulations have the force of law.

(c) A condition of disaster emergency shall be declared by proclamation of the governor if the governor finds that a disaster has occurred or that such an occurrence is imminent or threatened. If the legislature is not in session when a proclamation is issued, concurrently with the issuance of the proclamation, a call shall be issued by the governor to convene a special session of the legislature to consider ratification of actions taken under this chapter. A call for a special session under this section may be cancelled by the unanimous agreement of the presiding officers of the senate, house of representatives and the governor before the actual convening of the special session. If a special session is held, actions taken by the governor under this chapter that are not ratified by the legislature within 15 days of its convening are

void. The disaster emergency so declared remains in effect until the governor finds that the threat or danger has passed or the disaster has been dealt with to the extent that emergency conditions no longer exist and the governor terminates the disaster emergency by proclamation; but a proclamation of disaster emergency does not remain in effect for longer than 30 days unless renewed by the legislature. The legislature, by concurrent resolution, may terminate a disaster emergency at any time. All proclamations issued under this subsection must indicate the nature of the disaster, the area or areas threatened or affected, and the conditions that have brought it about or which make possible the termination of the disaster emergency.

(d) An order or proclamation issued under this chapter shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and, unless prevented or impeded by circumstances attendant upon the disaster, promptly filed with the Alaska division of emergency services, the lieutenant governor, and the municipal clerk in the area to which it applies.

(e) A proclamation of a disaster emergency activates the disaster response and recovery aspects of the state, local and interjurisdictional disaster emergency plans applicable to the political subdivisions or areas in question, and constitutes authority for the deployment and use of any force to which the plan or plans apply and for use or distribution of any supplies, equipment, materials, and facilities assembled, stockpiled, or arranged to be made available under this chapter or any other provision of law relating to disaster emergency response.

(f) During the effective period of a disaster emergency, the governor is commander-in-chief of the organized and unorganized militia and of all other forces available for emergency duty. The governor may delegate or assign command authority by appropriate orders or regulations.

(g) In addition to any other powers conferred upon the governor by law, the governor may, under this chapter,

(1) suspend the provisions of any regulatory statute prescribing procedures for the conduct of state business, or the orders or regulations of any state agency, if compliance with the provisions of the statute, order, or regulation would prevent, or substantially impede or delay, action necessary to cope with the disaster emergency;

(2) use all available resources of the state government and of each political subdivision of the state as reasonably necessary to cope with the disaster emergency;

(3) transfer personnel or alter the functions of state departments and agencies or units of them for the purpose of performing or facilitating the performance of disaster emergency services;

(4) subject to any applicable requirements for compensation under AS 26.23.160, commandeer or utilize any private property, except for

all news media other than as specifically provided for in this chapter, if the governor considers this necessary to cope with the disaster emergency;

(5) direct and compel the relocation of all or part of the population from any stricken or threatened area in the state, if the governor considers relocation necessary for the preservation of life or for other disaster mitigation purpose;

(6) prescribe routes, modes of transportation, and destinations in connection with necessary relocation;

(7) control ingress to and egress from a disaster area, the movement of persons within the area, and the occupancy of premises in it;

(8) suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles;

(9) make provisions for the availability and use of temporary emergency housing; and

(10) allocate or redistribute food, water, fuel, or clothing. (§ 3 ch 104 SLA 1977)

Sec. 26.23.030. Creation of the Alaska division of emergency services. There is created in the Department of Military and Veterans' Affairs the Alaska division of emergency services possessing the powers and duties set out in AS 26.23.040. (§ 3 ch 104 SLA 1977; am E.O. No. 58, § 16 (1984))

Cross references. — For the status of catastrophic oil discharge as a disaster emergency, see AS 46.04.080.

Effect of amendments. — The 1984 amendment inserted "and Veterans'."

Sec. 26.23.040. Duties of the Alaska division of emergency services. (a) The Alaska division of emergency services shall prepare and maintain a state emergency plan and keep it current. The plan may include provisions for

(1) prevention and minimization of injury and damage caused by disasters;

(2) prompt and effective response to disasters;

(3) emergency relief;

(4) identification of geographical areas, municipalities, cities or villages especially vulnerable to a disaster;

(5) recommendations for zoning, building, and other land use controls, safety measures for securing mobile homes or other nonpermanent or semi-permanent structures, and other preventive and preparedness measures designed to eliminate or reduce disasters or their impact;

(6) assistance to local officials in designing local emergency action plans;

(7) authorization and procedures for the construction of temporary works designed to protect against or mitigate danger, damage, or loss from a disaster;

(8) preparation and distribution to the appropriate state and local officials of catalogs or extracts listing federal, state, and private assistance programs;

(9) organization of manpower and chains of command;

(10) coordination of federal, state, and local disaster activities;

(11) coordination of the state emergency plan with the disaster plans of the federal government; and

(12) other matters necessary to carry out the purposes of this chapter.

(b) The Alaska division of emergency services shall play an integral part in the development and revision of local and interjurisdictional disaster plans prepared under AS 26.23.060. To this end, it may employ or otherwise secure the services of professional and technical personnel capable of providing expert assistance to political subdivisions, their disaster agencies, and interjurisdictional planning and disaster agencies. These personnel shall consult with political subdivisions and agencies on a regular basis and shall make field examinations of the areas, circumstances, and conditions to which particular local and interjurisdictional disaster plans are intended to apply and may suggest or require revisions.

(c) In preparing and maintaining the state emergency plan, the Alaska division of emergency services shall seek the advice and assistance of local government, business, labor, industry, agriculture, civic and volunteer organizations and community leaders. In advising local and interjurisdictional agencies, the office shall encourage them also to seek advice from these sources.

(d) The state emergency plan or any part of it may be incorporated in regulations or orders of the Alaska division of emergency services. Regulations and orders of the Alaska division of emergency services have the force and effect of law.

(e) The Alaska division of emergency services shall

(1) determine requirements of the state and its political subdivisions for food, clothing, and other necessities in the event of a disaster emergency;

(2) procure and pre-position supplies, medicines, materials, and equipment;

(3) adopt standards and requirements for local and interjurisdictional disaster plans;

(4) periodically review local and interjurisdictional disaster plans;

(5) provide for mobile support units;

(6) establish and operate, or assist political subdivisions, their disaster agencies, and interjurisdictional disaster agencies to establish and operate, training and public information programs;

(7) make surveys of industries, resources, and facilities in the state, both public and private, as are necessary to carry out the purposes of this chapter;

(8) plan and make arrangements for the availability and use of any private facilities, services, and property and, if necessary and if in fact used, provide for payment for use under terms and conditions agreed upon by the parties;

(9) establish a register of persons with types of training and skills important in disaster prevention, preparedness, response, and recovery;

(10) establish a register of mobile and construction equipment and temporary housing available for use in a disaster emergency;

(11) prepare, for issuance by the governor, orders, proclamations, and regulations as necessary or appropriate in coping with disasters;

(12) cooperate with the federal government and any public or private agency or entity in achieving any purpose of this chapter and in implementing programs for disaster prevention, preparedness, response and recovery;

(13) develop and carry out procedures and policies to effectively employ disaster relief funds made available by the governor's authority or by special legislative action; these procedures shall include application and documentation by disaster victims or applicants, review, verification and funding approval, and processing of appeals;

(14) do other things necessary or proper for the implementation of this chapter. (§ 3 ch 104 SLA 1977)

Sec. 26.23.050. Financing. (a) It is the intent of the legislature, and declared to be the policy of the state, that funds to meet disaster emergencies will always be available.

(b) Whenever, and to the extent that, money is needed to cope with a disaster, the first recourse shall be to funds regularly appropriated to state and local agencies. The second recourse shall be to funds available in the disaster relief fund or the oil and hazardous substance release response fund, as appropriate. If money available from these sources is insufficient, and if the governor finds that other sources of money to cope with the disaster are not available or are insufficient, the governor may, notwithstanding any limitation imposed by AS 37.07.080(e), transfer and spend money appropriated for other purposes or, in situations involving natural disasters, borrow from the United States government or other public or private sources for a term not to exceed two years.

(c) Nothing in this section limits the governor's authority to apply for, receive, administer, and spend grants, gifts, or payments from any source, to aid in disaster prevention, preparedness, response, or recovery. (§ 3 ch 104 SLA 1977; am § 3 ch 59 SLA 1986)

Cross references. — For the status of catastrophic oil discharge as a disaster emergency, see AS 46.04.080.

Effect of amendments. — The 1986 amendment, in subsection (b), inserted "or the oil and hazardous substance release response fund, as appropriate" at the end of the second sentence.

Sec. 26.23.060. Local and interjurisdictional disaster agencies and services. (a) Each political subdivision in the state is within the jurisdiction of, and shall be served by, the Alaska division of emergency services. An incorporated municipality also may be served by a local or interjurisdictional agency responsible for disaster preparedness and coordination of response.

(b) Each borough may maintain a disaster agency, or participate in a local or interjurisdictional disaster agency which, except as otherwise provided in this chapter, has jurisdiction over and serves the entire borough.

(c) Each political subdivision that does not have a disaster agency and has not made arrangements to secure or participate in the services of a disaster agency shall designate a liaison officer to facilitate the cooperation and protection of that city in the work of disaster prevention, preparedness, response, and recovery.

(d) The principal executive officer of each political subdivision in the state shall notify the Alaska division of emergency services of the manner in which the political subdivision is providing or securing disaster planning and intends to provide or secure emergency services, identify the person who heads the agency from which the services are or will be obtained, and furnish additional information relating to the services as the Alaska division of emergency services requires.

(e) Each local and interjurisdictional agency shall prepare and keep current a local or interjurisdictional disaster emergency plan for its area.

(f) The local or interjurisdictional disaster agency, as the case may be, shall prepare and distribute to all appropriate officials in written form a clear and complete statement of the emergency responsibilities of all local agencies and officials. (§ 3 ch 104 SLA 1977)

Sec. 26.23.070. Establishment of interjurisdictional disaster planning and service areas. (a) If the governor finds that two or more adjoining political subdivisions would be better served by an interjurisdictional arrangement than by maintaining separate disaster agencies and services, the governor may designate by order an interjurisdictional area adequate to plan for, prevent, or respond to a disaster in that area, and direct steps to be taken as necessary, including the creation of an interjurisdictional relationship, a joint disaster emergency plan, mutual aid, or an area organization for emergency

planning and services. A finding by the governor under this subsection must be based on one or more factors related to the difficulty of maintaining an efficient and effective disaster prevention, preparedness, response, and recovery system without an interjurisdictional relationship, such as

(1) small or sparse population;

(2) limitations on public financial resources severe enough to make maintenance of a separate disaster agency and services unreasonably burdensome;

(3) unusual vulnerability to disaster as evidenced by a past history of disasters, topographical features, drainage characteristics, disaster potential, and presence of disaster-prone facilities or operations;

(4) the interrelated character of the political subdivisions in an area; or

(5) other relevant conditions or circumstances.

(b) If the governor finds that a vulnerable area lies only partly within the state and includes territory in a foreign jurisdiction, and that it would be desirable to establish an international relationship, mutual aid, or an area organization for disaster, the governor shall take steps to that end as desirable. If this action is taken with jurisdictions that have enacted the Interstate Civil Defense and Disaster Compact substantially as contained in AS 26.23.130, any resulting agreement may be considered a supplemental agreement under Article VI of that compact.

(c) If a jurisdiction with which the governor proposes to cooperate under (b) of this section has not enacted the Interstate Civil Defense and Disaster Compact, the governor may negotiate a special agreement with that jurisdiction. (§ 3 ch 104 SLA 1977)

Sec. 26.23.080. Community disaster loans. Whenever, at the request of the governor, the President has declared a major disaster to exist in this state, the governor may

(1) upon the governor's determination that a local government of the state will suffer a substantial loss of tax and other revenue from the disaster and has demonstrated a need for financial assistance to perform its governmental functions, apply to the federal government, on behalf of the local government, for a loan; the governor may receive and disburse the proceeds of any approved loan to any applicant local government;

(2) determine the amount needed by any applicant local government to restore or resume its governmental functions, and to certify the amount to the federal government; however, an application amount may not exceed 25 per cent of the annual operating budget of the applicant for the fiscal year in which the major disaster occurred;

(3) recommend to the federal government, based upon review by the governor, the cancellation of all or any part of repayment when, for the first three full fiscal years following the major disaster, the revenue of the local government is insufficient to meet its operating expenses, including additional disaster-related expenses of a municipal operation character. (§ 3 ch 104 SLA 1977)

Sec. 26.23.090. State financial participation in grants to disaster victims. (a) Whenever the President, at the request of the governor, has declared a major disaster to exist in this state, the governor may

(1) upon the governor's determination that financial assistance is essential to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster that cannot be otherwise adequately met from other means of assistance, accept a grant by the federal government to fund that financial assistance, subject to the terms and conditions that may be imposed upon the grant;

(2) enter into an agreement with the federal government, or any officer or agency of it, pledging the state to participate in the funding of the financial assistance authorized in (1) of this subsection, in an amount not to exceed 25 per cent of the assistance and, if state funds are not otherwise available to the governor, to accept an advance of the state's share from the federal government to be repaid when the state is able to do so.

(b) The governor is authorized to make financial grants, the total of federal and state shares not to exceed $5,000, to an individual or family in any single major disaster declared by the President, to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster that cannot otherwise adequately be met from other means of assistance.

(c) A person who fraudulently or wilfully makes a misstatement of fact in connection with an application for financial assistance under this chapter is, upon conviction, punishable by a fine of not more than $5,000, or by imprisonment for not more than one year, or by both. (§ 3 ch 104 SLA 1977)

Sec. 26.23.100. Temporary housing. (a) Whenever the governor has proclaimed a disaster emergency, or the President, at the request of the governor, has declared an emergency or a major disaster to exist in this state, the governor may

(1) purchase, lease, or make other arrangements with any agency of the United States or state for temporary housing units to be occupied by disaster victims and to make those units available to any political subdivision of the state;

(2) assist any political subdivision of this state that is the location of temporary housing for disaster victims to acquire sites necessary for the temporary housing and do all things necessary to prepare the site to receive and use temporary housing units by

(A) advancing or lending funds available to the governor from an appropriation made by the legislature or from any other source;

(B) "passing through" funds made available by any agency, public or private; or

(C) becoming a copartner with a political subdivision for the execution and performance of any temporary housing for disaster-victim projects and, for those purposes, pledging the credit of the state on terms considered appropriate, having due regard for current debt transactions of the state;

(3) under whatever relevant regulations the governor may adopt, temporarily suspend or modify, for not more than 60 days, any public health, safety, zoning, transportation, or other requirement of law or regulation of the state, when by proclamation, the governor declares a suspension or modification essential to provide temporary housing for disaster victims.

(b) A political subdivision of this state may acquire, temporarily or permanently, by purchase, lease, or otherwise, sites required for installation of temporary housing units for disaster victims, and to enter into whatever arrangements, including purchase of temporary housing units and payment of transportation charges, that are necessary to prepare or equip those sites to receive and use the housing units. (§ 3 ch 104 SLA 1977)

Sec. 26.23.110. Debris and wreckage removal in disaster emergency or major disaster. (a) When the governor has declared a disaster emergency, or the President, at the request of the governor, has declared a major disaster or emergency to exist in this state, the governor may

(1) through the use of state agencies, clear from publicly or privately owned land or water, debris and wreckage that may threaten public health, safety, or property;

(2) apply for and accept funds from the federal government and use those funds to make grants to any local government for the purpose of removing debris or wreckage from publicly or privately owned land or water.

(b) Authority under (a)(1) of this section may not be exercised unless the affected local government, corporation, organization, or individual unconditionally authorizes the removal of the debris or wreckage from public and private property and, in the case of removal of debris or wreckage from private property, first agrees to indemnify the state government against claims arising from the removal. (§ 3 ch 104 SLA 1977)

Sec. 26.23.120. Intergovernmental arrangements. The Interstate Civil Defense and Disaster Compact is hereby enacted into law and entered into with all jurisdictions legally joining in it in a form substantially as contained in AS 26.23.130. (§ 3 ch 104 SLA 1977)

Sec. 26.23.130. Interstate Civil Defense and Disaster Compact. The terms and provisions of the compact referred to in AS 26.23.120 are as follows:

INTERSTATE CIVIL DEFENSE AND DISASTER COMPACT

The contracting states solemnly agree:

ARTICLE I

PURPOSE

The purpose of this compact is to provide mutual aid among the states in meeting any emergency or disaster resulting from enemy attack or other cause, natural or otherwise, including sabotage and subversive acts, direct attacks by bombs, shellfire, and nuclear, radiological, chemical or bacteriological means, and other weapons. The prompt, full, and effective utilization of the resources of the respective states, including the resources that may be available from the United States government or any other source, are essential to the safety, care, and welfare of the people of the respective states in the event of enemy action or other emergency, and any other resources, including personnel, equipment, or supplies, shall be incorporated into a plan, or plans, of mutual aid to be developed among the civil defense agencies or similar bodies of the states that are parties to this compact. The directors of civil defense of all party states constitute a committee to formulate plans to take all necessary steps for the implementation of this contract.

ARTICLE II

CIVIL DEFENSE PLANS AND PROGRAMS

It is the duty of each party state to formulate civil defense plans and programs for application within that state. There shall be frequent consultation between the representatives of the states and with the United States government, and the free exchange of information and plans, including inventories of any materials and equipment available for civil defense. In carrying out these civil defense plans and programs, the party states shall, so far as possible, provide and follow uniform standards, practices, and regulations, including:

(1) distinctive insignia or articles to designate and distinguish the different civil defense services;

(2) practice air attack drills, mobilization of civil defense forces, and other tests and exercises;

(3) warnings and signals for drills or attacks, and the mechanical devices to be used in connection with them;

(4) shutting off water mains, gas mains, electric power connections, and the suspension of all other utility services;

(5) all materials or equipment used, or to be used, for civil defense purposes, in order to assure that those materials and that equipment will be easily and freely interchangeable when used in, or by, any other party state;

(6) the conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic, before, during, and after drills or attacks;

(7) the safety of public meetings or gatherings; and

(8) mobile support units.

ARTICLE III

ASSISTANCE TO PARTY STATE

Any party state requested to render mutual aid shall take the action necessary to provide and make available the resources covered by this compact in accordance with its terms; however, it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for itself. Each party state shall extend to the civil defense forces of any other party state, while operating within its state boundaries under the terms and conditions of this compact, the same powers (except that of arrest, unless specifically authorized by the receiving state), duties, rights, privileges, and immunities as if they were performing their duties in their home state. Civil defense forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the civil defense authorities of the state receiving assistance.

ARTICLE IV

INTERSTATE RECOGNITION OF INDIVIDUAL QUALIFICATIONS

If a person holds a license, certificate, or other permit issued by any state or political subdivision of a state evidencing the meeting of qualifications for professional, mechanical or other skills, that person may render aid involving that skill in any party state to meet an emergency or disaster, and that state shall give due recognition to the license, certificate, or other permit as if issued in the state in which aid is rendered.

ARTICLE V

LIABILITY

No party state or its officers or employees rendering aid in another state pursuant to this compact is liable on account of any act or omission in good faith on the part of those forces while so engaged, or on account of the maintenance or use of any equipment or supplies in connection with rendering that aid.

ARTICLE VI

SUPPLEMENTAL AGREEMENTS

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that appropriate among other party states, this compact contains elements of a broad base common to all states, and nothing in this compact precludes any state from entering into supplementary agreements with other states. The supplementary agreements may comprehend, but are not limited to, provisions for evacuation and reception of injured and other persons, and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation, and communications personnel, equipment and supplies.

ARTICLE VII

INJURY AND DEATH COMPENSATION

Each party state shall provide for the payment of compensation and death benefits to injured members of the civil defense forces of that state and the representatives of deceased members of those forces, in case those members sustain injuries or are killed while rendering aid under this compact, in the same manner and on the same terms as if the injury or death were sustained within that state.

ARTICLE VIII

COMPENSATION TO ASSISTING STATE

A party state rendering aid in another state under this compact shall be reimbursed by the party state receiving the aid for any loss or damage to, or expense incurred in, the operation of any equipment answering a request for aid, and for the cost incurred in connection with the request; however, an aiding party state may assume in whole or in part the loss, damage, expense, or other costs, or may loan the equipment or donate the services to the receiving party state without charge or cost; in addition, any two or more party states may enter into supplementary agreements establishing a different allocation of costs as among those states. The United States government may re-

ieve the party state receiving aid from any liability, and reimburse the party state supplying civil defense forces for the compensation paid to and the transportation, subsistence, and maintenance expenses of those forces during the time of rendering the aid or assistance outside the state, and may also pay fair and reasonable compensation for the use of the supplies, materials, equipment, or facilities so used or consumed.

ARTICLE IX

CRISES RELOCATION PLANS

Plans for the orderly relocation and reception of the civilian population as the result of an emergency or disaster shall be worked out from time to time between representatives of the party states and the various local civil defense areas of those states. These plans shall include the manner of transporting the persons being relocated, the number of people to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of those relocated, the provision of facilities for the notification of relatives or friends, the provision of additional materials and supplies, and all other relevant factors. These plans shall provide that the party state receiving persons relocated shall be reimbursed generally for the out-of-pocket expenses incurred for transportation, food, clothing, medicines, medical care and like items. These expenditures shall be reimbursed by the party state of which the evacuees are residents, or by the United States government under plans approved by it After the termination of the emergency or disaster, the party state from which the people relocated shall assume the responsibility for their ultimate support or return.

ARTICLE X

AVAILABILITY OF COMPACT

(a) This compact is available to any state, territory, or possession of the United States, and the District of Columbia.

(b) The term "state" also includes any neighboring foreign country and a province or state of one.

ARTICLE XI

NON-BORDERING STATES

The governor may enter into this compact with any state that does not border this state if the governor finds that joint action with the state is desirable in meeting common intergovernmental problems of emergency disaster planning, prevention, response, and recovery.

ARTICLE XII

UNITED STATES CIVIL DEFENSE AGENCY PARTICIPATION

The committee established under Article I of this compact may request the Civil Defense Agency of the United States government to act as an informational and coordinating body under this compact, and representatives of that agency may attend meetings of the committee.

ARTICLE XIII

ENTRY INTO FORCE

This compact becomes operative immediately upon its ratification by any state as between it and any other state or states so ratifying, and is subject to approval by Congress, unless prior Congressional approval has been given. Duly authenticated copies of this compact, and of supplementary agreements that may be entered into, shall, at the time of their approval, be deposited with each of the party states, the Civil Defense Agency and other appropriate agencies of the United States government.

ARTICLE XIV

WITHDRAWAL

This compact continues in force and remains binding on each party state until the legislature or the governor of a party state takes action to withdraw from it. Withdrawal is not effective until 30 days after notice of that action has been sent by the governor of the party state desiring to withdraw to the governors of all other party states.

ARTICLE XV

SEVERABILITY

This compact shall be construed to effectuate the purposes stated in Article I. If any provision of this compact is held unconstitutional, or its applicability to any person or circumstance is held invalid, the constitutionality of the remainder of this compact and its applicability to other persons and circumstances are not affected by that holding.

ARTICLE XVI

COVERAGE

(a) This Article is in effect only as among those states that have enacted it into law or in which the governors have adopted it under constitutional or statutory authority sufficient to give it the force of law as part of this compact. Nothing contained in this Article or in

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

ARTICLE XII

UNITED STATES CIVIL DEFENSE AGENCY PARTICIPATION

The committee established under Article I of this compact may request the Civil Defense Agency of the United States government to act as an informational and coordinating body under this compact, and representatives of that agency may attend meetings of the committee.

ARTICLE XIII

ENTRY INTO FORCE

This compact becomes operative immediately upon its ratification by any state as between it and any other state or states so ratifying, and is subject to approval by Congress, unless prior Congressional approval has been given. Duly authenticated copies of this compact, and of supplementary agreements that may be entered into, shall, at the time of their approval, be deposited with each of the party states, the Civil Defense Agency and other appropriate agencies of the United States government.

ARTICLE XIV

WITHDRAWAL

This compact continues in force and remains binding on each party state until the legislature or the governor of a party state takes action to withdraw from it. Withdrawal is not effective until 30 days after notice of that action has been sent by the governor of the party state desiring to withdraw to the governors of all other party states.

ARTICLE XV

SEVERABILITY

This compact shall be construed to effectuate the purposes stated in Article I. If any provision of this compact is held unconstitutional, or its applicability to any person or circumstance is held invalid, the constitutionality of the remainder of this compact and its applicability to other persons and circumstances are not affected by that holding.

ARTICLE XVI

COVERAGE

(a) This Article is in effect only as among those states that have enacted it into law or in which the governors have adopted it under constitutional or statutory authority sufficient to give it the force of law as part of this compact. Nothing contained in this Article or in

any supplementary agreement made in implementation of it abridges, impairs, or supersedes any other provision of this compact or any obligation undertaken by a state pursuant to it, except that if its terms so provide, a supplementary agreement in implementation of this Article may modify, expand, or add to any such obligation as among the parties to the supplementary agreement.

(b) In addition to the occurrences, circumstances and subject matter to which preceding Articles of this compact make it applicable, this compact and its authorizations, entitlements, and procedures apply to:

(1) searches for and rescue of persons who are lost, marooned, or otherwise in danger;

(2) action useful in coping with disasters arising from any cause or designed to increase the capability to cope with any such disasters;

(3) incidents, or the imminence of them, that endanger the health or safety of the public and that require the use of special equipment, trained personnel, or personnel in larger numbers than are locally available in order to reduce, counteract or remove the danger;

(4) the giving and receiving of aid by political subdivisions of party states;

(5) exercises, drills or other training or practice activities designed to aid personnel to prepare for, cope with, or prevent any disaster or other emergency to which this compact applies.

(c) Except as expressly limited by this compact or a supplementary agreement in force pursuant to it, any aid authorized by this compact or a supplementary agreement may be furnished by any agency of a party state, by a political subdivision of a party state, or by a joint agency; such an agency or political subdivision is entitled to reimbursement for the aid to the same extent and in the same manner as a state. The personnel of a joint agency, when rendering aid under this compact, have the same rights, authority and immunity as personnel of party states.

(d) Nothing in this Article excludes from the coverage of Articles I — XV of this compact any matter that, in the absence of this Article, could reasonably be construed to be covered by Articles I — XV.

ARTICLE XVII

CONSTRUCTION

Nothing in this compact limits previous or future entry into the Interstate Civil Defense and Disaster Compact of this state with other states. (§ 3 ch 104 SLA 1977)

Sec. 26.23.140. Local disaster emergencies. (a) A local disaster emergency may be declared only by the principal executive officer of a political subdivision. It may not be continued or renewed for a period in excess of seven days, except by or with the consent of the governing board of the political subdivision. Any order or proclamation declaring, continuing, or terminating a local disaster emergency shall be given prompt and general publicity, and shall be filed promptly with the Alaska division of emergency services and the appropriate municipal clerk.

(b) The effect of a declaration of a local disaster emergency is to activate the response and recovery aspects of any and all applicable local or interjurisdictional disaster emergency plans, and to authorize the furnishing of aid and assistance under those plans.

(c) No interjurisdictional agency or official of one may declare a local disaster emergency unless expressly authorized by the agreement under which the agency functions. An interjurisdictional disaster agency shall provide aid and services in accordance with the agreement under which it functions. (§ 3 ch 104 SLA 1977)

Sec. 26.23.150. Disaster prevention. (a) In addition to disaster prevention measures as included in the state, local and interjurisdictional disaster plans, the governor shall consider, on a continuing basis, steps that could be taken to prevent or reduce the harmful consequences of disasters. At the governor's direction, and under any other authority and competence they have, state agencies, including but not limited to those charged with responsibilities in connection with flood plain management, stream encroachment and flow regulation, weather modification, fire prevention and control, air quality, public works, land use and land use planning and construction standards, shall make studies of disaster-prevention-related matters. The governor, from time to time, shall make recommendations to the legislature, local governments, and other appropriate public and private entities as may facilitate measures for the prevention or reduction of the harmful consequences of disasters.

(b) Appropriate departments, in conjunction with the Alaska division of emergency services, shall keep land uses and location of structures and other facilities under continuing study, and identify areas that are particularly susceptible to severe land shifting, subsidence, flood, or other catastrophic occurrence. The studies under this subsection shall concentrate on means of reducing or avoiding the dangers caused by this occurrence or the consequences of it.

(c) If the Alaska division of emergency services believes, on the basis of the studies or other competent evidence and after consultation with the appropriate local planning agencies, that an area is susceptible to a disaster of catastrophic proportions without adequate warning,

that existing building standards and land use controls in that area are inadequate and could add substantially to the magnitude of the disaster, and that changes in zoning regulations, other land use regulations, or building requirements are essential in order to further the purposes of this section, it shall specify the essential changes to the governor. (§ 3 ch 104 SLA 1977)

Sec. 26.23.160. Compensation. (a) Personal services may not be compensated by the state or any political subdivision or agency of it, except in accordance with Alaska law or a local ordinance.

(b) Compensation for property shall be made only if the property was commandeered or otherwise used in coping with a disaster emergency, and its use or destruction was ordered by the governor or by a member of the disaster emergency forces of this state who is authorized by the Alaska division of emergency services to issue such an order.

(c) Any person claiming compensation for the use, damage, loss, or destruction of property occasioned by action taken under this chapter shall file a claim for that compensation with the Alaska division of emergency services in the form and manner required by the division.

(d) Unless the amount of compensation resulting from property damaged, lost, or destroyed is agreed upon between the claimant and the Alaska division of emergency services, the amount of compensation shall be calculated in the same manner as compensation due for a taking of property under the condemnation laws of this state. (§ 3 ch 104 SLA 1977)

Sec. 26.23.170. Communications. The Alaska division of emergency services shall ascertain what means exist for rapid and efficient communications in times of disaster emergency. The division shall consider the desirability of supplementing these communications resources, or of integrating them into a comprehensive state or state-federal telecommunications network or other communication system or network. In studying the character and feasibility of any system or its several parts, the division shall evaluate the possibility of multipurpose use of it or its parts for general state and local governmental purposes. The division shall make recommendations to the governor as appropriate. (§ 3 ch 104 SLA 1977)

Sec. 26.23.180. Mutual aid. (a) Political subdivisions not participating in interjurisdictional arrangements under this chapter nevertheless shall be encouraged and assisted by the Alaska division of emergency services to conclude suitable arrangements for furnishing mutual aid in coping with disasters. The arrangements shall include provision of aid by persons and units in public employment.

(b) In concurring with local disaster plans, the governor shall consider whether they contain adequate provisions for the rendering and receipt of mutual aid.

(c) It is a sufficient reason for the governor to require an interjurisdictional agreement or arrangement under AS 26.23.070 that the area involved and political subdivisions in it have available equipment, supplies, and forces necessary to provide mutual aid on a regional basis, and that the political subdivisions have not already made adequate provision for mutual aid; but in requiring an interjurisdictional arrangement in order to accomplish the purpose of this section, the governor need not require establishment and maintenance of an interjurisdictional agency or arrangement for any other disaster purposes. (§ 3 ch 104 SLA 1977)

Sec. 26.23.190. Right of entry. If entry is reasonably necessary to actually alleviate or prevent the disaster, all persons authorized to carry out emergency measures directed under the provisions of this chapter shall be accorded free access to all public and private land and public buildings within the areas specified, and are authorized to enter them and to perform work and take measures that are appropriate without the consent of the owners of the land or buildings. (§ 3 ch 104 SLA 1977)

Sec. 26.23.200. Limitations. Nothing in this chapter

(1) interferes with or allows interference with the course or conduct of a labor dispute, except that actions otherwise authorized by this chapter or other laws may be taken when necessary to forestall or mitigate imminent or existing danger to public health or safety;

(2) interferes with or allows interference with dissemination of news or comment on public affairs; but any communications facility or organization, including but not limited to radio and television stations, wire services, and newspapers, may be requested to transmit or print public service messages furnishing information or instructions in connection with a disaster emergency, in a manner that encroaches as little as possible upon the normal functions of the news media;

(3) affects the jurisdiction or responsibilities of police forces, firefighting forces, units of the armed forces of the United States, or of any personnel of them, when on active duty; but state, local, and interjurisdictional disaster emergency plans shall place reliance upon the forces available for performance of functions related to disaster emergencies; or

(4) limits, modifies, or abridges the authority of the governor to proclaim martial law, or exercise any other powers vested in the governor under the constitution, statutes, or common law of this state independent of, or in conjunction with, any provision of this chapter. (§ 3 ch 104 SLA 1977)

Sec. 26.23.210. Relationship to civil defense statute. The Alaska civil defense statute (AS 26.20), applies to preparedness, response, and recovery from disasters caused by enemy attack and other hostile military or paramilitary action. The provisions of this chapter, other than AS 26.23.130, apply to preparedness, response, and recovery in cases of natural and nonmilitary manmade disasters. (§ 3 ch 104 SLA 1977)

Sec. 26.23.220. Administration. This chapter shall be administered by the Department of Military and Veterans' Affairs, which is responsible to, and which may receive delegations of authority from, the governor. (§ 3 ch 104 SLA 1977; am E.O. No. 58, § 17 (1984))

Effect of amendments. — The 1984 amendment inserted "and Veterans'."

Sec. 26.23.230. Definitions. In this chapter

(1) "disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or nonmilitary man-made cause including, but not limited to, fire, flood, earthquake, landslide, mudslide, avalanche, wind-driven water, weather condition, tsunami, volcanic activity, epidemic, air contamination, blight, infestation, explosion, riot, equipment failure, or shortage of food, water, fuel, or clothing, or the release of oil or a hazardous substance requiring prompt action to avert environmental danger or damage;

(2) "disaster emergency" means the condition declared by proclamation of the governor or declared by the principal executive officer of a political subdivision to designate the imminence or occurrence of a disaster;

(3) "emergency" has the meaning given in 42 U.S.C. 5122 (Disaster Relief Act of 1974);

(4) "major disaster" has the meaning given in 42 U.S.C. 5122;

(5) "political subdivision" means a home rule or general law borough or city including a unified municipality, an unincorporated village, or other unit of local government;

(6) "temporary housing" has the meaning given in the federal Disaster Relief Act of 1974 (P.L. 93-288, 88 Stat. 143);

(7) "unorganized militia" means all able-bodied persons between the ages of 17 and 59 years, inclusive, who reside in the state. (§ 3 ch 104 SLA 1977; am § 49 ch 74 SLA 1985; am § 4 ch 59 SLA 1986)

Revisor's notes. — With regard to (6) of this section, provisions related to temporary housing assistance can be found at 42 U.S.C. 5174 and in 44 C.F.R. 205.52 implementing that section.

Effect of amendments. — The 1985 amendment rewrote paragraph (5).

The 1986 amendment, in paragraph (1), deleted "oil spill or other water contami-

(b) In concurring with local disaster plans, the governor shall consider whether they contain adequate provisions for the rendering and receipt of mutual aid.

(c) It is a sufficient reason for the governor to require an interjurisdictional agreement or arrangement under AS 26.23.070 that the area involved and political subdivisions in it have available equipment, supplies, and forces necessary to provide mutual aid on a regional basis, and that the political subdivisions have not already made adequate provision for mutual aid; but in requiring an interjurisdictional arrangement in order to accomplish the purpose of this section, the governor need not require establishment and maintenance of an interjurisdictional agency or arrangement for any other disaster purposes. (§ 3 ch 104 SLA 1977)

Sec. 26.23.190. Right of entry. If entry is reasonably necessary to actually alleviate or prevent the disaster, all persons authorized to carry out emergency measures directed under the provisions of this chapter shall be accorded free access to all public and private land and public buildings within the areas specified, and are authorized to enter them and to perform work and take measures that are appropriate without the consent of the owners of the land or buildings. (§ 3 ch 104 SLA 1977)

Sec. 26.23.200. Limitations. Nothing in this chapter

(1) interferes with or allows interference with the course or conduct of a labor dispute, except that actions otherwise authorized by this chapter or other laws may be taken when necessary to forestall or mitigate imminent or existing danger to public health or safety;

(2) interferes with or allows interference with dissemination of news or comment on public affairs; but any communications facility or organization, including but not limited to radio and television stations, wire services, and newspapers, may be requested to transmit or print public service messages furnishing information or instructions in connection with a disaster emergency, in a manner that encroaches as little as possible upon the normal functions of the news media;

(3) affects the jurisdiction or responsibilities of police forces, firefighting forces, units of the armed forces of the United States, or of any personnel of them, when on active duty; but state, local, and interjurisdictional disaster emergency plans shall place reliance upon the forces available for performance of functions related to disaster emergencies; or

(4) limits, modifies, or abridges the authority of the governor to proclaim martial law, or exercise any other powers vested in the governor under the constitution, statutes, or common law of this state independent of, or in conjunction with, any provision of this chapter. (§ 3 ch 104 SLA 1977)

Sec. 26.23.210. Relationship to civil defense statute. The Alaska civil defense statute (AS 26.20), applies to preparedness, response, and recovery from disasters caused by enemy attack and other hostile military or paramilitary action. The provisions of this chapter, other than AS 26.23.130, apply to preparedness, response, and recovery in cases of natural and nonmilitary manmade disasters. (§ 3 ch 104 SLA 1977)

Sec. 26.23.220. Administration. This chapter shall be administered by the Department of Military and Veterans' Affairs, which is responsible to, and which may receive delegations of authority from, the governor. (§ 3 ch 104 SLA 1977; am E.O. No. 58, § 17 (1984))

Effect of amendments. — The 1984 amendment inserted "and Veterans'."

Sec. 26.23.230. Definitions. In this chapter

(1) "disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or nonmilitary man-mad cause including, but not limited to, fire, flood, earthquake, landslide, mudslide, avalanche, wind-driven water, weather condition, tsunami, volcanic activity, epidemic, air contamination, blight, infestation, explosion, riot, equipment failure, or shortage of food, water, fuel, or clothing, or the release of oil or a hazardous substance requiring prompt action to avert environmental danger or damage;

(2) "disaster emergency" means the condition declared by proclamation of the governor or declared by the principal executive officer of a political subdivision to designate the imminence or occurrence of a disaster;

(3) "emergency" has the meaning given in 42 U.S.C. 5122 (Disaster Relief Act of 1974);

(4) "major disaster" has the meaning given in 42 U.S.C. 5122;

(5) "political subdivision" means a home rule or general law borough or city including a unified municipality, an unincorporated village, or other unit of local government;

(6) "temporary housing" has the meaning given in the federal Disaster Relief Act of 1974 (P.L. 93-288, 88 Stat. 143);

(7) "unorganized militia" means all able-bodied persons between the ages of 17 and 59 years, inclusive, who reside in the state. (§ 3 ch 104 SLA 1977; am § 49 ch 74 SLA 1985; am § 4 ch 59 SLA 1986)

Revisor's notes. — With regard to (6) of this section, provisions related to temporary housing assistance can be found at 42 U.S.C. 5174 and in 44 C.F.R. 205.52 implementing that section.

Effect of amendments. — The 1985 amendment rewrote paragraph (5).

The 1986 amendment, in paragraph (1), deleted "oil spill or other water contami-

Sec. 44.19.045. [Renumbered as AS 44.19.024.]

Sec. 44.19.046. Simultaneous vacancies. If vacancies in the office of governor and the office of lieutenant governor occur simultaneously, the person appointed under AS 44.19.040 succeeds directly to the office of acting governor until successors to the respective offices are elected in a special election. (§ 5 ch 174 SLA 1959)

Revisor's notes. — Formerly AS 44.19.150. Renumbered in 1980.

Cross references. — For special election, see AS 15.40.230 — 15.40.310.

Article 3. Disaster and Emergency Relief Funds.

Sec. 44.19.048. Disaster relief fund. (a) There is in the Office of the Governor a disaster relief fund. The Department of Revenue is custodian of the fund.

(b) Subject to the restrictions of (d) and (e) of this section, the governor may, without additional legislative authorization, expend not more than $1,000,000 of the assets of the disaster relief fund for the following purposes:

(1) to implement provisions of law relating to disaster relief in the case of a disaster as defined in AS 44.19.050 occurring after October 11, 1967;

(2) to alleviate the effects of a disaster as defined in AS 44.19.050 occurring after October 11, 1967, by making loans or grants to persons or municipalities on terms the governor considers appropriate or by other means the governor considers appropriate.

(c) Subject to the restrictions of (d) and (e) of this section, the governor may, without additional legislative authorization, expend for any fiscal year not more than $500,000 of the assets of the disaster relief fund to prevent or minimize the effects of an event which occurs in any part of the state after October 11, 1967 and which, in the determination of the governor, poses a direct and imminent threat of resulting in a disaster of sufficient magnitude and severity to justify state action.

(d) Expenditures authorized by the legislature to alleviate effects of the natural disaster occurring on August 14, 1967 shall be reimbursed to the general fund from the disaster relief fund before any other expenditures may be made from the disaster relief fund.

(e) The governor shall present to the legislature an annual accounting of money expended from the disaster relief fund. (§ 1 ch 25 FSSLA 1967; am §§ 4, 5 ch 104 SLA 1977; am § 10 ch 116 SLA 1980)

Revisor's notes. — Formerly AS 44.19.171. Renumbered in 1980.

Cross references. — For Alaska Disaster Act, see AS 26.23.

Sec. 44.19.049. Grants and loans to municipalities damaged by natural disaster. (a) Grants and loans for urban renewal shall be made available to municipalities damaged by disasters occurring in the state after August 1, 1967 in order to match federal funds under federal urban renewal programs. A grant or loan of state funds to a municipality for an urban renewal program under this section may not exceed 25 percent of the aggregate of the net project costs of the urban renewal project. Funds shall be made available to a municipality to match federal funds only if the urban renewal project is made necessary by the disaster.

(b) The funds for the grants or loans under this section shall come from the disaster relief fund provided for in AS 44.19.048 — 44.19.050.

(c) No urban renewal project costing over $30,000,000 is eligible for grants or loans under this section.

(d) The governor shall determine the eligibility of a municipality for a grant and loan of funds to match federal funds for urban renewal. In making the determination the governor shall consider the following standards:

(1) the amount of participating money available from the United States government for urban renewal;

(2) the amount and availability of funds from other sources to meet the municipality's required contribution of matching funds;

(3) whether or not the urban renewal project was made necessary by a disaster;

(4) the needs of other municipalities damaged by the disaster for funds to match federal funds for urban renewal projects, and the urgency of the needs of other communities as compared with the community under consideration;

(5) the cost of the urban renewal project;

(6) the general welfare of the state and its inhabitants.

(e) A report of activity under this section shall be made to the legislature each year.

(f) The governor shall determine the terms and conditions of a loan made under this section.

(g) In this section "disaster" means a disaster proclaimed by the President of the United States. (§ 1 ch 20 FSSLA 1967; am § 1 ch 171 SLA 1970; am §§ 7 — 10 ch 104 SLA 1977)

Revisor's notes. — Formerly AS 44.19.177. Renumbered in 1980.

Sec. 44.19.050. "Disaster" defined. In AS 44.19.048 and 44.19.049, "disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause including, but not limited to, fire, flood, earthquake, landslide, avalanche, wind-driven water, weather condition, tsunami, volcanic activity, epidemic, air contamination, blight, infestation, explosion, riot, or the release of oil or a hazardous substance requiring prompt action to avert environmental danger or damage. (§ 1 ch 25 FSSLA 1967; am § 6 ch 104 SLA 1977; am § 5 ch 59 SLA 1986)

Revisor's notes. — Formerly AS 44.19.175. Renumbered in 1980. Also in 1980, former AS 44.19.050 was renumbered as AS 44.19.026.

Effect of amendments. — The 1986 amendment deleted "oil spill or other water contamination requiring emergency action to avert damage" preceding "volcanic activity" and "or" preceding "riot" and added the language beginning "or the release of oil" at the end of the section.

Sec. 44.19.052. Fuel emergency fund. There is established in the Office of the Governor the fuel emergency fund. When the governor determines that a shortage of fuel is sufficiently severe to justify state assistance the governor may make a grant from the fuel emergency fund to a city or borough, or to a village or unincorporated community, to purchase emergency supplies of fuel. (§ 37 ch 83 SLA 1980)

Revisor's notes. — Formerly AS 44.19.179. Renumbered in 1980.

Article 4. State Geographic Board.

Section
54. State Geographic Board
56. Composition
58. Duties of board
59. Alaska Native place names
60. Use of names chosen
62. Advertising or publishing a name without approval

Sec. 44.19.054. State Geographic Board. There is in the Office of the Governor a State Geographic Board. (§ 1 ch 119 SLA 1961)

Revisor's notes. — Formerly AS 44.19.350. Renumbered in 1980.

Sec. 44.19.056. Composition. The State Geographic Board consists of the commissioner of community and regional affairs, the curator of the state museum, the state historical librarian, the commissioner of transportation and public facilities, the commissioner of natural resources, the commissioner of education, the director of the division of lands, and one other person appointed by the governor. (§ 1 ch

Introduced: 2/8/90 6-2140A
Referred: Judiciary and Finance

BY SEN. HALFORD, Eliason, Coghill, Jones, Zharoff, Rodey, Kerttula, Fischer, Duncan, Kelly, Pearce, Frank, Sturgulewski

IN THE SENATE

SENATE JOINT RESOLUTION NO. 70

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

Proposing amendments to the Constitution of the State of Alaska to establish an Alaska environmental trust fund.

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

* Section 1. Article IX, sec. 7, Constitution of the State of Alaska, is repealed and readopted to read:

SECTION 7. DEDICATED FUNDS PROHIBITED. The proceeds of any State tax or license shall not be dedicated to any special purpose. This provision shall not prohibit the continuance of any dedication for special purposes existing on April 24, 1956, and shall not prohibit the dedication of revenue under Sections 15 and 17 of this article or when required by the federal government for State participation in federal programs.

* Sec. 2. Article IX, Constitution of the State of Alaska, is amended by adding a new section to read:

SECTION 17. ALASKA [ENVIRONMENTAL] TRUST FUND. Amounts recovered by the State from claims relating to the discharge of crude oil [from the Exxon Valdez on March 24, 1989,] that exceed amounts appropriated by the legislature for expenses of containment and cleanup of that discharge shall be placed in an Alaska [environmental] trust fund. The principal of the trust fund shall be managed in the manner authorized for management of the Alaska permanent fund by art. IX, sec. 15, and may be appropriated by the legislature only to meet the costs of a declared environmental disaster. The real income of the trust fund may be appropriated by the legislature for environmental protection,

as defined by law

enhancement, [and management]but the real income that is not so appropriated shall be deposited annually into the trust fund.

* Sec. 3. The amendments proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

6-2140J
Chenoweth
3/8/90

Original sponsor(s): SEN. HALFORD, Eliason, Coghill, Jones, Zharoff, Rodey, Kerttula, Fischer, Duncan, Kelly, Pearce, Frank, Sturgulewski

IN THE SENATE BY THE JUDICIARY COMMITTEE

CS FOR SENATE JOINT RESOLUTION NO. 70 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

Proposing amendments to the Constitution of the State of Alaska to establish an Alaska environmental trust fund.

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

* Section 1. Article II, sec. 14, Constitution of the State of Alaska, is amended to read:

SECTION 14. PASSAGE OF BILLS. The legislature shall establish the procedure for enactment of bills into law. No bill may become law unless it has passed three readings in each house on three separate days, except that any bill may be advanced from second to third reading on the same day by concurrence of three-fourths of the house considering it. Except for appropriations of the principal and real income of the Alaska environmental trust fund under Article IX, Section 17, no [NO] bill may become law without an affirmative vote of a majority of the membership of each house. The yeas and nays on final passage shall be entered in the journal.

* Sec. 2. Article IX, sec. 7, Constitution of the State of Alaska, is repealed and readopted to read:

SECTION 7. DEDICATED FUNDS PROHIBITED. The proceeds of any State tax or license shall not be dedicated to any special purpose. This provision shall not prohibit the continuance of any dedication for special purposes existing on April 24, 1956, and shall not prohibit the dedication of revenue under Sections 15 and 17 of this article or when required by the federal government for State participation in federal programs.

* Sec. 3. Article IX, Constitution of the State of Alaska, is amended by adding a new section to read:

SECTION 17. ALASKA ENVIRONMENTAL TRUST FUND. Amounts recovered by the State from claims relating to the discharge of crude oil or a hazardous substance that exceed by at least $25,000,000 the amounts appropriated by the legislature for expenses of containment and clean-up of the discharge on which the claims were made shall be placed in an Alaska environmental trust fund. The principal of the trust fund shall be managed in the manner authorized for management of the Alaska permanent fund by Section 15 of this article, and may be appropriated by the legislature only to meet the cleanup and restoration costs of a declared environmental disaster. The real income of the trust fund may be appropriated by the legislature for environmental protection or enhancement, as defined by law, but the real income that is not so appropriated shall be deposited annually into the trust fund. An appropriation may be made under this section only if the appropriation is approved by three-fourths of the membership of each house of the legislature. The legislature shall implement this section.

* Sec. 4. The amendments proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

deleted -
3/4 vote for appropriation
deposit in earnings
added back -
management

6-2140H ✓
Chenoweth
3/7/90

Original sponsor(s): SEN. HALFORD, Eliason, Coghill, Jones, Zharoff, Rodey, Kerctula, Fischer, Duncan, Kelly, Pearce, Frank, Sturgulewski

IN THE SENATE BY THE JUDICIARY COMMITTEE

CS FOR SENATE JOINT RESOLUTION NO. 70 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

Proposing amendments to the Constitution of the State of Alaska to establish an Alaska environmental trust fund.

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

* Section 1. Article IX, sec. 7, Constitution of the State of Alaska, is repealed and readopted to read:

SECTION 7. DEDICATED FUNDS PROHIBITED. The proceeds of any State tax or license shall not be dedicated to any special purpose. This provision shall not prohibit the continuance of any dedication for special purposes existing on April 24, 1956, and shall not prohibit the dedication of revenue under Sections 15 and 17 of this article or when required by the federal government for State participation in federal programs.

* Sec. 2. Article IX, Constitution of the State of Alaska, is amended by adding a new section to read:

SECTION 17. ALASKA ENVIRONMENTAL TRUST FUND. Amounts recovered [from the Exxon Valdez] by the State from claims relating to the discharge of crude oil ^ or a hazardous substance that exceed by at least $25,000,000 the amounts appropriated by the legislature for expenses of containment and clean-up of the discharge on which the claims were made shall be placed in an Alaska environmental trust fund. The principal of the trust fund shall be managed in the manner authorized for management of the Alaska permanent fund by Section 15 of this article, and may be appropriated by the legislature only to meet the ^ costs of a declared environmental disaster. The real income of the trust fund may be appropriated by

the legislature for environmental protection, enhancement, and management, as defined by law, but the real income that is not so appropriated shall be deposited annually into the trust fund. The legislature shall implement this section.

* Sec. 3. The amendments proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

6-2140E
Chenoweth
2/23/90

BY SEN. HALFORD, Eliason, Coghill, Jones, Zharoff, Rodey, Kerttula, Fischer, Duncan, Kelly, Pearce, Frank, Sturgulewski

IN THE SENATE BY THE JUDICIARY COMMITTEE

CS FOR SENATE JOINT RESOLUTION NO. 70 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

Proposing amendments to the Constitution of the State of Alaska to establish an Alaska environmental trust fund.

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

* Section 1. Article II, sec. 14, Constitution of the State of Alaska, is amended to read:

SECTION 14. PASSAGE OF BILLS. The legislature shall establish the procedure for enactment of bills into law. No bill may become law unless it has passed three readings in each house on three separate days, except that any bill may be advanced from second to third reading on the same day by concurrence of three-fourths of the house considering it. Except for appropriations of the principal and real income of the Alaska environmental trust fund under Article IX, Section 17, no [NO] bill may become law without an affirmative vote of a majority of the membership of each house. The yeas and nays on final passage shall be entered in the journal.

* Sec. 2. Article IX, sec. 7, Constitution of the State of Alaska, is repealed and readopted to read:

SECTION 7. DEDICATED FUNDS PROHIBITED. The proceeds of any State tax or license shall not be dedicated to any special purpose. This provision shall not prohibit the continuance of any dedication for special purposes existing on April 24, 1956, and shall not prohibit the dedication of revenue under Sections 15 and 17 of this article or when required by the federal government for State participation in federal programs.

* Sec. 3. Article IX, Constitution of the State of Alaska, is amended by adding a new section to read:

SECTION 17. ALASKA ENVIRONMENTAL TRUST FUND. Amounts recovered by the State from claims relating to the discharge of crude oil that exceed amounts appropriated by the legislature for expenses of containment and cleanup of the discharge on which the claims were made shall be placed in an Alaska environmental trust fund. The principal of the trust fund shall be managed in the manner authorized for management of the Alaska permanent fund by Section 15 of this article, and may be appropriated by the legislature only to meet the cleanup and restoration costs of a declared environmental disaster. The real income of the trust fund may be appropriated by the legislature for environmental protection or enhancement, as defined by law, but the real income that is not so appropriated shall be deposited annually into the trust fund. An appropriation may be made under this section only if the appropriation is approved by three-fourths of the membership of each house of the legislature.

* Sec. 4. The amendments proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

S J R

72

Patrick M. Rodey
Senator

Alaska State Legislature

Senate

3111 C. St., Suite 510
Anchorage, Alaska 99503
(907) 561-7618

During Session:
P.O. Box V
Juneau, Alaska 99811
(907) 465-3793

Monday, March 5, 1990

M E M O R A N D U M

To: Senator Jan Faiks, Chair
Senate Judiciary Committee

From: Senator Pat Rodey Pat

Subject: CSSJR 72 (L&C) - Economic Development Fund

The purpose of this legislation is to expand the opportunities for new development and redevelopment that would have a positive impact on the State of Alaska.

The Economic Development Fund would use one-half of one percent of the annual receipts of the State taxes on oil and gas. In fiscal year 1989 the State collected about $950 million in oil and gas taxes which would have resulted in approximately $4.75 million available to the Fund. The measure as originally written would have provided for only one-quarter of one percent of the annual receipts but the Senate Labor & Commerce Committee decided to raise the amount.

Along with the annual deposits in to the fund, any earnings or repayments that the fund receives from its activity would go back into the fund. This will enable the fund to develop a stable and ongoing source of investment dollars.

The Board of Directors would operate similar to the board of the Permanent Fund Corporation. They would set up the guidelines for a prudent investment policy with the guidance of the Legislature.

Article IX

Finance and Taxation

Section 1 - Taxing Power.

The power of taxation shall never be surrendered. This power shall not be suspended or contracted away, except as provided in this article.

Section 2 - Nondiscrimination.

The lands and other property belonging to citizens of the United States residing without the State shall never be taxed at a higher rate than the lands and other property belonging to the residents of the State.

Section 3 - Assessment Standards.

Standards for appraisal of all property assessed by the State or its political subdivisions shall be prescribed by law.

Section 4 - Exemptions.

The real and personal property of the State or its political subdivisions shall be exempt from taxation under conditions and exceptions which may be provided by law. All, or any portion of, property used exclusively for non-profit religious, charitable, cemetery, or educational purposes, as defined by law, shall be exempt from taxation. Other exemptions of like or different kind may be granted by general law. All valid existing exemptions shall be retained until otherwise provided by law.

Section 5 - Interests in Government Property.

Private leaseholds, contracts, or interests in land or property owned or held by the United States, the State, or its political subdivisions, shall be taxable to the extent of the interests.

Section 6 - Public Purpose.

No tax shall be levied, or appropriation of public money made, or public property transferred, nor shall the public credit be used, except for a public purpose.

Section 7 - Dedicated Funds.

The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in Section 15 of this article or when required by the federal government for state participation in federal

programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska. [Amendment approved November 2, 1976 - Effective February 21, 1977]

Section 8 - State Debt.

No state debt shall be contracted unless authorized by law for capital improvements or unless authorized by law for housing loans for veterans, and ratified by a majority of the qualified voters of the State who vote on the question. The State may, as provided by law and without ratification, contract debt for the purpose of repelling invasion, suppressing insurrection, defending the State in war, meeting natural disasters, or redeeming indebtedness outstanding at the time this constitution becomes effective. [Amendment approved November 2, 1982 - Effective December 24, 1982]

Section 9 - Local Debts.

No debt shall be contracted by any political subdivision of the State, unless authorized for capital improvements by its governing body and ratified by a majority vote of those qualified to vote and voting on the question.

Section 10 - Interim Borrowing.

The State and its political subdivisions may borrow money to meet appropriations for any fiscal year in anticipation of the collection of the revenues for that year, but all debt so contracted shall be paid before the end of the next fiscal year.

Section 11 - Exceptions.

The restrictions on contracting debt do not apply to debt incurred through the issuance of revenue bonds by a public enterprise or public corporation of the State or a political subdivision, when the only security is the revenues of the enterprise or corporation. The restrictions do not apply to indebtedness to be paid from special assessments on the benefited property, nor do they apply to refunding indebtedness of the State or its political subdivisions.

Section 12 - Budget.

The governor shall submit to the legislature, at a time fixed by law, a budget for the next fiscal year setting forth all proposed expenditures and anticipated income of all departments, offices, and agencies of the State. The governor, at the same time, shall submit a general appropriation bill to authorize the proposed expenditures, and a bill or bills covering recommendations in the budget for new or additional revenues.

Section 13 - Expenditures.

No money shall be withdrawn from the treasury except in accordance with appropriations made by law. No obligation for the payment of money shall be incurred except as authorized by law. Unobligated appropriations outstanding at the end of the period of time specified by law shall be void.

Section 14 - Legislative Post-Audit.

The legislature shall appoint an auditor to serve at its pleasure. He shall be a certified public accountant. The auditor shall conduct post-audits as prescribed by law and shall report to the legislature and to the governor.

Section 15 - Alaska Permanent Fund.

At least twenty-five per cent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the State shall be placed in a permanent fund, the principal of which shall be used only for those income-producing investments specifically designated by law as eligible for permanent fund investments. All income from the permanent fund shall be deposited in the general fund unless otherwise provided by law. [Amendment approved November 2, 1976 - Effective February 21, 1977]

Section 16 - Appropriation Limit.

Except for appropriations for Alaska permanent fund dividends, appropriations of revenue bond proceeds, appropriations required to pay the principal and interest on general obligation bonds, and appropriations of money received from a non-State source in trust for a specific purpose, including revenues of a public enterprise or public corporation of the State that issues revenue bonds, appropriations from the treasury made for a fiscal year shall not exceed $2,500,000,000 by more than the cumulative change, derived from federal indices as prescribed by law, in population and inflation since July 1, 1981. Within this limit, at least one-

third shall be reserved for capital projects and loan appropriations. The legislature may exceed this limit in bills for appropriations to the Alaska permanent fund and in bills for appropriations for capital projects, whether of bond proceeds or otherwise, if each bill is approved by the governor, or passed by affirmative vote of three-fourths of the membership of the legislature over a veto or item veto, or becomes law without signature, and is also approved by the voters as prescribed by law. Each bill for appropriations for capital projects in excess of the limit shall be confined to capital projects of the same type, and the voters shall, as provided by law, be informed of the cost of operations and maintenance of the capital projects. No other appropriation in excess of this limit may be made except to meet a state of disaster declared by the governor as prescribed by law. The governor shall cause any unexpended and unappropriated balance to be invested so as to yield competitive market rates to the treasury. [Amendment approved November 2, 1982 - Effective December 24, 1982]

Article X

Local Government

Section 1 - Purpose and Construction.

The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.

Section 2 - Local Government Powers.

All local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only.

Section 3 - Boroughs.

The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.

SJR

78

STEVE COWPER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 2, 1990

The Honorable Tim Kelly
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a joint resolution proposing an amendment to the Alaska Constitution to give rural residents a priority for subsistence uses of fish and wildlife.

In Title VIII of the Alaska National Interest Lands Conservation Act ("ANILCA"), P.L. 96-487, 94 Stat. 2371, 2422 (1980), the United States Congress established a priority for subsistence uses of fish and wildlife by rural residents on federal land, and provided that the priority would be implemented by the secretaries of interior and agriculture unless the state enacted legislation affording the same priority. In ch. 52, SLA 1986, the legislature gave rural residents a priority for subsistence uses of fish and wildlife. The legislature enacted ch. 52, in part, to prevent a federal takeover of fish and wildlife management on federal land, an action with which I wholeheartedly agree.

In McDowell v. State, 785 P.2d 1 (1989), however, the Alaska Supreme Court held that a subsistence priority for rural residents violates the Alaska Constitution. This raises the distinct possibility that the state will lose management of fish and wildlife on federal land and, conceivably, statewide. Such a result is simply unacceptable. It also means that the state might find it difficult, if not impossible, to ensure that rural residents most reliant on fish and wildlife have the necessary opportunities to take those resources when needed.

Section one of the joint resolution would add a new section to art. VIII of the Alaska Constitution to ensure that the constitution does not prohibit (1) a subsistence priority for rural residents, and (2) the allocation of fish and wildlife for subsistence uses on the basis of local or

community residence, availability of alternative resources, and customary and direct dependence on a fish or game population as a mainstay of livelihood. This would give the legislature clear constitutional authority to enact laws that are consistent with the subsistence provisions of ANILCA.

Section 2 of the joint resolution would validate, ratify, and reinstate those provisions enacted by ch. 52, SLA 1986, held invalid by the Alaska Supreme Court in the McDowell decision. While the court declared that those provisions were inconsistent with the constitution as it read at the time of the decision, they have not been repealed by the legislature nor declared void in a final court judgment. (In any event, while there is a presumption that a constitutional amendment is not retrospective, case law from this and other jurisdictions makes clear that an amendment will have retroactive effect if such an intent is clearly expressed, as here. See Mathews v. Quinton, 362 P.2d, 932, 938 -- 939 [Alaska 1961].) By reinstating and ratifying the provisions of the 1986 law, the state would be back in the same position it was in before the McDowell decision, but with the certainty that the provisions of the 1986 law are constitutional.

Section 3 of the joint resolution is, essentially, the standard language directing the lieutenant governor to place the proposed constitutional amendment, including the statement of intended effect, before the voters in a single ballot proposition at the next general election.

I urge your prompt and favorable action on this measure.

Sincerely,

Steve Cowper
Governor

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SJR 78
PUBLISH DATE: 3/2/90

FISCAL NOTE

REQUEST:

Revision Date: 3/2/90
Title: Constitutional Amendment: Subsistence
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Dept. of Fish and Game
BRU:

Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

No FY 90 impact.

Prepared by: Molly McCammon
Phone: 465-4100
Division: Commissioner's Office
Date: 3/1/90

Approved by Commissioner: [signature]
Date: 2-28-90
Agency:

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

go0450sJ
Utermohle
5/4/90

Original sponsor(s): Rules/Governor

IN THE SENATE BY THE RESOURCES COMMITTEE

CS FOR SENATE JOINT RESOLUTION NO. 78 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

Proposing an amendment to the Constitution of the State of Alaska relating to subsistence uses of fish and wildlife; and providing for an effective date for the amendment.

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

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

SECTION 19. SUBSISTENCE USES OF FISH AND WILDLIFE. Consistent with the sustained yield principle, the legislature may grant a preference to and among residents of rural areas of the State for the taking of fish and wildlife for subsistence uses.

* Sec. 2. In addition to authorizing the legislature to enact laws relating to granting a preference for subsistence uses, the intent of the amendment proposed by this resolution is to (1) validate, ratify, and reinstate state subsistence laws, including provisions of ch. 52, SLA 1986, that are consistent with federal laws relating to subsistence uses; and (2) allow the state to retain management of fish and wildlife on federal land.

* Sec. 3. The amendment proposed by this resolution, and the intent of the amendment as set out in this resolution, shall be placed before the voters of the state as one ballot proposition at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

* Sec. 4. The amendment proposed by this resolution if approved by the voters is effective immediately upon certification of the election returns