

ALASKA
7300

LEGISLATURE
HOUSE STATE

COMMITTEE
AFFAIRS

FILES

1991-1992

8672

up to the successful conclusion of his campaign in 1934. Taking as his point of departure the progressive notion of re-establishing political responsibility among public servants, Norris candidly put forth the case for the unicameral legislature - proposing a small lawmaking body elected on a non-partisan basis in place of the large, unwieldy, often violently partisan conventional arrangement.

The Nebraska Senator in typical fashion began his discussion by citing criticism after criticism of the existing framework. He concentrated his attack upon the "undemocratic" conference committee which meets when bills passed in both houses vary in content. This process, Norris maintained, grants arbitrary power to the few men who are chosen to put legislation in final form. Making matters worse, he added, is the fact that this "third house", often meeting behind closed doors, is a haven for lobbyists who usually need to influence only two or three legislators. When, finally, the conference report reaches the separate houses, Norris went on, individual lawmakers find it difficult to express opposition to any specific provision that the bill in revised form contains. In turn, the conscientious citizen cannot properly evaluate the efforts of his representative. The end result is a travesty of the democratic process.⁷

The unicameral legislature, small in size, Norris continued, would be free of the evils characteristic of the two-house system. Conceding that in theory a larger body is supposed to be more representative of the citizenry, he argued that in practice each man loses his individual rights. Committees must determine procedure; by special rules there is a deprivation of the right to offer amendments; and there is less time for deliberation. Writing much later on the same thought, Norris asserted that professional lobbyists had told him that the easiest situation to handle was the large legislative body. Here only two or three leaders need be controlled, while in a small body "every

⁷ *New York Times*, January 28, 1923.

member has all the rights of every other member . . . and is much more difficult to control."⁸

The Senator's final proposal, and the one nearest his heart, was the election of representatives on a non-partisan basis. Since his later years as a Congressman, Norris had himself been free of blind party loyalty. To him, the Republican party was subject to the same influences that dominated the Democratic party; both "were machine controlled, and the Democratic and Republican machines [the Muscle Shoals fight had taught him] . . . worked in perfect harmony and brotherly love."⁹ The removal of this stumbling block to good legislation Norris thus attached to his unicameral reform.

Hollow as these proposals may have sounded in the Harding-Coolidge era, the unicameral idea was an old one in America. The first constitutions of Pennsylvania, Vermont and Georgia provided for single-house legislatures, although in each case a board of censors was established and in effect operated as a second house. Of these states, Vermont kept the arrangement longest — until 1836. Approximately seventy years elapsed before the idea again took hold, when during the progressive period, Governors of six different states recommended to constitutional conventions revision along unicameral lines. In New York and Ohio the reform was considered but not acted upon; in Oregon, Oklahoma and Arizona the people themselves turned down efforts to institute the single deliberative assembly. A joint legislative committee of Nebraska studied the possibility and filed a favorable report, but little was done until six years later, in 1919, when a motion before the constitutional convention providing for a unicameral body was defeated by a close vote.¹⁰

While one feature of the composite Norris plan had thus become familiar to Nebraskans, the foundation had been

⁸ Norris to John M. Paul, February 3, 1934, Norris MSS.

⁹ *Fighting Liberal*, p. 96.

¹⁰ *Time*, XXIX (January 11, 1937), 16-18; *Congressional Digest*, XVI (August-September, 1937), 197-224.

laid for another. Back in 1909, partisanship had been abolished in elections all the way from local boards of education to State Superintendent and in the judiciary from the lower courts to the supreme bench. Yet these moves were insignificant next to Norris' proposed governmental change, and the very radical nature of his program contributed to the ten-year delay in his campaign.

There were, of course, compelling reasons why to Senator Norris and to others 1933 loomed as a good year in which to launch the fight in Nebraska for the unicameral legislature. The depression itself bred much discontent with existing institutions, and once again Americans appeared willing to implement new and challenging ideas. Furthermore, the Democratic landslide of 1932 brought in its wake a Nebraska legislature sporting inexperienced lawmakers whose first efforts proved unimaginative and fruitless.¹¹ Finally, there was Senator Norris himself, now a towering figure not only in his home state but across the nation as well. The "fighting liberal's" brilliant record in Washington and the promise of further achievement gave him a measure of prestige and influence which few politicians can boast in their lifetime. Indeed, by the time the unicameral campaign was begun, Norris had lived down his reputation as a member of that "little group of willful men who attempted to sabotage President Wilson's preparedness efforts in 1917. People had come to know the Senator as the man who had labored incessantly for the "farm bloc" throughout the 1920's and had been remarkably successful in securing a national labor anti-injunction law in 1930, acceptance by Congress of his proposed "lame-duck" amendment to the United States Constitution in 1932, and, finally, enactment of his Tennessee River Valley plan in 1933. He was rapidly on his way to gaining the reputation later described by the once-critical *New York Times* as "a contemporary Founding Father . . . always remote from the scramble of politics . . . a thinker and a philosopher."¹²

¹¹ *New York Times*, January 7, 1934; John P. Senning, *The One-House Legislature* (New York, 1937), p. 51.

¹² January 6, 1937.

Busy as Norris was in Washington in 1933, he never lost sight of his earlier declarations on the unicameral experiment. To be sure he was no longer interested in retiring from national politics to devote all of his time to the one-house campaign, but he was willing more than ever to plunge himself into such a movement. To a friend he optimistically announced that his reform "could be brought about if we would organize and make the right kind of a fight."¹³ Hard on the heels of this—and other similar statements—came letters of support and encouragement from people all over Nebraska. So enthusiastic was this response that Colonel John G. Maher, long one of the Senator's close associates and a pillar in the single-house movement, called a public meeting in Lincoln on February 22, 1934. Appropriately, Norris was invited to deliver the main address in behalf of the unicameral reform, and the campaign was under way.

Senator Norris took full advantage of his appearance in Lincoln, Nebraska to tie his reform proposal to his long-held progressive philosophy.¹⁴ He traced the origins of the democratic ideal in America, asserting that the history of our civilization has been basically a contest between the rulers and the ruled. The Constitution, he insisted, was designed in accordance with the theory that the "common people . . . were not sufficiently civilized and sufficiently educated to govern themselves." But, he continued, history has seen inevitable advances toward the achievement of democracy. Already, we have repudiated at least one of the old conservative features—the election of Senators by state legislatures. Others will follow in due course, Norris added, implying that the success of his unicameral plan in Nebraska would spur other states to adopt it.

Following Norris' impassioned speech, the enthusiastic throng of eight hundred adopted a resolution commissioning Colonel Maher to organize a committee to circulate petitions in compliance with the state constitution. Since

¹³ Norris to Dan Horrigan, November 13, 1933, Norris MSS.

¹⁴ *Congressional Record*, 73 Cong., 2 sess., 3276-3280.

preliminary details had been ironed out well before the Lincoln meeting, it was announced that 57,000 signatures were necessary to submit the question to a referendum in the November elections. Already, a careful observer, confident of the Nebraska Senator's widespread influence, had predicted that this task would be an easy one for such "an organization as the friends of Norris are prepared to perfect. . . ."¹⁵

Yet the early stages of the unicameral campaign transpired less smoothly than was anticipated. The Model Legislative Committee itself ran into difficulty when it attempted to revise the Senator's tentative proposals. Individual members were especially reluctant to include the non-partisanship feature, which, although acceptable in principle, would, they believed, endanger the rest of the amendment. Trouble had been foreshadowed when Arthur F. Mullin, leader of the Democratic party in Nebraska, was refused a compromise by Norris in which the controversial provision was to be dropped in return for Democratic support.¹⁶ Furthermore, the determined Norris refused even to listen to another committee criticism that the election of a Governor on a partisan ballot would lead to complications.¹⁷ Only on one matter—the number of representatives in the new single-house deliberative body—would the Senator compromise. Here, the issue was pure and simple. Nebraska's farmers, long the core of Norris' strength, apparently felt that fewer legislators would result in city domination of the state government, a condition which they naturally feared and abhorred. So he capitulated and acquiesced in an increase of membership to from thirty to fifty representatives, the final number to be determined by the 1935-1937 Legislature.¹⁸ With these difficulties thus ironed out, the committee drew up a set of proposals calling for: a unicameral body with members elected in single districts on a non-partisan basis; the right of a lawmaker to

introduce bills at any time during a legislative session, the only reservation being that no bill could become a law in less than five days; and, finally, salaries of \$1774 per member for two years' work together with transportation expenses to Lincoln once each session.¹⁹ In essence, the details of the unicameral plan followed closely Norris' general principles.

In the meantime, petitioners busied themselves throughout the state in an effort to obtain the required number of signatures. Here, too, obstacles were met. The chief difficulty stemmed from a provision of the state constitution stipulating that each petition could offer only twenty names and had to contain an affidavit verifying that the circulator personally witnessed every signature. Furthermore, the names had to be distributed among at least sixty-two of the ninety-three counties, burdening the unicameral organization with the task of finding petitioners in each locality. At first, volunteers were not readily available, and the committee sought funds with which to pay circulators. This effort proved futile, however, as the proposed reform engendered little enthusiasm among substantial citizens. So desperate did the situation become at one point that campaign chairman Donald Gallagher wrote discouragingly to Senator Norris in Washington suggesting the possibility of postponing the campaign for two years.²⁰ Alarmed over the drop in morale of his group, Norris generously enclosed a personal check to Gallagher for one thousand dollars to help defray mounting expenses.²¹ Fortunately, as the unicameral movement gained impetus, more and more volunteers poured into the Lincoln headquarters, and little additional money was needed.

The final and most crucial stage of the unicameral campaign came in the fall of 1934, with Senator Norris himself assuming the greatest burden. Already in September, his

¹⁵ *New York Times*, January 7, 1934.

¹⁶ *Fighting Liberal*, pp. 346, 348.

¹⁷ Senning, *The One-House Legislature*, p. 55.

¹⁸ Norris to Dan V. Stephens, November 30, 1934, Norris MSS.; *New York Times*, September 23, 1934.

¹⁹ *Congressional Digest*, XVI (August-September, 1937), 203-204; Roscoe Fleming, "Senator Norris's Legislature," *Nation*, CXLIV (January 9, 1937), 43-44.

²⁰ *Fighting Liberal*, p. 347.

²¹ *Ibid.*, p. 348.

secretary had set up quarters in the state capital, and he followed along the next month. Norris knew that the task ahead was still a difficult one, for, in spite of the work of his cohorts, the amendment had not had the advantage of being proposed in any recent session of the legislature, or recommended in a Gubernatorial message, or, for that matter, even intelligently discussed in the state press.²² Yet the determined Senator despaired not, and instead, plunged wholeheartedly into the campaign.

Senator Norris commenced his whirlwind state tour in Hastings where he humbly confessed his irritation at statements impugning his motives. People often asked, he admitted: "What does Norris get out of it?" To him, public service, not personal gain, had always been his chief inspiration.²³ In subsequent speeches he used all of the arguments at his disposal against the inefficiency and corruptibility of the traditional two-house system. Norris often cited the case in the Nebraska legislature where a majority favored a bill permitting certain municipal plants to extend lines outside the municipality just as private utilities had done.²⁴ However, as a result of clever manipulation of the conference committee, the private interests not only blocked the legislation but caused so much confusion in the process that the electorate remained totally ignorant of the issues at stake. When the air finally cleared, he added, a referendum was held and the measure received overwhelming popular support. To this illustration, Norris usually appended a quip directed at his opponents. "In every two-house Legislature," he once remarked sardonically, "if we post the checks and the balances after the end of the session we shall find that the politicians have the checks and the interests have the balances."²⁵

²² Senning, *The One-House Legislature*, p. 51; Bernice S. Engle, "Nebraska's New Unicameral Legislature," *Scholastic*, XXV (January 5, 1935), 15-16; Claudius O. Johnson, "George William Norris," in J. T. Salter (ed.), *The American Politician* (Chapel Hill, 1938), p. 100.

²³ Alfred Lief, *Democracy's Norris: The Biography of a Lonely Crusade* (New York, 1939), p. 443.

²⁴ *Literary Digest*, CXVIII (October 13, 1934), 8.

²⁵ *Time*, XXIX (January 11, 1937), 17.

Needless to say, Norris' opposition — composed largely of newspaper editors, the leaders of both parties, and a vast majority of present and past legislators—was not silent.²⁶ They literally cringed at such an irreverent attack upon the time-honored system, and cited the great authorities—Alexander Hamilton, James Kent, and Joseph Story—whose arguments in behalf of the bicameral legislature rested on a defense of property rights. As if to modernize this old version, several anti-unicameral speakers and writers emphasized the importance of maintaining two houses for checking sectional interests. It is still true, wrote Walter Dodd, "that one house does check the other to some extent."²⁷ Anticipating this objection, Norris could only reply in terms of his own experience as a member of the House of Representatives and the United States Senate. "With very few exceptions," he said, "it makes . . . little difference whether a representative lives in a rural community, or whether he comes from the heart of a large city. . . ."²⁸ He himself had always been sympathetic to labor's plight though his particular community and state were essentially rural. Norris did concede, however, that states with large urban centers should strive to attain sectional balance in an experimental unicameral legislature.

As the unicameral campaign drew to a close in early November, the Norris organization was confident that their reform would "receive a larger vote than people expected."²⁹ Certainly, its fate captured national attention in the period immediately before and shortly after its enactment. *Collier's* had early come out strongly against the idea on the ground that a one-house legislature of so few members "is a plea for authority more centralized."³⁰ The Representative Government Association concurred, and in a pamphlet added that the proposed "un-American change

²⁶ John P. Robertson to William J. Froelich, November 21, 1934, Norris MSS.; Roscoe Fleming, "Senator Norris's Legislature," *Nation*, CXLIV (January 9, 1937), 43-44; Senning, *The One-House Legislature*, pp. 58-59.

²⁷ *Congressional Digest*, XVI (August-September, 1937), 221.

²⁸ Norris to Andrew R. Shottky, March 30, 1934, Norris MSS.

²⁹ *Fighting Liberal*, p. 350.

³⁰ "One Man Can Do It," *Collier's* XCI (March 25, 1933), 50.

. . . would break down the hold which the people had over their representatives."³¹ Even the *Christian Science Monitor* cited the desire for "centralization and authority", but looked at the proposal in a more favorable light,³² while the *Saturday Evening Post* insisted that there was no justification whatever for a state bicameral legislature. Originally, they added, senators "were expected to be of superior wealth and social standing", and property qualifications were required of electors of the upper house. In recent times, however, aside from manner and size of apportionment, the only difference in the two houses has been that senators serve longer terms.³³ Finally, the American Legislators' Association conducted a survey of segments of the population and concluded that fifty-nine percent of those polled opposed the Nebraska experiment.³⁴ Significantly, state and federal legislators rejected it by a vote of approximately three to one, while professors of government and others engaged in research along these lines favored it four to one.

The result of the Nebraska unicameral campaign in November, 1934 was, indeed, decisive. The proposed amendment carried the state by a plurality of over ninety thousand votes. Only eight counties out of ninety-three, Norris happily noted, turned down his idea.³⁵ For him, the triumph was a rich reward following a more vigorous campaign than he had ever waged as a candidate for an elective office. But in his customarily modest way, the Senator took little personal credit for the victory, applauding, instead, the stellar efforts of his organization and the enlightened state of the Nebraska electorate.³⁶

³¹ Senning, *The One-House Legislature*, p. 58.

³² November 14, 1934.

³³ "A More Perfect Democracy," *Saturday Evening Post*, CCVII (August 4, 1934), 22.

³⁴ "Two Houses — Or One?" *State Government*, VII (October, 1934), 207-208.

³⁵ *Fighting Liberal*, p. 350.

³⁶ John P. Robertson to Charles M. Kearney, November 27, 1934; Robertson to William J. Froelich, November 21, 1934; Norris to William Jurgensen, November 30, 1934, Norris MSS.; *Fighting Liberal*, p. 350.

It was another two years before the unicameral reform actually went into effect in Nebraska, and in the meantime, Norris returned to his desk in Washington.³⁷ His work, however, was not forgotten. When in January, 1937, the one-house legislature commenced its deliberations, the aging Senator was invited to deliver the first message. Proudly standing before his peers, he took this momentous occasion to appeal once again in behalf of the progressive cause. Sensitive to the role that unicameralism might play in improving democratic government, Norris asked for the cooperation of all, and warned that lobbyists, politicians "and every representative of greed and monopoly. . . [are] hoping and praying your work will be a failure."³⁸ Upon completing his remarks, Norris received a standing ovation and was escorted from the platform by several prominent Nebraska leaders.

Undoubtedly, Senator Norris' victory in his home state, in 1934, resulted from a renewed spirit of liberalism and experimentalism which swept across the nation in the depression years together with his own personal dedication and determination. The "gentle knight of American progressive ideals", as President Franklin D. Roosevelt so aptly called him, had again succeeded in achieving a specific objective within a tradition of reform which had guided his political career for over a quarter of a century. If today the Norris formula for the perfection of representative government and the realization of the democratic ideal appears too simple and perhaps somewhat naive, it is because simplicity and perhaps even naivete were characteristics of the progressive impulse as it sprang out of nineteenth-century America. George Norris was a product of that America, and her inherent belief in the perfectibility of human institutions.

³⁷ There were again rumors that Norris would retire from the Senate and run for Governor of Nebraska, thus to help initiate the new system. See *New York Times*, November 9, 1934.

³⁸ *Ibid.*, January 6, 1937.

information

clerk of the legislature

Patrick J. O'Donnell
Clerk of the Legislature
Room 2018, State Capitol
(402) 471-2271

The clerk's office publishes a roster listing names, phone numbers, committee assignments, and other information about state senators. Also available during the legislative session is information regarding weekly hearing schedules, the daily agenda, and daily worksheets showing the status of all bills.

Subscriptions to the Unicameral Update, a weekly newsletter summarizing legislative activities, as well as copies of bills, daily journals, and transcripts of legislative proceedings also are available from the clerk's office.

hotline

Hotline
(402) 471-2709 (Lincoln)
(800) 742-7456 (All other areas)

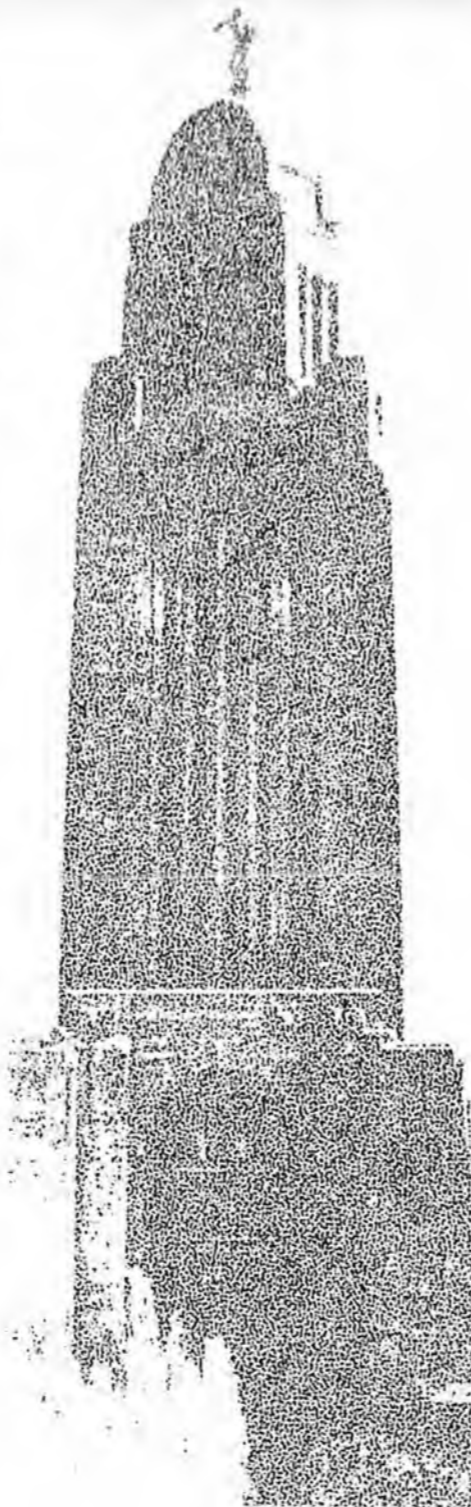
The clerk's office also operates a toll-free hotline which interested persons may call for information on bills. The hotline is in operation 8 a.m. to 5 p.m. Monday through Friday during the legislative session, except on state holidays.

public counsel

Public Counsel
Room 807, State Capitol
(402) 471-2035
(800) 742-7690

The office of Public Counsel, also known as the state ombudsman, was established by the Legislature in 1969 to provide a means by which citizen complaints against state agencies could be investigated. If an investigation shows that a mistaken, unfair, or arbitrary action has taken place, the ombudsman may work with the agency to rectify the problem. The public counsel works independently of any other branch of state government, and where appropriate, information gathered by the public counsel is kept confidential. The ombudsman's office also will answer questions relating to government.

the nebraska legislature



history

The one-house, nonpartisan Legislature is a system of state government unique to Nebraska. The other 49 states have two-chamber legislatures organized along political party lines, as Nebraska once did. From the days when Nebraska was a territory until 1937, the state had a two-house Legislature, modeled after the U.S. Congress and the British Parliament.

For years, a United States Senator from Nebraska, George Norris, had been advocating the merits of a one-house, nonpartisan legislature. The two-house system, he argued, was outdated and unnecessary. He saw it as a custom based on the British class system, which he believed had no place in a democratic society. Norris and his supporters were also critical of another feature of the two-house legislature known as the conference committee. This committee consists of a group of senators and representatives who meet in closed session to work out the differences in similar bills passed by both houses. Norris said the conference committee was contrary to democratic government, and led to private negotiation and compromise.

The nonpartisan aspect of the amendment was just as crucial to Norris as the unicameral plan. Norris believed that partisanship was a barrier that stood between elected representatives and the people, and that it must be eliminated in order for government to become truly representative.

Aside from the philosophical issues, Nebraskans also saw that paring down the legislative branch of government would save the state money; an important consideration during the Depression years.

In the face of much editorial opposition, Norris in 1934 began his initiative petition drive to place the issue on the general election ballot. His efforts paid off, and in that year's election a majority of voters in 84 of the state's 93 counties approved the unicameral amendment, thus embarking upon what was called a "great experiment" in government. Nebraska's first Unicameral Legislature met in January, 1937.

The Unicameral Legislature, which was ridiculed and doomed to failure by its early critics, has proven itself to be an efficient and accountable representative of the people. In fact, an independent study of the 50 state legislatures ranked Nebraska first in accountability and ninth in overall structure and organization.

Contributing to the high marks are Nebraska's single-member legislative districts, open meetings, accessible records, and relatively uncomplicated procedures.

After more than 50 years in action, the Unicameral Legislature no longer is an experiment. It is a responsible system of government that works for Nebraska.

citizen participation

The state senators are your elected representatives in the Nebraska Legislature, which meets each January at the State Capitol in Lincoln. Each legislature exists for two years. In odd-numbered years, a session meets for 90 days; in even-numbered years, the session is 60 days long. Each of Nebraska's 49 state legislators, elected from districts throughout the state, represents about 30,000 people. Your views, therefore, are important to your senator.

There are several ways in which concerned citizens can communicate effectively with their senator in an attempt to suggest or influence legislation. They include:

Personal Contact

Most senators agree that they are most impressed with direct personal contact from constituents in their legislative districts. When you talk to a senator, it is important to be well informed about the issue you are discussing. You can become an important source of information for your senator on the issues which concern you.

Letters

Letters are most effective when they are personal and informative. Form letters, telegrams, and postcards generally get less attention and are less effective than personal letters.

Phone Calls

Phone calls can be an effective way to establish initial contact with a senator, but since details of a conversation can be easily forgotten, it is generally a good idea to follow up a phone call with a letter.

Committee Testimony

A public hearing is required on virtually all bills which are introduced in the Legislature. At public hearings, citizens have an opportunity to make their views known to the committee, and have them incorporated into the official committee record.

Your presentation should be factual, well-organized, and concise, and you should be prepared to answer questions put to you by committee members.

Continued Contact

If you are interested in a particular bill, you can be most effective by monitoring it throughout the entire legislative process. This means keeping in contact with senators who are likely to vote for your proposal, and trying to persuade others to vote your way. You also should make sure that the governor is aware of the issue and your position on it.

lawmaking

The lawmaking process in Nebraska officially begins when a senator introduces a bill into the Legislature. But the process actually begins much earlier, when a senator first begins to formulate ideas for new laws. An idea for a new law may be proposed by anyone: concerned citizens, special interest groups, state agencies, or the governor. But it must be introduced by a senator in order for it to be formally considered.

Extra care is taken to ensure that bills are thoroughly considered before they are passed into law because, unlike the other 49 states, the Nebraska Legislature has only one house. The full Legislature has an opportunity to debate each bill at least two times before its final passage, and may propose amendments to alter the bill at each stage of debate. Committees also debate and propose amendments to bills.

Here are the steps a bill must take before becoming a Nebraska state law.

Research

First, a senator and his or her staff research the problem and possible legislative remedies. As a result of this research, a senator may introduce a bill to create a new law, or to repeal or change an existing law.

In addition to the senators' individual and committee research staffs, the Legislature has a central research division which assists senators with their research projects.

Much of the research is done during the period between sessions, when legislative committees study a variety of issues outlined in interim study resolutions passed by the Legislature.

Drafting

A senator brings his or her idea for a new law to a bill drafter, who works with the senator to transform the idea into the proper legal form for a bill. Unlike some states, bills introduced in Nebraska may contain only one subject.

Introduction

Most bills are introduced during the first 10 days of the legislative session, which begins each January. Legislative committees are limited in the number of bills they may introduce each session.

In order to introduce a bill, a senator files it with the clerk of the Legislature, who reads the title of the bill into the record, assigns it a number, and prints copies of it for public and legislative use.

Fiscal Note

The Legislative Fiscal Office prepares budget statements known as fiscal notes for each bill introduced. The fiscal note contains three estimates of the monetary impact each bill would have if it became

law. One estimate is calculated by the fiscal office staff. Another is prepared by the governor's budget office, and a third is prepared by the appropriate state agency.

In addition, the fiscal office prepares appropriation bills ("A" bills), which must be voted on separately, to accompany most bills which would have a fiscal impact.

Committee Hearing

With the exception of a few technical bills, most bills introduced into the Legislature must receive a public hearing by a legislative committee. The nine-member Reference Committee determines which bills will be heard by each of the 14 standing committees.

General File

General File is the first time the full Legislature has the opportunity to debate and vote on bills. At this stage, senators consider amendments, which may be proposed both by committees and by individual senators. General File is considered by many to be the most crucial stage of the legislative process because it is where most compromises are worked out through debate and amendment. Also, this initial vote may reflect the level of support a measure has.

As with most legislative business, it takes a vote of a majority of the Legislature (25 votes) to adopt most amendments, and to move a bill from General File to the next stage of consideration.

Enrollment and Review

Commonly referred to as "E & R", enrollment and review is a process by which amendments previously adopted are incorporated into the bill, and the entire bill is checked for technical and grammatical accuracy.

Select File

Select File is the second debating and voting stage. This step allows another opportunity for amendment, compromise, and reflection. Bills on Select File may be indefinitely postponed or advanced to the next stage.

After Select File, bills are sent to E & R again to be rechecked. Bills then are reprinted for Final Reading.

Final Reading

The Nebraska Constitution requires that, before final passage, all bills be read aloud in their entirety by the clerk of the Legislature. Senators are required to be in their seats in the legislative chamber during Final Reading.

Bills may not be amended or debated on Final Reading, but they may be returned to Select File for a specific amendment. Bills may not be voted on for final passage until at least five legislative days after the bill is introduced, and two legislative days after it is placed on the Final Reading file. Printed copies of the bill in its final form must have been available to senators for at least one legislative day before final reading.

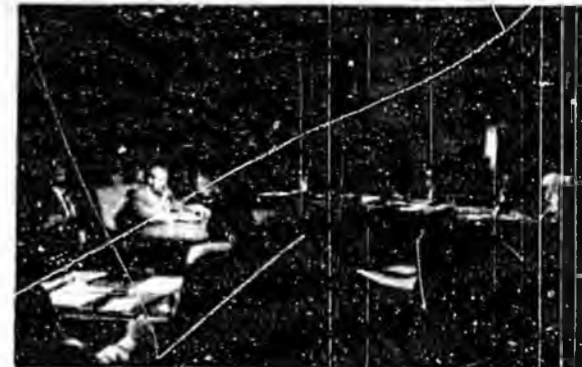


Governor

After the Legislature passes a bill on Final Reading, it goes to the governor for consideration. The governor has five days, excluding Sundays, to decide what to do with a bill.

If the governor signs a bill, or declines to act on it, the bill becomes a state law. If the governor vetoes it, the bill is returned to the Legislature with objections. A vote of three-fifths (30 members) of the Legislature will override a governor's veto.

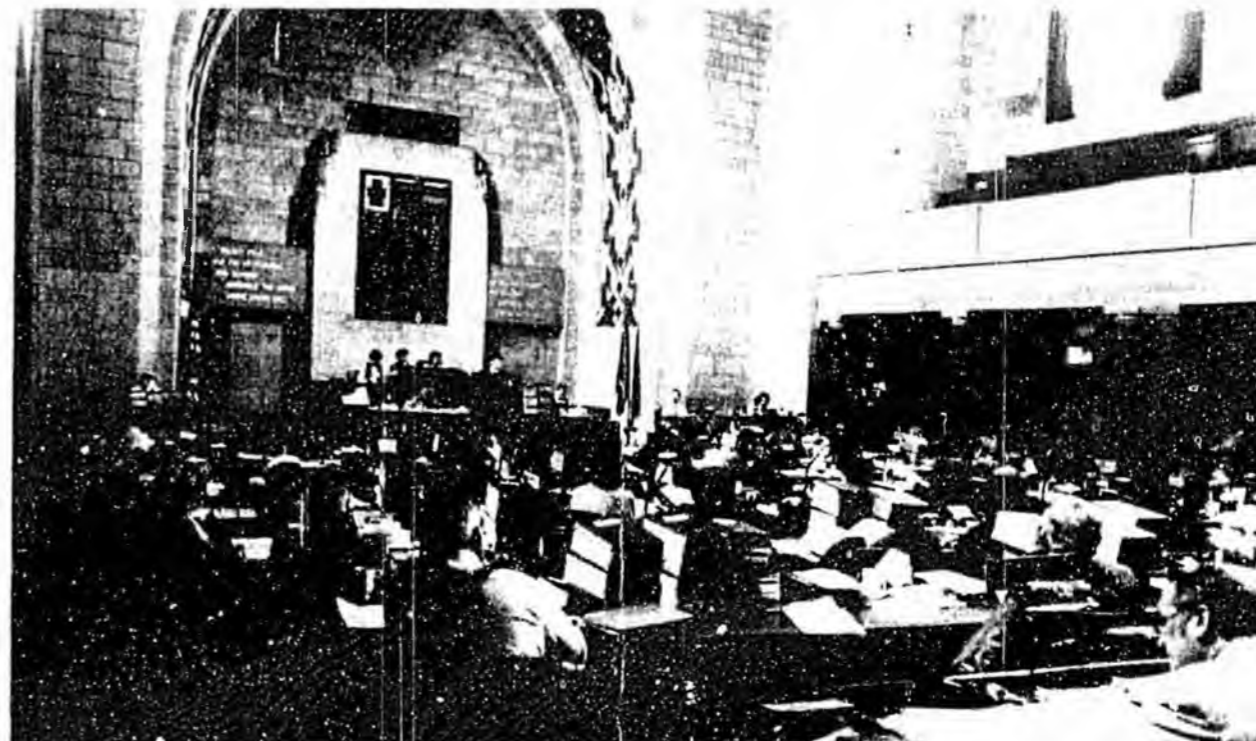
The governor also has the right to disapprove or make specific reductions of figures on state budget bills.



These are known as line item vetoes or reductions. The Legislature also may override these.

Effective Date

Most bills which are passed and approved by the governor become law three calendar months after the Legislature adjourns. However, bills may take effect prior to that date if they contain the emergency clause. It takes a vote of two-thirds (33 members) of the Legislature to pass a bill with the emergency clause.



HJR

86

HOUSE COMMITTEE REPORT

Referred: June 15, 1992

FURTHER REFERRALS:

Judiciary

Date of Committee Action: 6/17/92

By STATE AFFAIRS Committee considered:

HJR 86

HOUSE JOINT RESOLUTION NO. 86

CONST. AMDT: SUBSISTENCE PREFERENCE

Proposing an amendment to the Constitution of the State of Alaska relating to subsistence uses of fish and wildlife by residents, and establishing an effective date for the amendment.

RECOMMENDATIONS:
 be replaced with CS HJR 86 (STA) the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact Gov - Div of Elections

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Eugene G. Kubera</i>	X	<i>[Signature]</i>			
<i>[Signature]</i>	X	<i>[Signature]</i>			
<i>[Signature]</i>					
<i>[Signature]</i>					

Eugene G. Kubera
 CHAIRMAN'S SIGNATURE

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

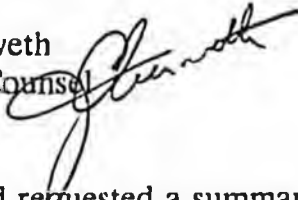
240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

June 16, 1992

SUBJECT: HJR 86, proposing an amendment to the Constitution of the State of Alaska relating to subsistence uses of fish and wildlife by residents, and establishing an effective date for the amendment.

TO: Representative Georgianna Lincoln

FROM: Jack Chenoweth
Legislative Counsel 

You have introduced HJR 86 and requested a summary of its provisions.

Section 1 of the resolution adds a new section to article VIII of the Alaska Constitution. The new section, relating to subsistence use of fish and wildlife, would require the legislature to grant a preference to residents and among residents to take fish and wildlife for subsistence use based on one or more of the following factors: customary and traditional use; cultural tradition; direct dependence; local residence; or the availability of alternative resources. A preference granted under this section of the constitution must be consistent with the sustained yield principle.

Section 2 of the resolution gives the change proposed in the preceding section an immediate effective date upon certification of the election results by the lieutenant governor.

Section 3 of the resolution provides that the two constitutional amendments proposed in the resolution shall be placed on the ballot at the next general election.

JBC:mi
92-102.mai

House Work Session on Subsistence

June 20-21, 1990

Anchorage

Transcript section on the
Constitution

resent being told that I am considered....I'm doing this in bad faith, or that it's a political move on my part -whatever way I vote - that there is only one solution, no others and if I don't vote that way, I'm somehow a bad person, that I'm continuing a tradition of prejudice, if you will. I have not ever in my life been a person who has been prejudice against anyone, and I resent the implication that I am or that I somehow have to bend over very far backwards in the other direction in order to make up for something that happened a hundred years ago. I resent that. I have to represent a large body of people, most or all of my district is considered urban rather than rural, and anyway you go, you're going to distant franchise some of those people. So I just wanted to put my two cents worth into the discussion.

Navarre:

Thank you Rep. Davis. Okay, thank you Mr. Walleri, I'm sure we'll be discussing this with you further _____ next week or so. Thank you.

Navarre: Next on the agenda we have a historical perspective and I'd like to invite Judge Stewart and George Rogers to join us.

Rogers: We got a call, I guess it was yesterday, inviting us to come up here and put this subsistence thing in something of a historical perspective. I don't know whether that's necessary or not, but we were asked to do it and so we'll do our best. Both Tom and I have been somewhat involved with the issue for many, many years. Tom and I served on the constitutional convention. Tom was the Secretary of the Convention, I was the consultant and a staff member.

Navarre: Mr. Rogers, I just want to make sure you identify yourself.

Rogers; Oh, I'm sorry, I just assumed that everybody knows us. O.K., I'm George Rogers and I an economist. I'm retired and I won't go into my entire background. I've practiced my trade here in Alaska since 1945 and I think that's enough.

Stewart: My name is Tom Stewart. I'm a retired judge of the Superior Court. I'm a lifetime Alaskan I live in a home that my father built before I was born in Juneau and have been involved in legislative matters since..vicariously since I was a child, and actively since I served in the house in 1955, and in the first State Senate in 1959 and '60. For the last 20 years...25 years I've been involved with the Judiciary. I did have some background in the resource issues because I took a particular interest in that when I was in the House in 1955 and secured the passage with the help of George Rogers who was an advisor then of the Resource Development Board, I won't go into the detail of that at the moment, but as your interested in historical background, I can tell you something of what prompted that and also some of the circumstances involved in the writing of Article 8 of the constitution.

Rogers: This, of course, I don't need to tell you this is a charged issue and discussed in legal terms, traditional terms, traditional use. I'd like to, as much as possible, focus on the necessary and practical aspects of subsistence. And in order to get that into perspective simply, my resort is always to go to demographic figures historically and look at them and see what the trends are, and then try to pinpoint what caused the changes. I won't go through all the figures here, but in the beginning, subsistence was it. It was the game, the only game in town. The original inhabitants of Alaska lived on the resources of the territory. Primarily the fish and the game and the marine mammals. I don't have to tell you that, this is obvious when you look at the map

of distribution of the native population was primarily along the coast and along the river systems. The big item was, of course, salmon which provided the basic support of the population all the way from Ketchikan to Barrow and then into the interior. And then you had various combinations of game, marine mammals..whale, walrus, other mammals that were hunted and fished. And this was the basis of which each of the societies geographically were built. The best estimates we have of the native population at the time of the first contact was about 62,000 people, as I say primarily along the coast and on the river systems. They were broken down into various sub-groups. The Eskimo, interior and coastal, the Aleut, the Athapaskan, primarily interior and then later on the Tlingit in southeast part of Alaska. The first contact with the west was followed immediately by attempts to commercialize the resources of Alaska. This had a dramatic and disastrous impact upon subsistence, the economy and the way of life. The Russians were primarily interested in one or two fur items. The sea otter and the fur seal. They needed hunters, and so they took the hunters, using force. The impact upon the Aleuts was to reduce their numbers from an estimated 15,000 in two generations to a little over 2,000. Now this may sound like a shocking figure that was made up by somebody, but it based upon the Russian's own records. The first impact was one of complete lawlessness, there was not government, with the hunters and the rival companies, it wasn't until you had the church and the navy coming in to restore some order that you began to get things civilized. That was the first encounter and a dreadful one. It impacted the subsistence because, although they did not live on sea otters, the providers of the subsistence were taken forcedly from the villages. The villages, the remaining population was left to starve. The next impact had nothing to do with the Russians. It was a smallpox epidemic that struck from the claims of the

separate part of the United States through the Columbia River then by means of the trade between the Columbia River Indians and the Southeast Indians on into the interior. This reduced the population of the Southeast natives and the Athapaskan by about 30%. That was something that would have happened in any case. But, from the 19 century on, other things happened. First was in the invasion of the Bering Sea and the Arctic Ocean by yankee whalers. This almost wiped out the subsistence base of the coastal Eskimo. Combined with this was the traders brought in the rum trade which had another devastating effect. So, between about 1839, the last good Russian census and 1880 the Eskimo was estimated by about 15%. The other one was more insidious. And that was the expansion of canned salmon. The canned salmon industry moved from California up the coast and it was a migratory thing as it wiped out the resources in the Southeast virgin territory. It was unregulated for most of the turn of the century. It wasn't until the 1920's that we began to impose some sort of a conservation management to the resource. But the effect upon the native population again was devastating. And this was all pervasive. You had the people in the interior who in the beginning didn't even know what was happening. The indians in the Copper River, for example, were used to living off the salmon. Suddenly the salmon stopped coming or in numbers that could support their population. It was because, at the mouth, a number of canneries were built. It took most of the run. The population continued to drop and the population....I'm not going to go into details, but remained at less than it was about 60% below the aboriginal levels for most of the century, up to the mid-century point. Since then the native population has recovered and the 1980 census shows a figure that is a couple of thousand over the original estimate of the native population as of the first contact. Now that was the first disastrous impact upon the subsistence base. The

taking commercially of the majority of resources that had supported these people. They made adjustments. Some of them became involved in the commercial fishing. Particularly in Southeast Alaska. So they did make adjustments to this, but they couldn't make enough adjustments and in time, and therefore, people actually died during this period. The other big impact is one that we're living with now, and that's the urbanization of Alaska. And I want to touch on that very briefly. The 1939 census which was just before the onset of WWII in Alaska, ...urban, by the way, I'm not going to sweat the definition. The U.S. Bureau of the Census defined it as places that are 2,500 people or more, so we'll use that as our benchmark and we can argue about things later if you have time. But using the census definition, 32% of Alaskans lived in urban places. Of the 1970 census 81% of Alaskans lived in urban places. Not only did the number of urban dwellers increase in development terms, but, of course in absolute terms. The 1986 estimates, give it a 79%. Alaska lost a few people as you recall right after the oil price dropped. Interestingly enough, what we would then call the people that are left over, also increased. In other words the rural population didn't go away. There was persistence. If you look at the native villages, although the native urban population increased, the native villages were pretty stable. They didn't go away for the most part, some of them did, but for the most part they stayed there. Furthermore, in recent years there has been a growth. In 1939 Census, about 50,000 Alaskans lived in rural places. Those were the day when we had 72,000 people in the state total. In the 1986 estimate, 110,000 lived in rural places. In part, this is a growth of native population, recovery of native population. In part it's an option that non-natives also have exercised of living in rural places. Now how do these people survive? Again, if we go to the census data,

economic data, and this gets back to Tom's mention of 1955 legislation that we both worked on. The then Commissioner of Labor, Henry Bellamy, came to my office right after the census and said George, we've got something here we've got to take care of. He showed me and it was something I should have looked at myself, the report of the cash income received by census division in the rural areas. These were substantially below, these levels were below what the census considered the poverty level. Now, these cash incomes included welfare, social security, aid to dependent children, all those sort of things as well as earned income. The difference had to be made up by something because these people were surviving. Sometimes not too well, sometimes quite well. There had to be ...and we used this a rough measure of the importance of subsistence. Comparing the actual cash income received in these areas with the poverty level, gave us a very significant value for what the people must have been harvesting from the land. So, the survival of the rural population was dependent upon the continuation of subsistence practices. Now they were on a cash economy, there was some employment, there were transfer payments and so on. But still in all, this required the continuation of a subsistence harvest for the survival of these people. Today the same thing applies. If you look at the U.S. Department of Commerce personal income estimates for census division, which is done every year, again you will see that the per capita income level is extremely low for those areas. Which means, again, that subsistence still plays a practical role in keeping these people alive and giving them the option of living some place other than urban areas. As I say, with the increase of the rural population between '39 and '86 indicates that there is more than just traditional forces at work here. There's a choice actually going on. So, I'm going to stop talking. I could talk....

(Noise interference on tape makes speaker inaudible)

...ways of doing this. The chairman says you have three minutes. This time I wasn't given that whistle. They blew the whistle instead, so I'll stop. I just wanted to get those points over.

(tape has empty section, then begins again with someone speaking in mid-sentence)

_____: ...the equal access provision in there. The basis of it, what were some of the criterias. I think we just heard Dr. Rogers speak about one of the measurements was the cash value in rural vs. urban Alaska and that was useful, so if you can continue along those lines.

_____: I knew, Judge Stewart, I knew he was a delegate to the constitutional convention.

_____: This is Barrow, we can't hear you.

JoAnne: This is JoAnne in Juneau, and I think Anchorage is experiencing technical difficulties at this time. If we could all standby, I'm sure they're working on it.

Koponen: Juneau, I see that there is....this is Niilo Koponen in Fairbanks in the McDowell case I see that Judge Cutler has issued a memorandum of decisions severing unconstitutional portions of the statue. In otherwords, the words "rural" and areas abutting "rural". Could we have legislative/legal look at that decision and give us a reading on the

applicability on the remaining portion of the statute? I don't mean immediately, but obviously we'll need that by the time we get down there.

Navarre: Yes **Nilu**, this is Rep. Navarre, Department of Fish and Game and Department of Law are working on that as we speak and they may be back this afternoon. And they may have a preliminary discussion available for this afternoon and, if so, we'll go through that this afternoon and it will be available in Juneau.

Koponen: Yeah, okay, I prefer to read...I read much faster than I listen and some of this is interminable.

Navarre: Okay, thank you. Judge Stewart I think our technical difficulties are solved.

_____: (inaudible speaker)

Koponen: Well, that's a solution.

_____: (inaudible speaker)

JoAnn (?): I'm sorry, you're cutting off, would you please speak to the mike.

Judge Stewart: _____ to discuss how the resource development should occur. That section was passed, but I don't think that it ever worked in terms of the heads of the department sitting down and doing that. So when we came to the convention, in ..at the end of that year, there was not really a pattern of coordinated approach to the use of the development of the natural resources. At the convention, the committee, and I can't remember for sure who the Chairman of the committee was, my father was on the

committee. He was the Commission of Mines and had been for 30 years, from 1919 until 1949. Brook Riley was on the committee, Truman Endberg a fisherman from Dillingham was on the committee, Beau Smith, a commercial fisherman on a Troller from Ketchikan was on the committee. I believe one of the people from the F-P company in Fairbanks was on the committee and a couple of others that I can't remember for sure who they were. And when they sat down to write that article, they had real problems to know how to make an approach. There was no other state that they could look to as a pattern that had an article that dealt in an overall view of how to use and develop the resources. They had the use of an consultant and you may wish to make some contact with this gentlemen, I'm still in touch with him, his name is Vincent Ostrom. And Vince Ostrom was a professor from one of the western universities, he's now in Ohio and was the consultant to that committee. They met a lot of frustration on how to draft the article. Late in the time of the convention, one Sunday, they went to a church basement in Fairbanks, and Vince got a big blackboard and with all the members of the committees speaking, they outlined each of the topics that ought to be dealt with. They made an outline of the topics that should be dealt with and the approach that should be taken to them. And I think the basic thing was that these resources should be available to all of the people of Alaska, and that's where you find the equal access language. It was something that...I shouldn't say that they "dreamed" up, but it did not come from a pattern from other states. It was not language that had court interpretation from other state court's for example. It was new language that they thought up and that expressed their philosophies as to how the resources should be used. Subsistence, per se, I don't think was a matter on which they focused. Because it was accepted. It was the pattern that existed in the free territory of Alaska and in

territorial Alaska. And I think that when they wrote that language nobody was really sensitive to the possibility that the language could affect the fact that subsistencesubsistence was the highest priority/use of the fish and game resources, but I think that Fred Rogers could tell you that when you looked at the priority of uses, subsistence was first. Then came commercial uses, then pleasure uses, in that order. And that was a fact of life and not something that they really needed to focus on when that article was written. Now what the debates were in the committee in substance, or on the floor in the plannery session of the Constitutional Convention, I cannot tell you. My job as Secretary was primarily administrative and organizational and I was not on the floor listening to the debates and I was not in the committee sessions. George was in both of those things. So, I think that's about what I can give you, unless you have questions of me in terms of the history of how it developed.

Rogers:

My memory confirms what Tom has said, that at that time subsistence and commercial was focused primarily on fishing and not the hunting aspects of it. The hunting conflict came with what I call the explosion of urbanization. We have a new population dumped on Alaska who wanted to go out and hunt and fish. When we were doing the constitution, that was in '56, that was a long time ago. Population was much smaller, and there had been a sort of an adjustment made between commercial and subsistence take of fish. In fact, frequently the same people participated in both fisheries. The thing that's happened most recently is the recreational hunting and fishing which is expanded and created a new conflict, which I don't believe was one that we considered seriously at that time. But Tom's mentioning that the priorities we discussed which were not incorporated in language, but were probably thinking was that subsistence

first because of people's life depended on that. Commercial second because people's livelihood depended upon it, and recreational third because this contributed to people's way of life. So that was pretty much the definition we had in mind. But one thing that we did in the constitution was to leave a lot of things out. We said the legislature will take care of those. This is one of those issues.

Hoffman: So, you're saying that the subsistence issue, you felt was going to be addressed by the legislature?

Rogers: I think that that was pretty much the feeling of the group. The resources committee. It was not one that was a burning issue at the time. As I say, an adjustment has been arrived at without any help from any of us, between the fishermen, and the subsistence fisherman.

Navarre: Questions? Rep. Hudson.

Hudson: Yes, thank you Mr. Chairman. Judge Stewart, you were on the bench for many years and we are reacting to a recent to a court determination on the equal access provision, these would be the rural allocation of subsistence uses. And yet, you are living history as a part of that process, and you just told us that the subsistence uses, specifically and probably and primarily in rural Alaska, was always intended even to the original drafters for this provision in the constitution. I wonder whether or not the courts have either aired or not perhaps gone to sufficient determination as to whether or not that original intent has not beenif they haven't taken that out of contents. If you hear what I'm saying is that....

Stewart:

It's responsible. It depends on what was argued to them, because their decision is a reflection of the arguments they received. On the other hand, since subsistence was not an issue, subsistence for rural people at the time the article was written, the committee members that drafted the article were, I think, were not sensitive to the possibility that it could be interpreted in this way. I suppose, if you're asking me my opinion, I think that you'll probably have to the Constitutional Amendment that makes it clear that this priority can be established or continued. I think that historically it's always been there.

Hudson:

I guess what I'm asking is, that if in your opinion, both as someone who's been there and as a member of the bench if the authority doesn't already exist, it's the interpretation of the authority that's at fault at this time. That is that the court's today are ruling that the equal access provision does not provide for "subsistence" that the makers of the constitution had taken for granted would continue on. And so I'm wondering, you know whether or not we have to get rid of that or if you can amplify that in statutes or if some historical readings back made available to the courts wouldn't modify the courts decision today.

Stewart:

I doubt that it would. As I say, I think...let me just back up for a moment, I have a note from the honorable delegate, Jim Doogan that the other...I mentioned Truman Endberg, but also on this committee were Muktuk Marston, who obviously was a man steeped in rural culture. Frank Proctorvich, the native leader from LaRock who was reared in a village that in those days were certainly of a subsistence style flavor, and Bill Egan. They were the...all very interested in subsistence and equal rights for natives as well. I think that the writers of that language, simply did not see that given the language that there could be this

kind of a challenge. I don't have any argument with the Supreme Court looking at equal access language and saying that you can't enact laws under that constitutional language that would give preference to a class of citizens of this kind. Therefore, unless the constitution specifically recognizes a right to protect rural users, the court had no alternative.

Hudson: But the constitution also provides today...this is Bill Hudson, for the record....Also provides, today, for the sustained yield and the allocation among beneficial uses as opposed to users. Which some could argue that through the proper regulations, then perhaps, backup statutory requirements, that we could continue to provide, in effect, the continued subsistence uses, not necessarily specifically naming, say native or rural or one sector of Alaska over another, but by attacking the thing from the uses point of view as opposed to users point of view.

Stewart: It's possible. I'm certainly not going to sit here and say I have a legal opinion, you can't do that. I think it is possible. It's not something I've studied, I haven't focused on the issue until this morning. First of all, all I can give you is the historical circumstance under which it arose and that historical circumstance was and in my memory was subsistence was an engrain part of the culture. And it wasn't something that those delegates thought they were somehow going to lose given the use of the term equal access. They were specifically trying to prevent, for example, commercial interests, the commercial fishing interests from outside of Alaska from having some kind of a strangle hold. And the equal access was to assure that that wouldn't happen. But I just don't think that they had before them an issue of whether or not subsistence uses, apart from the use , would be subject to limitations under

the language that they chose. It was not being discussed. Because everybody did it, most of the communities _____ . I got a pass from high school so I could go hunt a goat. So my family could eat goat, literally. One winter we lived on moose all winter. When there was a depression in 1932. We had nothing but moose meat.

Rogers: We lived on canned salmon in San Francisco once

Stewart: But, as I say, it was a part of life, and they didn't have to focus on it separately, and I don't think they ever dreamed that that language could be interpreted as the court has done. I don't have any argument with what the court has done, because when you read the language on it's face, equal access means that. But whether or not you can come up with some statutory scheme, I'm not here to say.

Navarre: Rep. Taylor.

Taylor: Thank you Mr. Chairman. (voice inaudible - not at mike)

Phone: Dillingham can't hear the question.

Taylor: (still not at mike - difficult to understand - will do best for transcribing) I said, I think it's wonderful for both these gentlemen to be here today. I certainly appreciate the background and perspective that they, Mr. Doogan and other bring to us because we need that _____. We often abandoned just as many people have abandoned in the rural areas listening to the elders. We have lost _____ same thing in our haste to move forward with solutions to perceived problems. My concern here is the one addressed earlier by Mr. Hudson. And that is that it would appear as though we do have the opportunity to legislatively provide for a mechanism that will protect what

I think is an essential element to Alaskan life and we can do so, I believe, through the constitution where it allows us to discriminate as a legislature among uses of the resources. Now,...

Phone: We're breaking up badly.

Taylor: I can't help that. My concern at this point is that simplistic solutions have been offered. They say pass an amendment to the constitution and it will happen. The problem occurs when you practically carry out any of those simple solutions. And the problem is one of resource management. 'cuz that's the real bottom line here. We have two things I guess we're really responsible for. One is to preserve a certain life style, and an opportunity out there, I certainly support that. The second, however, is a mandate that we are to manage that resource and not allow resources to be disseminated or to be abandoned through neglect or misuse. I think that's a very difficult thing to carry out as a practical matter. When the population was much smaller, and people had an understanding, so to speak, of the need for their neighbor to have a extra moose or an extra few deer....one fella has maybe a good job and he can afford to buy groceries for his family, the other fella is out of work because the mine has shut down or whatever, and no one thought a thing about him taking an extra deer or two, it was anticipated he'd have to. If you had food, you helped him out too. Now we're into times when we've got 185 airplanes on floats flying around, and we've got snowmobiles, and we've got expanding populations and we're faced with the difficulty of trying to sort out very small practical problems in small areas. We're not really talking about big uses the resources, and yet people who are in the commercial fishing industry right now, I think, are very

frightened of this whole concept. Especially since we put in limited entry. They perceive the closure or a vault like reaction out of the state of Alaska. Closing down major fisheries resources. People who are concerned about developing this state, as far as roads, gas pipelines and other things are very concerned.....

..... than they want to do. And we certainly did not see the misuse of our court systems through the injunctive process during the year that you're talking about. People didn't go out and file _____ law suits in 1955, just so they could restrict or prevent the development of a road or a bridge or a highway. Nor did they go out and do those sorts of things and then say, "Well, you can pay us off, we'll allow you to go through now, and just take care of all of this.". Those things are now a fact of life. We work with those things every day. And.....

Stewart: I'm sure you agree with me that there are too many lawyers.

Taylor: You bet I do, Tom. We have for years. Too many good ones, we'll say that. Not enough courts. But my concern in, I think we may be able to address this in this fashion. But I'm looking for local and regional solutions on a fish and game management decision concerning the utilization of the resource. And through that providing a macrocosm for the continuation of lifestyles and cultures and other things. Because as soon as I attempt to make discriminatory decisions based upon where a person lives, what the color of their skin is, what religion they happen to practice, I think I'd find my self in complete conflict with the very tenants of this society that we all so allegedly agree with. So, I find that very difficult. It's going to be on uses, how that resource is going to be used, gonna have too much problem coming up with some stuff on it. But if it's going

to be on users.....How do I tell the fella who lives on the Kenai Peninsula, works up on the oil patch, and he wants to go back up home because it's whaling time in Barrow and he's always gone out with his family. He's always participated in that. Am I supposed to pass something something that's to preclude him from going back home and doing that? 'course, I would hope I'm not. I hope that's what _____ is saying. Everytime you attempt to carry out one of these schemes, you run into these impractical, ridiculous scenarios. I have a question for you George on percentages. Now, what percentage...what is the racial breakdown on people living in the rural areas?

Rogers: Robin, I don't have that figure here, but it is down on the native. I just can't give you that....I could get that figure for you very easily.

Taylor: Somebody told me the other day it was 60/40 roughly.

Rogers: Yeah, it may be about that now.

Taylor: Okay.

Rogers: But at one time it was almost a 100% as you know.

Taylor: Well, of course. But it isn't today, that's what I'm getting at.

Rogers: So, what I'm talking about here, and I notice I didn't use...when I talked about that, I didn't use the term rural/urban break. I think that's what makes this significant today. I used the native figure to indicate what happened to a people who were dependent upon subsistence, when you had commercial development take place.

Now we have this other club now, between the urban and rural users.

Taylor: Well, I understand that, but my frustration, I guess is that, my district, as you know Reverend, is Ketchikan, Wrangell, Petersburg. Using the numbers that you've used as a benchmark, everybody seems to grab at different numbers, some people 750, and the numbers go as high as 3 to 4 thousand as _____ urban/rural. If we use your benchmark of 2500, all of my urban dwellers would be precluded from subsistence. Many families in Wrangell and Petersburg, and even in Ketchikan who utilize.... a significant portion of their diet is foods, whether it's salmon or berries or whatever, that are gathered off the land. And I have a hard time coming back from Juneau saying "sorry folks, you're out of the business".

Rogers: See, I wasn't advocating that figure, that's one that the census uses when they figure out urban life. So let's just use that. I think I'll preface that by saying, you don't have to agree with that for purposes of this discussion, but we'll use that. Tom made reference to the resource development board constant that he and I worked on. We had a definition of rural that was based upon the size of the place of residence and whether or not it was accessible by surface transportation. In other words, isolation and size were the two things. Limited entry has as you know, and the brownie points you get to get a permit, one is the availability of alternative employment. There are lots of these things that really should be worked into our concept. And I agree with you, you can have a place that's a thousand, which is very urban, maybe a government or military outpost, that has nothing to do with the size, and in your case where you have a population that is partly dependent upon the harvest of resources, timber and fish,

but also everybody has personal use of the resources which is another term for subsistence and those things are the things that have to be protected as well as the traditional uses.

Stewart: Mr. Chairman, I don't want to try to comment on the merits of constitutional amendments legislative changes, because I'm not a student of this subject, and I really haven't given it adequate consideration to be competent in giving you responses, for example to Representative Taylor's comments. Glad I'm not on the legislature, I'm retired. If you have any questions, otherwise, I'd be glad to try to answer them, but I don't feel myself to be competent address the merits of these issues. Historically, but not currently.

Navarre: Representative Hudson.

Hudson: Thank you. I think I'm sensing that the solution has got to come from...in some form amplifying the findings behind the original intent of the constitution since that's the guiding light as far as the State of Alaska is concerned. And/or changing ANILCA since that's sort of the guiding light of the federal lands concern. Or finding some way in which we can accommodate both of them, and live within both of them. But it sounds to me, as though from your testimony, and your recollection of the fact of the subsistence use, subsistence use of fish and wildlife was always intended to remain and was not to be excommunicated by virtue of the adoption of the equal access. If I understand you right, you're saying that one of the biggest motivators perhaps to an adoption or incorporation of the equal access provision, was to make certain that the out of state fisheries activities didn't come in and gobble up all the resources. That you were more concerned in developing that provision that the economic

development of the resources and the access of the resources in order to accommodate that was very important to embody in the constitution. Is that essentially correct?

Stewart: I think so.

Hudson: As so, it seems to me as though those are findings that ought to be documented by the body at large here. So that... maybe we can't affect the McDowell case at the present time. Maybe that'll stand. Maybe, as you say, that they've dealt with that upon the merits of what was presented them on the surface. But it seems to me as though that's the kind of stuff that needs to be put into law. But it needs, in my opinion, not to users but to uses. Just like you say subsistence uses and then in law come back in and have the guts enough to define what the hell subsistence uses really are. Because we don't do that. We leave that up to some court to decide that. And I think that we, as legislators, ought to go back in and strike a consensus as to what subsistence uses are. And that may not necessarily say that just because you live in some rural part of Alaska that you are the only one that gets it. It may say that subsistence includes the customary and traditional and even try to define that to some extent, so that...we're really talking, in my opinion, only about a very limited small percentage of the total resources of Alaska. The balance of it is probably of sufficient quantity to handle the commercial needs and the personal use. And I think personal... use also needs to be....

Stewart: _____ sustained yield.

Hudson: Managed on a sustained yield always. And then from their we work it on down, but....You know we're to figure out how in the world we can make something that is not well defined

useful, and I think we've got to work on definitions. Both from the federal side as well as on the state side, and then we can protect those legitimate native and non-native rural subsistence requirements and at the same time, show that we are treating people equally. If they want to live in rural Alaska in order to have that priority, they can do so. You know. Do you think I'm on the right track in this?

Stewart: I don't have any argument in that. I just don't envy you the difficult job of trying to reach that kind of a definition.....

(Both parties speaking at once - inaudible)

Stewart: I've not seen it previously defined in law. It's going to take somebody with imagination and expertise to try to come up with it. But I don't have any argument with the principle.

Navarre: Representative Taylor.

Taylor: Yes, thank you Mr. Chairman. Tom as we struggle with this and we're not alone, we've watched legislative sessions now for over ten years struggle with this question. They tried "needs" base, that didn't work. It was held as discriminatory. We tried urban vs. rural, that certainly didn't work. And each time we tried to do...use the word you just suggested, make that definition, draw some line someplace, each time we do that, we are immediately indicating that one group or class of people someplace in this state, shall be allowed to participate in an activity...and what we're really saying is that other groups shall not be. That's where we were in the first place. As soon as we start doing that, we run into problems. How in

the world we could have survived all of this time...without the intervention of the words subsistence being mandated by federal law, I don't know. It seems to me that we survived pretty well, really. People understood what it meant, though we might not be able to clearly define it, we understood what it meant and know one abused it. I think each of you know, from living in Southeast Alaska, we had quite an activity going on, on the sale of herring eggs on kelp. Down in Frank Brackovich's old country Kowak and Craig out there in Sea Otter Sound. This product was taken under the guise of subsistence, placed in boxes and shipped to Japan and were selling for several thousand dollars a box. We're talking millions of dollars of herring eggs on kelp that went that way. Felony complaints were brought. A two or three year investigation. So we're not talking about speculated belief that somebody might abuse it. We've seen it abused. We know it can be abused. The one group of people talking about how their customarily and historically have been selling salmon eggs for almost 20 years and that that ought to be part of their right to continue to sell salmon eggs. I fished salmon a lot of years when all the eggs went right out the shoot with the gurry and heads and tails. Then I watched salmon eggs become more valuable than the entire salmon pack was. So when I hear about somebody catching a whole bunch of fish so that they can sell the salmon eggs, that doesn't sound like subsistence to me, that sounds like a commercial use. When I see herring eggs on kelp being sold for millions of dollars to Japan, it sounds like a commercial use. I don't see a lot of it on the tables _____. That's the kind of thing we're running into here. We start making these definitions, we're going to be precluding, in my district, by any numbers I've seen so far, everyone of my native families from being able to utilize subsistence. Some of these people are 80 years old and have been eating fish and deer all their lives. Now

their going to be told, "Oh no, you can't have this right. This right goes to someone who's living more rural than you are. I have a real hard time telling them they can't do that anymore, George. Just because they happen...I mean, my God, how big is Bethel? Will Bethel be precluded?

Rogers: I wished I hadn't use the census figure, but I had to use something.

Taylor: But everybody else is, George. They all are, they're all grabbing a number someplace.

Rogers: And I think that, as I quickly suggested, the definition has to be more than just that. It's a combination of factors. Yes, I agree with you, that the figure was applied nationally. We have to have a figure for Alaska and I don't think that's too difficult the way the Alaska population is distributed. I'd say 80% lives in central places and for your concern is that your constituents would be considered urban, and I agree with you that it's more than just the size, it's the lifestyle and a lot of other factors. I think we can take care of it the way we did with limited entry points. It would be a combination of things.

Stewart: Limited entry did take a constitutional amendment

Rogers: That's right, because that was a special thing andsetting up....I'm not arguing. I'm not a lawyer, thank God.

Navarre: Judge Stewart, how much difference would the courts give to...if we passed another statutory change and defined or attempted to define subsistence and even rural and then put some findings in, an interpretation of what the legislature thinks the history of the constitutional convention, with

respect to that issue, was. How much deference would the courts give that upon a review.

Stewart: The deference would come in the specific language that you used. Whether or not it was consistent or inconsistent with the language they were interpreting. I can't tell you where I've seen actual language that you're going to use and how does it measure up under what they wrote in the McDowell decision. I don't think it's impossible to come up with some statutory language that would be consistent with the existing constitution. It might satisfy the bulk of this problem. But I'm not prepared to sit here and write out some language for you. That's a difficult job. Why don't I say I'm glad you have it and not I.

Navarre: Representative Salo.

Salo: Judge Stewart, In both of these...the explanation of what equal access was originally was real helpful here. I also am hearing from you that the constitutional amendment route in order to give the legislature authority to deal with all of the hard problems that are there, would be an appropriate route for.....

Stewart: I'm not saying it's a preferable route. It's certainly a possible route. If you did it I would want to have the simplest, briefest language that enables an address to the subsistence question. And I'm not sure whether one or the other of these things that are before you is better. I think I probably was attracted to the senate language because of its brevity and apparent simplicity. But, again, I don't want to be heard to say that the constitutional amendment is the only way you can go. I think it may be possible to draft a statute focusing on use, and if you two gentlemen, Mr. Hudson and Mr. Taylor suggests on uses rather

than users, it might pass mustard under the existing constitutional language. But until I say that language, I would not presume to say, "yes, it will".

Salo: Well, if you were to try to draft a statute or essentially do what Rep. Navarre laid out in front of you, it would be an appeal process to McDowell, would it not?

Stewart: It would what?

Salo: It would constitute an appeal for process to the Supreme Court decision...

Stewart: Well, not until somebody brought a case.

Salo: Well, my question.....

Stewart: If you passed the statute and the governor signs it and it becomes law, and until somebody then challenges the validity of it.....

Salo: We can probably anticipate that though, right?

Stewart: Depending on what it says.

Salo: Well, what I'm trying to figure out is, which is the more efficient way to get to legislative authority for dealing with the more complex issues than a long term solution.

Stewart: As a matter of policy, I do not like to see the constitution amended, unless it's absolutely necessary. And especially in the form of an amendment that puts restrictions on everybody having equal rights. I would hope that some route would be found where you didn't have to do that. But, as with limited entry, it may be your only alternative. I

think I'm not very helpful to you. I think it would be desirable if you had staff people trained in this field that could attempt to come up with a statute that would pass mustard under the tests that was laid down by the court in McDowell, and what the existing constitution requires, but if you can't find language that would do that, then your alternative is the amendment.

Hudson: What's your analysis of the strict interpretation of rural subsistence preferences in ANILCA? You know, judging....basing back from where we came from as a state.

Stewart: I wouldn't presume to say. George would be more qualified than I. I'd have to have the ANILCA language before me and look at the cases it's interpreting and I've not done that. I'm not an expert.

Rogers: Yeah, I'd have to check the language too, Bill, but it....again, we're concerned about the definition of rural as a very valid one. It depends on how you define it and of course, we were dealing in that legislation with a particular group of Alaskans rather than where they lived. We were trying to settle aboriginal land claims which included subsistence use.

Navarre: George, the federal definition that there intending to use now is 2500 or below is rural, 7,000 or above in non-rural, absent any others, that I guess, findings, indicate otherwise. And the areas between 2500 and 7,000 are going to be determined based on, I guess, looking at a lot of different criteria and testimony to determine whether or not it fits the rural type of.....

Rogers: What we're talking about when we say rural is a way of life, as well as....I mean we think Robin's done that very

clearly. Talking about his old people who live in an urban, by definition, center for a living what would be considered an rural life style and this is one of the things that we find all over Alaska not just in your constituency. I'd have to re-reexamine that sort of attempt to sort of arbitrarily set the limits. It's a very tough one. I don't like to have just, what is it the census does, just one criteria for cutting it off. They have to, because they deal with statistics, we deal with people. The rural development resources court that Tom mentioned, we tried to factor in size and isolation, but then that, again, precludes your constituency. And it has to be done on the basis of how the resources are used, for what purpose. But, I'm not answering your question.

Mike Navarre

This is Mike Navarre, and they, I guess they have indicated that it's not going to be simply an arbitrary number. What they've indicated is that's what their starting point is going to be, but then they're going to factor in other criteria to try to determine whether or not it truly fits a non-rural or rural designation that they've arbitrarily used at the starting.

Rogers:

When we get the 19...which census is this?1990 return's then, I'm going to be very interested in going through all the socio and economic indicators because in the last several decades, in fact every time I live here, every decade, you have to redefine Alaska. I think precisely what we are going to have to be doing here is not just defining rural, but defining what Alaska is. And I do think that those returns are going to be very useful if they use them right.

Hudson:

This is Bill Hudson. It was rather interesting this morning when we listened to the federal managers. The

Federal Fish and Game people. They said that they picked the 2,500 as a figure out of the bureau of census. Their definition of anything over that was urban and then they picked 7,000 on the basis...in the old law Ketchikan was included in the 5 that were not rural, that were urban, considered urban, was Anchorage, Fairbanks, Ketchikan and Juneau and at that time Ketchikan had about 7,000 population, so they choose the census figures as the bottom hand and the 7,000 predicated upon that. So everybody is scrapping for some sort of an arbitrary definition. Which is why I really believe that the legislature is empowered, and should be responsible enough to really try to figure out a definition that, in fact, does what is the proper thing to do. You know that settles this thing to some extent and I think that would even help the future court cases.

Rogers: I think that has to come in the form of a statutory change. Not necessarily a change in the constitution.

Hudson: One of the possibilities, that seems to me, is...both you gentlemen speak of uses rather than user. But then if you do that, it seems to me that you would probably have to license people to make that use. (Several voices talking at once - indiscernible) Special licenses for the use that you might have to set up much more of a bureaucracy than you now have to arrive licensing. Look at the problem that limited entry had to determine with cases. And the courts still have issues about who is and who's not entitled to a permit.

Rogers: And that is true, your honor, and I think that certainly there are other and misuse of economic situations such as indicated on the permanent fund application and other wide-spread literally encompassing, all encompassing, types of things out there. And I know that's something that's

very likely is going to be involved in this, but I don't know any other way out of it. The value of the equal access, if I might just one quick one, the value of the equal access perhaps is maybe just as legitimate today as when it was incorporated originally. If that intent is carried forward. If the original intent is carried forward so that the "intent" of equal access was to make certain that all of Alaskan's had an opportunity to the resources for legitimate development or for, you know, public policy, or public interest development and not necessarily as a curtailment of the other subsistence uses.

Leman:

This is Loren Leman. Mr. Rogers you went through some interesting numbers on demographics, and I don't have the length of your history, I don't recall the mid-thirties, but I do talk to my dad who tells me many of the same stories and I do remember the mid-fifties and I can attest to what you two are representing about subsistence use going on and it just wasn't considered to be a big deal. In fact, in the community where I was raised, people would subsistence fish and typically share the early kings that were caught or reds as one were. And it just became a "thing", you know, you'd share that. That typically was done and set a net in front of a trap and now if you did that, you'd probably get shot. But then it wasn't a big deal, you know. In fact we'd even scoff at the inefficiency that some people would go through in doing it. But things are different now. But one of the things you didn't mention, and I think it's 'cuz you didn't talk about native vs. non-native, but an interesting statistic is that Anchorage is now the largest native community in the state. One of the problems I'm having, and I know Rep. Taylor talked about it, is that the proposal that was presented to us for a vote, the closing days of last session, really didn't provide for accommodating for these people and many of which I think depend on

subsistence. I've been to potlatches here in Anchorage, I don't know exactly how they got it. I don't know if it's subsistence, or commercial, or sport, or poaching or however, but it's certainly a part of their lifestyle. I'd certainly like to make sure that those people, in addition to those native people, those non-native people who really do depend on subsistence may live in Anchorage or other urban areas would have access. But at the same time I'm concerned about opening up and creating 500,000 users who all of a sudden, because if it's available, become subsistence users under a more liberal standard than the sport or recreational type regulations that we have. So, it's a....this issue is complex to me. There's not an easy answer and I appreciate what you're saying and I think of mine as more of a comment than a question. If you have any response to any of those thoughts I'd appreciate it.

Rogers:

This again is something I think that if when we get the 1990 census that we can see what has been happening. There has been an increased urbanization of native population. And the native population, as I indicated, has since WWII expanded very rapidly, almost explosively. And a great deal of that population is, as you indicate, Anchorage is the largest native community in Alaska. Southeast Alaska we have two, in addition to the regional and village corporations we have two urban corporations. These are natives who live in Sitka and Juneau who have, in a sense, asked to be incorporated because they are no longer living the life style of the village. They're living a different lifestyle. However, the traditions are still there as you point out. Potlatches and so on. Where very much is...where those of us European have certain traditions that we observe. On _____ (Burnis?) night I wear a kilt for example and that sort of silly thing, but then that's important too. There is, when we're talking about the use

of a resource, when you become urban, you change your lifestyle. You still may have traditions, but your lifestyle, the way you live can change from the way you life when you lived in the villages. And it is something that is very complex. It is something, as I said earlier, that we have to redefine Alaska every ten years. That we're going to be faced with this again. And looking at the native population, how they fit into the scheme of things. That's a very important point to bring out. The people who have traditionally been rural to become urban. Their particular place in the scheme.

Navarre: Representative Taylor.

Taylor: Thank you Mr. Chairman. I am concerned that as we continue to struggle with this problem, that we maintain before us the...what I think is the crucial issue..or the crucial word here, that's "resources". There's only a argument over how many caribou are going to be shot in a given herd while there's still a herd of caribou. If there's no longer a herd of caribou, there's no reason to argue about who's gonna get 'em, 'cuz they're gone. They're destroyed. The way we maintain that herd of caribou or that salmon run into a given stream is what we've felicitously, I think in this state call management, because I think we do a very poor job of managing our resources. And what we really usually do is manage man's activity as a predator on those resources. We don't do anything about the bears or the wolves. They won't let us touch those. They'll let us talk about what man's impact is on the resource, so what we really do is, we don't regulate the resource, we regulate men. How they're going to approach this. It would seem to me that if you have some scientific basis for the management of fish and management of ungulates in Alaska, then it ought to bear some resemblance to a scientific proposition that says we need to

maintain 'x' amount of these critters wondering around so the herd will continue to grow and be sustained. We call that sustained yield. But that's our bottom line. We can't allow any more than that to be taken. And it shouldn't matter at that point. What the use is that man might put to it. Whether it's recreational, livelihood or lifestyle. We can't kill them all off. Some where's above that limit we've got to have...we've got to establish some priorities. And as our populations, as you've indicated George, have been expanding in both our urban and our rural areas, with what appears to be a fluctuating, but somewhat finite game and fish resource. We're ending up with a conflict between...of being...we're being asked as legislators to establish who shall get this resource and have access to it and who shall not. And as you have indicated to do it just on the arbitrary basis of how many people happen to congregate together in a given community, really doesn't have to say anything about their lifestyles, who they are, what use they'll put the resource to. It doesn't say any of those things. And yet if we attempt to come up with another series of definitions, we run into the bureaucratic problem of how in the world do we administer this monster? What if instead we manage the resource and the use made of the resource, as opposed to the individual people who may, at given times, choose to use it. Limit the taking of the resource itself. As opposed to limiting the takers, and their ability to do it. One suggestion that had been made, I think Senator Halford made it, was people want to go shoot at caribou on one side of the Brooks Range, let him eat it there. If they can't eat it there, they want to take it someplace else, but we don't allow them to transport it out, then they'll probably not going to fly all the way up there and shoot a caribou for the fun of killing it. If we impose something like that now on the Kenai River, it probably wouldn't work. A whole bunch of people live in that area,

and you could probably have a greater impact on it than what would be healthy for the resource. But it seems to me, that with tunnel vision, say some groups of people living in certain areas shall have unlimited source to the resource. Someplace, whether it's the federal government or us, we've got to manage that resource so's not to kill it off.

Rogers:

Well, I would assume that that was inherent in this thing. That they would not have unlimited use of the resource. It's very much like the North Pacific Fisheries Council trying to regulate the extended fishing zone. You first of all determine what they determine optimum yield. Which is different than the maximum sustained yield. Then you put the total allowable catch, then you divide that out among the catchers. The object being, of course, to Americanize the catching. And very much the same sort of thing here is once you've established in a pseudo-scientific way of what the allowable take shall be, then you set up priorities as to how much will be allocated to each potential user of the resource. And that's when the squeeze comes, of course. And that's where, when we were talking about the constitutional convention and the discussion there the four men that....Delegate Dugan gave us their names for the ones that were constantly pushing for the....giving the priorities to the subsistence use and the commercial use second and the recreational third. That's an allocation format. What...I agree with you, first of all you've got to establish...the resource has got to be managed. The resource has to be sustained. You don't allow anyone just to go in there and arbitrarily destroy the resources simply because they have a prior right established by law. But you start with that.

Taylor:

The state of Washington, Oregon and Idaho, now...between the treaty tribes and the Boldt decision are trying to figure

out what 50% of their fishing resources...now, by the way, it's also a game resource and there's unlimited hunting going on in the state of Washington, of the elk and deer populations at night using the spotlight, the spokes at night_____. They attempted to come up with something about, oh, you could take 4 elk to a family. They couldn't figure out how to distribute what a family was. They got into arguments about that, how to make them count how many elk they were killing and so on. So I think we're going to see some population decreases as far as their _____ populations down there in the near future. Probably as significant as what they've done with our salmon. But if I got...I believe this is an example of what would fit Alaska very well, we got a very long river system with villages all along that river system that have relied for years and years, throughout history practically, that we know of, on a salmon run returning into that stream and being able to take the food they needed from that stream. Now those populations are growing according to the newspaper article today and according to your testimony based on census records, they're growing and growing significantly. Is the run growing? I don't know. Only my fisheries managers can tell me that and I don't know how many _____ (wiers?) they have in there to tell us. Is it growing or declining or whatever? We got to rely on some of the local people to tell us that. My good friend Mr. Hoffman sitting down here is very concerned about the fact that his people don't think they've been getting a very good cut out of the management of that resource in this State. It's just like you indicated historically years ago that a commercial take at the mouth of that stream, seems to be so large that there aren't enough fish that make it up the stream that they get what is fair share. Well, I'm sympathetic to what he's saying there. I'm concerned about that and their livelihood depends on that. How they're going to get by the winter

maybe. The state of Washington, they decide, basically faced with kinda the same problem. Vote decision, we're allowed to take any..a 50% of our fish, we'll decide to take them half way up the river..they find they can't open up a fishing season down there, until "X" number of fish have been caught in a given area. This raises all kinds of havoc on how you're gonna manage the fishery and what you're gonna do with it. I can see very similar problems occurring right here every time we attempt to _____. Not that the people up the river shouldn't get the fish. I don't think anybody in this legislature would deny them that or suggest that they shouldn't have that. Still what do we do with one of the largest industries in the state sitting right of the shore here and they're all sitting there with their hands folded and people out of work because we're waiting for 25 sockeye to make it far enough up the stream so we can say the fishery can now open. Maybe there's another solution. Maybe we we'll require the guy taking the commercial fish out here to certain that they get up. The next year we adjust the time opening and so on. I guess I'm suggesting that we try to work within regions upon specific resource problems with specific uses to which that resource is put as opposed to trying to paint this state with one broad brush. My theory is you paint it with one broad brush, you're going to end up with unique problems of excluding people from this all over this state, which I don't think any of us would like. If we...Will Hensley suggested this a couple three years ago and many people reacted opposed to it, other people thought it was a pretty good idea. I'll throw it out here for your consideration. What about utilizing our regional fish and game boards? By giving them a more expanded role to play other than just being advisory to our Fish and Game Board? So that those regional boards could begin to make allocation decisions at least on subsistence basis. And to determine what is a fair use and a fair

amount of caribou to be taken in a given area. What the fair use of salmon is, and how many should be taken in a given area. Would they not be better located to make those kinds of decisions than me sitting in Juneau trying to tell somebody how many caribou they can shoot on the north side of the Brooks Range? That's my suggestion. I'd like your comments on whether or not we should _____ at the same time.

Rogers: I think it's certainly one that we should definitely consider, because otherwise we end up with, as you _____ arbitrary definition, arbitrary decision making, which you turn a crank and a decision comes out without any human input.

Navarre: Thank you. Mr. Stewart, you have any comment?

Stewart: No, I just, ...I don't think I have any more to offer to you.

Navarre: I'd like to thank you for participating Mr. Stewart and Mr. Rogers. At this time I want to invite Jim Dugan, who is the delegate to the Constitutional Convention to offer a comment he would like with respect to the historical. _____ to adjourn as soon as we are finished here and reconvene at about 1:15.

Dugan
Dugan:

Mike had to do this since he's my nephew. I wanted to clear up...I have quite a little to say about this, but I'm only going to attempt to clear up the reason that the Constitutional Convention didn't go into this matter any further than they did. When the Natural Resources Committee and all other committees were, of course, trying to develop their particular part of the constitution, they would hold hearings within the constitutional group themselves

periodically, just to kind of straighten out their thinking and so on. In a preliminary session a couple of.....Muktuk Marston, who was the commander of the Eskimo Scouts, made a very eloquent plea, to be sure that his people, the Eskimos, were treated as equal of everybody else. Not equal people, but equal under the policy that we were setting. Truman Endberg, who was the union business agent for the Commercial Fishermen in Dillingham recognized very well, and stated so, that subsistence was a necessity. Anyhow, Bill Egan, as he would do from time to time as the President of the Constitutional Convention, would step.....



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PRESS RELEASE

FOR IMMEDIATE RELEASE

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NR92-17

STATEWIDE NATIVE COMMUNITY CALLS FOR CONSTITUTIONAL AMENDMENT

More than 500 representatives of the statewide Native community voted unanimously to oppose the current draft of Governor Hickel's subsistence bill Tuesday and demanded a constitutional amendment to preserve subsistence users' priority.

Alaska Natives, who gathered for a two-day Subsistence Summit sponsored by AFN and RurAL CAP, also adopted a comprehensive package of guiding principles and directives on the subsistence issue, including the appointment of a new subsistence steering committee with representatives from all of Alaska's twelve Native regions. The new committee will present a unified Native voice in dealing with the state and federal governments, using the newly adopted principles as a guide.

Village leaders attending the Summit have sent a clear message that the Native community is unwilling to take any more losses on the subsistence issue. A "No Net Loss" addendum to the guiding principles outlines in detail the protections that presently exist for subsistence users.

Following is the package of principles adopted at the Summit and the "No Net Loss" addendum.



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NEWS RELEASE

FOR IMMEDIATE RELEASE
May 6, 1992

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BUSH CAUCUS INTRODUCES SOLUTION TO SUBSISTENCE CRISIS

JUNEAU--Legislation today was introduced in both houses of the legislature by the members of the Bush caucus addressing Alaska's subsistence crisis. The bills propose an amendment to Alaska's constitution, comply with the Alaska National Interest Lands Claim Act (ANILCA), regain state management of fish and game resources and create a subsistence board to set subsistence regulations and policies.

"Alaskans are becoming increasingly polarized by the subsistence issue," said Sen. Al Adams, D-Kotzebue. "It's time to face the fact that the only way for Alaska to regain management of its resources on federal lands is a constitutional amendment permitting statutory protection of subsistence hunting and fishing. Otherwise, the impasse will continue."

Under the Senate-House plan, there would be a new subsistence board appointed by the Governor from a list of three names submitted by each of the 12 regional councils. The board would determine which areas of the state are rural, which fish and game populations are subject to subsistence uses, how much may be harvested, which stocks and populations are appropriate for urban subsistence uses and set other regulations pertinent to subsistence resources.

"This legislation responds to concerns raised by people in my district as well as the AFN Subsistence Summit," said Rep. Georgianna Lincoln, co-chair of the Bush caucus. "It has always been our feeling that we cannot adequately address a single management system without a constitutional amendment."

Unlike the subsistence plan submitted to the legislature by the Hickel

MORE-

administration, the plan introduced by lawmakers does not require amending the Alaska National Interest Lands Claim Act. It provides subsistence uses by rural and urban residents, allowing all eligible users to participate near their residences. The Hickel plan provides for subsistence uses by rural and urban residents, but does not allow urban residents to participate near their residences.

"I think everyone agrees that subsistence users need guaranteed protection," said Sen. Lyman Hoffman, co-chair of the Bush caucus. "This subsistence legislation is the most direct way of accomplishing that, as well as eliminating the confusion caused by the dual management system we now have. If you are in favor of protecting subsistence and states' rights, then this bill is for your. The bottom line is that subsistence must be protected."

The plan by Bush lawmakers includes all fish stocks and game populations which have been customarily and traditionally used for subsistence. The Hickel plan eliminates those fish stocks and game populations which have been customarily and traditionally used in urban areas.

The plan introduced today protects subsistence use by requiring that regulations be consistent with customary and traditional patterns in ways which cause the least adverse impact on subsistence users. The plan requires the boards to provide for subsistence uses when harvestable surpluses exist.

The Hickel plan provides wide discretion to the boards to regulate subsistence uses in ways which may not reflect customary and traditional patterns. It also provides wide discretion to the boards to decide when to find that harvestable surpluses exist and, therefore, when to provide for subsistence uses.

A new subsistence board ensures more attention to subsistence and reduces the impact from competing uses. It also ensures provides greater authority and more direction to local users through regional councils.

The Hickel plan maintains the existing board system, which places subsistence uses in competition with other uses.

The plan by lawmakers is endorsed by the Alaska Federation of Natives representing more than 200 communities in Alaska. In addition, Commonwealth North, the public policy think tank created in part by Gov. Hickel, has endorsed the concept of a state constitutional amendment. The Anchorage Chamber of Commerce voted in support of the Commonwealth North resolution approving a constitutional amendment.

The Anchorage Times

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TIME FOR DECISIONS

Floundering on subsistence

SUBSISTENCE HASN'T been making the headlines in recent weeks, but that doesn't mean it has fallen off the list of urgent priorities facing Alaska. If anything, the urgency for action increases substantially with each passing day.

Time is running out for the Alaska Legislature to take action. Time is drawing near for the permanent federal regulation of fish and game management.

Federal fish and game managers, councils, regulations and restrictions are about to permanently replace the state's management policies — not only within the 60 percent of the state that is federal land, but possibly reaching into state and private lands as well. Lawsuits now pending in federal courts challenge the state's authority to manage fish, especially migrating salmon, on any Alaska waterway.

The special lifestyle considerations afforded Alaskans under unique federal land management laws are going to be challenged more and more as federal managers rule the domain. Prohibitions on hunting, as well as restrictions on commercial and subsistence fishing, won't be far off. The potential consequences are devastating for commercial, sport and subsistence users of Alaska's fish and game resources.

THE SOLUTION to the subsistence dilemma can be as simple or as complicated as Alaskans want to make it. Following the Alaska Supreme Court ruling two years ago that threw out the state's subsistence preference law as being unconstitutional, the cleanest solution that presented itself was to amend the Alaska Constitution.

Alaskans were denied the opportunity to vote on that option because some members of the Legislature and other state leaders believed there would be a better way — one that involved compromise among all affected parties. That plan entails a new set of subsistence regulations and potential changes to both the state constitution and federal law — possible only if there exists a consensus among the different Alaska interests.

A few weeks ago, following completion of many months of work by the governor's subsistence advisory council, there was reason for optimism that such an alternative was possible. However, as the plan undergoes public

scrutiny, its shortcomings draw more attention than the merits of the process that produced it.

Today, the two sides of the debate that had come together under the governor's guidance in a fragile truce to work things out appear to be retrenching into their former positions.

GOV. HICKEL deserves much credit for pushing the process along for the alternative solution. But as the time runs shorter, and the laudable goal of compromise remains no closer, perhaps Alaskans best begin considering the original option for resolving the issue.

The Alaska Federation of Natives is holding a subsistence summit in Anchorage Monday and Tuesday to assess the current situation and make its recommendation. The governor should listen closely. Legislators, already burdened with a fiscal crisis and an election year, must contemplate the consequences of their action — or inaction — on subsistence this session.

As each day passes, it appears more and more obvious that the best action may be to involve the whole state in the decision-making process, to ask Alaskans what they want to do. The best way to accomplish this would be to propose a constitutional amendment, put it on the ballot and let the people decide.

SPEAKING OUT



Norris



Brown



Johnson

Q: Should there be a constitutional amendment to provide subsistence preference for rural residents?

• "I definitely think so, because I'm an Alaskan. I live here."

—Robert Norris, Girdwood

• "Yes. They're out there living off the land. They're out there in the bush and they've got to live. It's not like they can go to restaurants or Safeway stores."

—Tyrone Brown, Anchorage

• "That's a tough one. It's an urban/rural question. But, yes, I do think so. People choose a rural lifestyle and subsistence is part of it."

—Nancy Johnson, Anchorage



MAY -1 REC'D

April 29, 1992

The Honorable Georgianna Lincoln
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Rep. Lincoln:

Commonwealth North is deeply concerned about the issue of subsistence and the divisions it creates among the people of Alaska. We have engaged in substantial discussion and debate on the issue and strongly conclude that this issue must be resolved with all due haste. To this end, the Board of Directors, acting as a representative body of the membership of Commonwealth North, passed the enclosed resolution.

We urge you, and all your fellow legislators, to do all in your power to effect the necessary compromises and take the actions outlined in the resolution this year.

Sincerely,

Richard F. Barnes
President

Enclosure

*Founding Co-Chairmen Governor Walter J. Hickel and the late Governor William A. Egan
Richard F. Barnes, President • Judith M. Brady, Vice President • Dr. Lee Gorsuch, Vice President
Jeff Lowenfels, Vice President • Susan Ruddy, Secretary • Michael E. Stone, Treasurer • Bill Allen • Robert B. Atwood
Skip Bilheriz • Janna Brattain • Julian Darley • Perry Eaton • Joe Griffith • Joe L. Hayes • James Hermiller
Marc Langland • Loren H. Lounsbury • Stephen McAlpine • Bill McHugh • Governor Bill Sheffield
William J. Tobin • Dr. F. Thomas Trotter • Robert M. Walp*

A COMMONWEALTH NORTH RESOLUTION
ON
THE ISSUE OF SUBSISTENCE

WHEREAS, the state of Alaska needs to regain unitary management authority over fish and game resources from the Federal Government and the citizens of Alaska need to develop a consensus on the issue of access to fish and game resources for subsistence purposes; and

WHEREAS, the Governor and the Subsistence Advisory Council, along with other groups in the State, have worked diligently to address the unique issues faced by Alaska regarding access to resources for subsistence; and

WHEREAS, the Alaska Legislature has before it numerous proposals which seek to resolve the issues surrounding subsistence;

BE IT RESOLVED, that Commonwealth North strongly supports the efforts of the Governor, his Council and others who are addressing the subsistence issue and commends all those who have undertaken the effort to resolve the subsistence problems facing the State.

BE IT FURTHER RESOLVED, that the Alaska State Legislature take immediate steps to ensure passage during this session of:

1. A Constitutional Amendment to go before the voters which designates subsistence as the priority use of Alaska's fish and game resources, and which specifically confers on the Legislature the necessary authority to grant a preference to and among Alaska residents in the taking of fish and game for subsistence use based upon criteria such as customary and traditional use, direct dependence, local residence, availability of alternative resources, or some combination thereof; and

2. An appropriate subsistence bill to implement the Constitutional Amendment which contains the intent expressed by HB 552 and SB 443, in order to protect all Alaskans whose survival depends most directly on the continued harvest of fish and game resources; and

3. Whatever actions are necessary to ensure unitary state management of all fish and game resources, upon adoption of the above described Constitutional Amendment and State statute.

BE IT FURTHER RESOLVED, that Commonwealth North takes this action with the goal of creating unity among Alaskans, so we can channel all of our efforts towards the development of a productive future, unencumbered by regional or ethnic division.

May 5, 1992

To: The Honorable Governor Walter J. Hickel & Members of the
Alaska State Legislature
From: The Anchorage Chamber of Commerce
Re: The Issue of Subsistence

**Anchorage Chamber of Commerce
Support for Commonwealth North Resolution
On the Issue of Subsistence**

During the Anchorage Chamber of Commerce board meeting of May 1, 1992, after review of the Commonwealth North resolution and discussion the board voted to support the resolution on the issue of subsistence recently passed by Commonwealth North.

The board views subsistence as an issue vitally important to all Alaskans. The Subsistence issue has the potential to divide Alaskans. The Chamber feels an equitable and speedy resolution of the issue is in the best interest of all Alaskans.

The Chamber feels the steps outlined in the Commonwealth North resolution are appropriate and should be acted upon.

Anchorage Daily News

Subsistence

*It's time for compromise;
Gov. Hickel's bill offers a way*

This should be Gov. Wally Hickel's finest hour. Alaskans are turning their attention to the special session on subsistence. Gov. Hickel deserves immense credit for getting longtime adversaries to seek a solution. The proposal they produced offers a promising foundation for settling this divisive issue. Unfortunately, his bill seems to be dead on arrival.

If that's true, Alaska is in for more political bitterness and resource management chaos. Federal law requires a subsistence preference for rural residents; the Alaska Constitution bars it. The result: Alaska is partitioned into two conflicting fish and game management fiefdoms. The feds enforce a rural preference on federal lands. On other lands, state courts have held the sub-

*Gov. Hickel's
consensus
solution isn't a
complete cure,
but it's a good
first step.*

sistence priority is open to any Alaskan.

Split management hasn't produced complete chaos — yet. But it's sure to come as eagle-eyed lawyers on both sides crank up their copying machines.

Whatever happens with federal law, the state's come-one, come-all subsistence preference must be narrowed. Gov. Hickel's consensus solution isn't a complete cure, but it's a good first step.

It delivers solid protection to those for whom subsistence is most important: Alaska Natives. To them, subsistence is not some quaint lifestyle option. It is the very foundation of who they are and how their cultures survive.

A Native-only preference, as some Natives desire, would produce deep bitterness among excluded Alaskans. The state can protect subsistence without pitting Alaskans of different races against each other.

Gov. Hickel's solution might be called "rural-plus." For the first time, urban Natives could qualify. The plan also offers long-term protection to Natives living in Bush regional centers, which might someday grow so large that residents no longer qualify for the rural preference. As under the old system, any non-Natives living in the Bush can also qualify.

The key difference is political. Hickel's consensus plan makes a fundamental compromise. It offers a subsistence priority to urban non-Natives who rely on large amounts of fish and game. Though their ranks are relatively small, excluding these non-Natives has produced the strongest opposition to subsistence laws.

So why are Native interests — from villages on up — dead set against the very plan several of their leaders helped craft?

In a word, fear. They do not trust the state system to protect their way of life — with good reason. Subsistence users have repeatedly challenged state decisions in court — and frequently won.

Natives generally feel that the most critical Native interest — village-level subsistence — is well protected by federal law. In return, they're willing to endure the law's other shortcomings. They'd rather see the state regain fish and game management by passing a constitutional amendment that allows a rural preference — and leave federal law alone.

In the past, the Daily News has supported this course. But it's now clear that Alaska cannot achieve the political consensus a constitutional amendment requires. It simply will not pass the legislature.

As a fallback, though, the governor's consensus plan has compensating merits. The one missing element is some way of assuring Natives that the state will not shirk its subsistence duties.

The state's fish and game advisory boards are supposed to give subsistence users an effective voice, but the system hasn't worked well. A separate, all-powerful subsistence board, as proposed by the Alaska Federation of Natives, may be a bit extreme, but it addresses an important need.

All sides need to remain open to further compromise. Alaska Natives have already won many accommodations in the governor's plan. If Natives remain unwilling to budge now, they will have to settle for a deeply flawed state system. If they give a bit, they can gain uniform statewide protection for subsistence — and good prospects for long-term political peace.

QUOTABLE

"There's no question that this is fast-paced. But in unusual times we are asked to do unusual things. The time frame is the only thing unusual about it."

— Richard Franklin, director of the Division of Institutions, commenting on plans to furlough 10 percent of the state's prison inmates to cut costs and accommodate other inmates.



Resource Development Council for Alaska, Inc.

121 West Fireweed Lane, Suite 250, Anchorage, Alaska 99503-2039
Phone 907/276-0700 Fax 276-3887

FOUNDED 1975

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Senator Frank Murkowski

Congressman Don Young

6/17/92

To: Sen. Al Adams

From: Debbie Reinwand, Acting Director

Re: Subsistence legislation/1992

As you are aware, RDC has been involved in the subsistence issue since the special session of 1990. At that time, RDC's executive committee voted to support whatever means necessary to resolve the issue, including the concept of a constitutional amendment (see attached).

RDC took the position because it was felt that resolution of the issue, via an amendment or other means, was the best option for resource development. Our board members were concerned that lack of a decisive conclusion to this issue, would in fact, have a negative impact on future economic and resource development.

Some of the discussion points raised, in no particular order were:

- * Do not re-open ANILCA on the subsistence issue. This could force Alaskan Natives to align with environmental interests, forging a powerful lobby.
- * Keep fish and game management in Alaska. Federal subsistence requirements could ultimately become more onerous than state management due to so-called "mandates" generated by national interest groups.
- * Rural Alaskans are an important player in resource development. This amendment is important to them. Given the fact that Native corporations own the largest chunk of private land in Alaska, RDC felt it was in the best interest of economic development that those lands continue to be used for reasonable development projects, rather than restricted to purely subsistence use.

*Wild Biology
Alaska Outdoor Council
6/16/82*

Ref: conamdmnt.mss

CONCERNS WITH A CONSTITUTIONAL AMENDMENT ON SUBSISTENCE

- EQUAL RIGHTS AND COMMON USE -- Equal rights and common use of fish and game protected by the constitution must NOT be compromised. There is no assurance that any proposed constitutional amendment will not compromise those protections.
- RETURN OF STATE MANAGEMENT -- Amending the state Constitution to comply with ANILCA does not return state management authority. It ratifies management by federal rules (ANILCA) enforced by federal courts. State management is not returned until state regulations are enforced through state court proceedings.
- "RURAL", "NATIVE", "NO NET LOSS/RURAL PLUS" priority options -- Any of these discriminatory criteria can be promoted as the basis for a priority if any constitutional amendment is proposed. All are unacceptable and inconsistent with the interests of the majority of Alaskans. Discrimination based on local or rural residency will lead to "Indian country" status--tribal governments in control of regulations and tribal members exempt from state/borough taxation.
- CONSTITUTIONALITY OF GOVERNOR'S SUBSISTENCE BILL -- A constitutional amendment is not needed to "legalize" SB 443/HB 552.
- SUBSISTENCE AND SOVEREIGNTY -- Consistent with their "no net loss" policy, AFN will undoubtedly oppose any ANILCA amendment that does not protect a "community/group based" priority and federal court oversight. Both points are related to their quest for "Indian country" status.
- ANILCA AMENDMENTS before CONSTITUTIONAL CHANGE: A LEVERAGE FOR ANILCA CHANGE -- A constitutional amendment acceptable to the majority of Alaskans will not be acceptable to AFN, nor will it persuade them to support ANILCA changes. A constitutional amendment opposed by AFN but acceptable to the majority of Alaskans MAY encourage our Congressional delegation to support amending ANILCA in spite of AFN objection. Do we have any commitment from them?
- COST/BENEFIT ANALYSIS -- With regard to any proposal that would link constitutional change to ANILCA change: A cost/benefit analysis balancing potential loss of constitutional protection against beneficial changes to ANILCA must be kept foremost in mind. Principles of individual rights and equal protection must never be

sacrificed. Group (community) rights must never supersede individual rights. Group rights and federal court intervention both argue for Indian country status and both must be eliminated through amendment to ANILCA.

- PUBLIC PARTICIPATION -- Unlike the Governor's bill, proposed constitutional amendments and ANILCA amendments circulated by the Governor's office were not developed through broad public participation.
- CHANGING ANILCA -- There is no guarantee that Congress will "fix" ANILCA if Alaska's Constitution is changed. It would be outrageous to compromise Constitutional protection of Alaskans' equal rights and common use of fish and game by amending the Constitution in a future hope of getting ANILCA changed. Nonetheless, ANILCA must be changed to remove the discriminatory rural priority, to remove its inherent arguments for "Indian country", to correct bad resource management provisions, and to eliminate unconstitutional judicial oversight.
- SUBSISTENCE IS NOT "...essentially a native issue" as stated by AFN. If subsistence has a priority over all other uses, then everyone who uses fish and game or their habitats is affected. When a "rural" priority leads to "Indian country", as the 9th Circuit made clear would be the case, then every current or future tax paying citizen is affected.

HELLO MY NAME IS TARA KATUK MAC LEAN, A YOUNG INUPIAQ FROM BARRROW, ALASKA. I WOULD LIKE TO EXPRESS MY FEELINGS ON WHY I AM OPPOSED TO THE GOVERNOR'S SUBSISTENCE BILL.

SUBSISTENCE HAS BEEN AND STILL IS A MAJOR PART OF MY LIFE AND I WOULD LIKE IT TO HAVE THE SAME IMPACT AND INFLUENCE ON MY CHILDREN.

WHILE GROWING UP MY AAKA, MY GRANDMOTHER, TAUGHT ME THE MEANING OF SUBSISTENCE. ONCE AN ANIMAL WAS CAUGHT, SHE EXPLAINED HOW TO GIVE SPIRITUAL THANKS TO GOD, THEN THE ANIMAL, AND THEN HOW TO DIVIDE AND SHARE THE CATHCH WITH OTHERS. ESPECIALLY ELDERS WHO HAVE NO ONE TO HUNT FOR THEM.

THIS HAS BEEN A POSITIVE INFLUENCE ON MY LIFE AND I WOULD LIKE FUTURE DECENDANTS TO HAVE THE SAME EXPERIENCE AS WELL AS ALL OTHER FUTURE ALASKANS.

I FEEL THE GOVERNOR HAS FALLEN SHORT OF UNDERSTANDING THE REAL MEANING OF SUBSISTENCE, OUR WAY OF LIFE, CULTURE, HERITAGE AND INHERETANCE AS A PEOPLE OF THE STATE OF ALASKA. QUYANAQPAK.

Please print legibly & provide all requested information. Thank you.



Rep. Dave Donley, Chair

House Judiciary Committee

DATE: 6/16/92

PLACE: CAPITOL

SUBJECT OF MEETING: SUBSISTENCE
 HJR 86 -- CONSTITUTIONAL AMENDMENT ON SUBSISTENCE

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Mary McBurney	CDIFU	P.O. Box 939 Cordova	99574		474-3447	Y <input checked="" type="radio"/> N	HJR 86
BYRON I. MALLOTI	AFN	ANCHORAGE			586-1512	Y <input checked="" type="radio"/> N	HJR 86
Mc/AC AMP/SLC	GROUPS OFF.					Y N	
CHANCIE CORE	AC.					Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	

Please print legibly & provide all requested information. Thank you.



Rep. Dave Donley, Chair

House Judiciary Committee

DATE: 6/16/92

PLACE: CAPITOL

SUBJECT OF MEETING:
SUBSISTENCE
 CONSTITUTIONAL
 HJR 86 -- AMENDMENT ON SUBSISTENCE

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Loretta Bullard	Kawerai	PO BOX 948, Nome	99762	443-5730	443-5231	Y	<input checked="" type="radio"/> N	
Job Kokochuruk	SIT.	Box 815, Nome	99762		443-2011	<input checked="" type="radio"/> Y	N	
Pete Larsen Jr	NOME ESTIMO COMMUNITY	PO Box 1603, Nome	99762	443-2664	443-2664	<input checked="" type="radio"/> Y	N	
Eric Smith	ANCHORAGE	771 E 4th, Anch	99520	694-5341	276-4451 276-4451	<input checked="" type="radio"/> Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	

Please print legibly & provide all requested information. Thank you.



Rep. Dave Donley, Chair

House Judiciary Committee

DATE: 6/16/92

PLACE: CAPITOL

SUBJECT OF MEETING:
SUBSISTENCE
 CONSTITUTIONAL
 HJR 86 -- AMENDMENT ON SUBSISTENCE

Catch plane to
 see 4:30
 ↑

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
DON MITCHELL	AGN	1335 F. St, Anchorage	99501	276-1658	276-1651	(Y) N	
JULIE KITKA	AGN					(Y) N	
BYRON MALLOT	AGN/SEALASKA/ SELF	4 SEALASKA PLAZA SUITE 400 DUNEDU	9980	586-6937	586-1512	(Y) N	
CHRIS MCNEILL	AGN					(Y) N	
Leo A. Land	Haines A.N.P.	Box 122 Haines AK. 99827		766-2466		(Y) N	
WILL MAYO	TANANA CHIEFS	122 FIRST AVE FAIRBANKS AK 99701	99701	457-2991	452-8251	(Y) N	CONSTITUTIONAL AMENDMENT ON SUBSISTENCE
Reid Nav	CITY OF ANATLUTUAH Pass	99721 P.O. Box 21044 ANCHORAGE	99721	661-3612		Y N	
Pete Hansen	NSMP EST in O Community	Nome, Alaska P.O. Box 1603 99762	99762	443 3664		(Y) N	HJR 86
						Y N	
						Y N	
						Y N	

Please print legibly & provide all requested information. Thank you.



Rep. Dave Donley, Chair

House Judiciary Committee

DATE: 6/17/92

PLACE: CAPITOL

SUBJECT OF MEETING: ..
SUBSISTENCE
 CONSTITUTIONAL
 HJR 86 -- AMENDMENT ON SUBSISTENCE

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Beid May	Anaktunuk Pass	P.O. Box 21044	99721	661-3612		<input checked="" type="checkbox"/>	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	

Please print legibly & provide all requested information. Thank you.



Rep. Dave Donley, Chair

House Judiciary Committee

DATE: 6/17/92

PLACE: CAPITOL

SUBJECT OF MEETING:
SUBSISTENCE
 CONSTITUTIONAL
 AMENDMENT ON SUBSISTENCE
 HJR 86

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Martha Vlasoff	Tatitlek	- Box 122 Tatitlek AK	99677	325-2310	1800 562-4155	(Y) N	HB 599-600 + HJR 86
6/17 Benjamin Neeley	Antha/Culkana	PO Box 699 Glennallen AK	99588	822-3476		(Y) N	Subsistence
6/17 Henry Bell	Antha/Chitina	PO Box 649 Glennallen, AK	99588	822-3476		(Y) N	Subsistence
6/17 DICK BISHOP	A.O.C.	POB 34014 JND AK	99603	413-3630		(Y) N	HJR 86
6/17 Marilyn Ogan	Cape Fox Corp.	PO-Box 8558 Ktn. AK	99901	225-5163		Yes	Subsistence
6/17 PAT WILLIAMS	CAPE FOX CORP	P.O. Box 8558 KTN AK	99901	225-6533		(Y) N	Subsistence
4/17 Paul & Madeline	Kwik	P.O. Box 8721 30 Wdsillie AK	99687	207 376-2845		(Y) N	" "
6-17-92 WILL HALE	SELF	GEN-DELI. WILLOW 99688	99688	-	-	(Y) N	SUBSISTENCE
6-17 Chris McNeil	APN	1000 Second Ave #3300 Seattle WA 98154	98154	206 677-1000		(Y) N	
6-17 John Fuller	Semse Wrangell	330 Church St Bx 247 Wrangell, AK 99929	99929	874-3829		(Y) N	" "
Beth Jackson	Rural AP	Copper Center AK	99573	822-3737		(Y) N	
Loretta Bullard	Kawerak	PO Box 948, Nome	99762	907-523		(Y) N	

S B

8

Alaska State Legislature

130 Seward Street, Suite 218
Juneau, Alaska 99801-2196

Phone: (907) 465-3991
Fax: (907) 463-3351

Legislative Research Agency



February 27, 1992

MEMORANDUM

TO: Representative Gene Kubina

FROM: Paula d. Scavera *PdS*
Legislative Analyst

RE: Comparison Between Senate Bill 8 and Senate Bill 56 as Vetoed by Governor Cowper in 1988
Research Request 92.183

You requested a comparison between Senate Bill 8 passed by the Senate earlier this week and Senate Bill 56 which was vetoed by Governor Cowper in 1988.

Both bills enact an annuity plan which allows people to defer their permanent fund dividends or equivalent cash amounts into a state annuity account. Once a person reaches 65 years of age, he or she would be able to receive a monthly annuity based upon the amount contained within the person's annuity account. Both bills also allow for a one-time emergency withdrawal from their annuity account with payback provisions. Also, SB 8 and SB 56 designate a beneficiary succession for death benefits.

The one major difference between SB 8 and SB 56 is the language for the decreased longevity bonus. Senate Bill 8 in section 9 states "...the monthly longevity bonus is \$250 minus the maximum possible straight life annuity under the annuity program."

Senate Bill 56 in section 9 set in statute exactly what the decreased longevity bonus dollar amount is for fiscal years after 1990, rather than using the formula in SB 8. Attached is a copy of SB 56 as vetoed by Governor Cowper which shows the decreased bonus amounts.

If you have questions or require further assistance, please contact this office.

Attachment

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. CSSB 8 (STA) am

Revision Date: March 2, 1992 Department Affected: Revenue
 Title: Annuity Program Amendments BRU: Administration and Support
 Component: Administrative Services
 Sponsor: Kerttula, Halford
 Requestor: House State Affairs COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	-0-	8.0	8.0	8.0	8.0	8.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	8.0	8.0	8.0	8.0	8.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER	-0-	8.0	8.0	8.0	8.0	8.0
FUND SOURCE:						
TOTAL	-0-	8.0	8.0	8.0	8.0	8.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

This fiscal note reflects the basic costs of monitoring and balancing the accounting functions as required. It also includes interface with the longevity bonus program to coordinate accounting transactions.

Prepared By: Tracy L. McGill *Tracy L. McGill* Phone: 465-2313
 Division: Administrative Services Date: March 24, 1992
 Approved by Commissioner: Darrel J. Rexwinkel
 Agency: Department of Revenue Date: _____



benefit concepts

INFORMATION ABOUT BENEFIT CONCEPTS, INC.

Benefit Concepts, Inc. is a nationally based firm that specializes in the design, installation, and administration of all types of Benefit Plans for large companies throughout America.

Benefit Concepts has 26 offices across the country and was founded over 20 years ago. In 1983, the New York office merged with the firm of Lambert M. Huppeler and Company, a large and well known actuarial firm, which enhanced the firm's ability to service any type of benefit plan large or small. Benefit Concepts, Inc. of New York numbers 137 in staff and has substantial in-house computer resources.

BCI is now in its second year working on a joint venture with Kidder, Peabody & Company, Inc. to provide high quality services to their clients.

A

MAR 25 1992

LONGEVITY BONUS PROGRAM
Proposed Emergency Regulation Change

PURPOSE

Resolve the confusion surrounding the transition from prospective payment and retrospective payment systems by eliminating the erroneous assumption of "duplicate payments."

DISCUSSION

When the program changed from paying prospectively to paying retrospectively a transition was necessary to ensure that payments to current recipients would not be interrupted. This should have been handled as a transition issue for the program, not as a debt to recipients.

The current regulation, 2 AAC 40.175 (f), establishes a debt for "duplicate payments" under the Longevity Bonus. Duplicate payments, however, were not made to any recipient. The program dated two checks for January 1991 and February 1991. The checks were delivered to recipients during a four month period from January through April of 1991. This was done for accounting and payment processing purposes and in an attempt to make program administration changes transparent to current recipients.

The result has been confusion on the part of most recipients and the creation and posting of a debt due from recipients for "duplicate payments" pursuant to 2 AAC 40.175 (f). The fact is that no recipient received more than one payment in any one month. Thus there is no reality to a notion of duplicate payment nor should there be a debt.

The solution to the problem is to terminate payments to those eligible before December 1, 1990 (old recipients) at the time of disqualification. Those who became eligible on or after December 1, 1990 (new recipients) would continue to be eligible through the last full month of eligibility as provided in the current

regulations. The practical effect of this approach is that old recipients will not be eligible to keep any bonus payments issued after they lose eligibility.

Examples for recipients eligible before December 1 , 1990

1. A person dies on January 10. The person would keep the payment received in January. We would turn off the payment scheduled for February. No collection efforts would be required.

2. A person dies on January 29. A payment is issued in the month of February. We will ask that the payment be returned. We would not attempt to collect the January payment.

The proposed emergency regulations will not affect recipients who became eligible for the Longevity Bonus Program on or after December 1, 1992.

The attached proposed emergency regulations accomplish this objective.

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NOTICE OF ADOPTION OF EMERGENCY REGULATIONS

Notice is given that, under the authority of AS 47.45.100(1) the Department of Administration adopted, amended and repealed, as emergency regulations, provisions in 2 AAC 40.075 and 2 AAC 40.175 relating to Longevity Bonus payments.

The amendments change the regulations by:

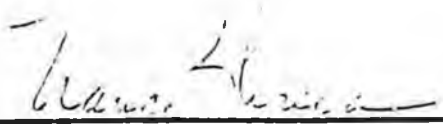
Eliminating transition language which require the administrator to recover certain payments and clarifying eligibility to receive bonus payments at the time of disqualification.

The emergency regulations took effect March 6, 1992.

Copies of the regulations may be obtained by writing to the Division of Pioneers' Benefits, P.O. Box 110211, Juneau, Alaska 99811.

Notice is also given that the Department of Administration intends to make the regulations permanent, and any person interested may send written statements relevant to the action proposed to Division of Pioneers' Benefits, P.O. Box 110211, Juneau, Alaska 99811, to be received no later than April 15, 1992.

Date: 3-9-92



Nancy Bear Usera
Commissioner of Administration

FINDING OF EMERGENCY

The Department of Administration finds that an emergency exists and that the attached regulations adopting, amending and repealing provisions in 2 AAC 40.075 and 2 AAC 40.175 are necessary for the immediate preservation of the public peace, health, safety, or general welfare. The facts constituting the emergency are as follows:

1. The current regulations are confusing to Longevity Bonus program recipients.
2. The current regulations were promulgated with an erroneous interpretation of accounting principles.
3. The regulations have created a current debt against approximately 20,000 Alaskans who have not received any overpayment from the State of Alaska.
4. The inappropriate debt recorded against Longevity Bonus recipients can adversely affect their credit rating.
5. Adoption of these regulations will allow the Longevity Bonus Program to remove the debt that has been posted against Longevity bonus recipients and clear any concern with credit ratings.
6. Delay in adoption will cause initiation of collection procedures for a debt which should not exist.

ADOPTION ORDER

Under authority of AS 47.45.100(1), the amendments to the regulations are therefore adopted as emergency regulations and are effective March 6, 1992.

This action is not expected to require an increased appropriation.

Date: 3/1/92
Juneau, Alaska



Nancy Bear Usera, Commissioner

FILING CERTIFICATION

I _____, Lieutenant Governor for the State of Alaska, certify that on _____, 1992, at _____ .m., I filed the attached regulations, which were voluntarily submitted to me for publication.

Lieutenant Governor

Effective _____.
Register _____.

2 AAC 40.075 (b)(2) and (c) are amended to read:

(2) the recipient has notified the administrator that he or she has discontinued residency in Alaska and the payment is for a month for which a [THE] recipient is qualified to receive [FOR] a bonus payment.

(c) Unless other reimbursement is received by the administrator, bonus payments will be withheld as repayment for bonuses that were issued to a recipient for a period in which the recipient was not entitled to receive a bonus payment. (Eff. 12/1/90, Register 117; am / / , Register).

Authority: AS 47.45.100(1)

2 AAC 40.175(f) is repealed and reenacted to read:

(f) A recipient who was eligible for and received a bonus before December 1, 1990 is not eligible to receive bonus payments after the month of disqualification under 2 AAC 40.110 or termination under 2 AAC 40.140 (a), (b), (c)(2), and (c)(3), regardless of the month for which the payment is being made.

2 AAC 40.175 is amended by adding new subsections (g) and (h) to read:

(g) A recipient who was eligible under 2 AAC 40.010(b) before December 1, 1990 who terminates eligibility under 2 AAC 40.140(c)(1) will continue to receive payments without interruption.

(h) A recipient who was eligible for the program before December 1, 1990 whose eligibility for bonus payments is discontinued under 2 AAC 40.110(b) or (c), or who is terminated under 2 AAC 40.140 may be reinstated under 2 AAC 40.130 but will be treated as a new recipient who was not eligible for the program before December 1, 1990. Bonus payments will commence pursuant to 2 AAC 40.065. (Eff. 12/1/90, Register 117; am / / , Register).

Authority: AS 47.45.020(1)

No. 8

Bill Version: CSSA 8 (STA)

(S) Publish Date: 2-21-92

1992 LEGISLATIVE SESSION

Revision Date: January 24, 1992

Department Affected: Revenue

Title: Annuity Program Amendments

BRU: Operations/Permanent Fund Dividend

Sponsor: Kerttula, Halford

Component: Treasury Management/ Permanent Fund Dividend

Requestor: Zharoff

COMPONENT SERIAL NO.

0	1	2	1
0	9	8	1

 and

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	31.7	18.1	18.1	18.1	18.1	18.1
TRAVEL						
CONTRACTUAL	35.0	35.0	35.0	35.0	35.0	35.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	66.7	53.1	53.1	53.1	53.1	53.1

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER	66.7	53.1	53.1	53.1	53.1	53.1
FUND SOURCE:						
TOTAL	66.7	53.1	53.1	53.1	53.1	53.1

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

This is a consolidation of fiscal notes for the Treasury and Permanent Fund Dividend Divisions. Detailed fiscal notes with substantiating documentation are attached for each division.

Prepared By: Tracy McGill, Director

Phone: 465-2313

Division: Administrative Services Division

Date: January 24, 1992

Approved by Commissioner: David Kerttula

Agency: Department of Revenue

Date: 1/25/92

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: 1/24/92

Title: An act amendine and making effective an annuity program and amendments to the longevity bonus and P.F.D...

Department Affected: Revenue

BRU: Operations

Component: Treasury Management

Revenue

Sponsor: Senators Kertula, Halford

Requestor: Zharoff

Component Serial No.

0	1	2	1
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	5.0	5.0	5.0	5.0	5.0	5.0
TRAVEL						
CONTRACTUAL	20.0	20.0	20.0	20.0	20.0	20.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	25.0	25.0	25.0	25.0	25.0	25.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND/Unrestricted						
FEDERAL FUNDS						
OTHER	25.0	25.0	25.0	25.0	25.0	25.0
TOTAL	25.0	25.0	25.0	25.0	25.0	20.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: The 25.0 expenditure in total operating costs is the basic personal services and contractual costs for a trust managed by the Treasury Division. Contractual costs would consist of external investment management, accounting, auditing, and custodial services. Future cost increases are dependent on the asset growth of the trust fund from contributions and market gains.

Prepared by: Brian C. Andrews

Phone: 465-2350

Division: Treasury

Date: January 24, 1992

Approved by Commissioner: [Signature]

Agency: Revenue

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 12/91

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