ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672
8649 HOUSE JUDICIARY

ANALYSIS (cont.):

Under this bill, this new ITS population could be civilly committed to API if they met the general commitment criteria that applies to all API admissions, i.e., that they are gravely disabled or a danger to themselves or others (no doubt it would be the latter criteria -- a danger to others -- that would be employed to commit the mentally retarded incompetent defendant to API). This bill requires API to diversify into the provision of care to DD clients versus services to API's historic clientele: patients experiencing acute psychotic breaks, depression, bi-polar disease, suicidal or homicidal ideation, and persons with chronic psychiatric disorders.

While API presently is required to provide a forensic unit, for the provision of services to persons found incompetent to stand trial because of a mental illness, it would be inappropriate to house this population together with the new IST population created by this bill. IST mentally ill patients are often very volatile, angry, abusive, and assaultive towards unit staff and each other. IST mentally retarded patients, while occasionally aggressive, are also often physically, medically, and emotionally fragile; these individuals would be especially vulnerable to abuse if housed with the IST mentally ill patients. There are two very good reasons why the State cannot house these two widely differing patient populations together.

First, there are significantly different treatment modalities. API clinical staff work to assist mentally ill IST patients to become competent to stand trial through utilization of individual and group therapies combined with psychotropic medication treatments. A good portion of these patients will eventually recover sufficiently to be found competent to stand trial. The mentally retarded patients, adjudged mentally incompetent to stand trial because of a permanent incapacity, not illness, might well be given appropriate sex offender treatment while committed to API, but otherwise the programming focus would be on day-to-day residential care.

The second concern, as mentioned above, would be for the safety of the mentally retarded ISTs. The mentally retarded defendants would be very vulnerable to physical and mental abuse from the more volatile, unpredictable, and assaultive mentally ill defendants. Even with adequate staffing, the risk to the mentally retarded would be extreme, no doubt eventually forcing one or both populations to be restricted to their rooms, an unacceptable reversal to maintenance of a therapeutic environment.

For the above reasons, an additional unit would have to be created for this population. Estimated eventual need (by FY 99) is for a 10 bed unit, with its own direct care staff, beginning with 10 PFT employees in FY 97 and building to a total of 21 PFT employees in FY 99 (18 nursing staff to cover three shifts, one Rehabilitation Services staff, one unit program manager, and a social worker), with an additional cost for supporting hospital functions (i.e., dietary, maintenance, housekeeping and laundry, medical/lab and pharmacy, patient records). Existing space at API is not now appropriately configured (in the present five-unit setting) to accommodate 10 extra beds for this new -- mentally incompetent not ill -- population, so remodeling of the present facility would be required prior to completion of the API 2000 project, the replacement facility.

Specific, one-time (FY 97) costs related to project start-up include the following: the provision of capital funds both for a module ("hospital unit") in the replacement facility ($4.4M)and immediate remodeling and enhancement costs in the existing facility to accommodate a sixth unit ($135.0) until the replacement facility is open and operating (approximately, May, 1998); training for staff who will work with the new DD patients; adaptive equipment and furniture (most of which can be utilized in the replacement facility, as well) to provide care for the patients with developmental disabilities.

Position Title	No. of Position	Range/Step	Bargaining Unit	Bill No.
Psychiatric Nurse Assistant (PNA) III	6	10B/C	GGU	SB 321

Time Status	Staff Months	Location	Election District
5 FTE; 1PTE	66.0	Anchorage	19

TYPE of EXPENDITURE		AMOUNT
Salary		156.8
Benefits		74.3
Premium Pay		16.5
Other		
Total Personal Services (100)		247.6
100 Travel		
200 Contractual		
300 Supplies		
500 Equipment		
Other		
Total Cost		247.6
FUNDING SOURCE for TOTAL COST		
1002 Federal Receipts		
1003 GF Match		
1004 General Fund		
1005 GF/Program Receipts		
1037 GF/Mental Health		247.6
1007 I/A Receipts		
1061 CIP Receipts		
Other ( )		

Justification

PNA's are required to provide the principal daily care, support, and supervision of unit clients. In the first year we are staffing one PNA per shift, seven days per week.

REQUEST for NEW POSITION

AGENCY: Health and Social Services

BRU: MH/DD Services

COMPONENT: Alaska Psychiatric Institute (311)

Position Title	No. of Position	Range/Step	Bargaining Unit	Bill No.
Nurse II	6	15B/C	GGU	SB 321

Time Status	Staff Months	Location	Election District
5 FTE; 1 PTE	66.0	Anchorage	19

TYPE of EXPENDITURE		AMOUNT
Salary		209.0
Benefits		93.5
Premium Pay		27.5
Other		
Total Personal Services (100)		330.0
100 Travel		
200 Contractual		
300 Supplies		
500 Equipment		
Other		
Total Cost		330.0
FUNDING SOURCE for TOTAL COST		
1002 Federal Receipts		
1003 GF Match		
1004 General Fund		
1005 GF/Program Receipts		
1037 GF/Mental Health		330.0
1007 I/A Receipts		
1061 CIP Receipts		
Other ( )		

Justification

Nurses are required to provide clinical nursing care to unit clients as well as to shift supervision to other unit nursing staff - - assigning tasks, charting, etc. In the first year we are staffing one Nurse per shift, seven days per week.

REQUEST for NEW POSITION

AGENCY: Health and Social Services

BRU: MH/DD Services

COMPONENT: Alaska Psychiatric Institute (311)

SB - 321 Civil commitment of a criminal defendant who is found to be mentally incompetent.

- This bill is well intended but doesn't correct the flaw in the legal system and that being the problem of a developmentally disabled person being found "incompetent to stand trial".

- It is inappropriate to place any individual who is not gravely disabled or poses a threat to themselves or others to be committed to API, developmentally disabled or not.

- This bill has a far wider scope than just the "mentally retarded" sex offenders. It could be any individual judged "mentally retarded" that commits a crime and is determined "incompetent to stand trial". The numbers may be small today, but the impact on the service delivery system will be great.

- This premise is borne out by the statement of Dr. Sperbeck, Forensic Psychologist for Department of Corrections who was quoted in the Anchorage Daily News, April 6, 1996, as saying that a case like this is quite rare: "Of the hundreds of child molestation cases charged in Alaska each year, about half a dozen are brought against developmentally disabled people. Of those, about one defendant per year is determined to be incompetent to stand trial." API does not have a Sex Offender Treatment Program nor do they have the necessary staff trained to deal with developmentally disabled individuals. In order to provide these services, additional resources are required to address staffing, training, and space. This bill, therefore, would have an adverse fiscal impact on an already stretched budget at API and would require an additional capital appropriation.

- The Department believes that the Division of Mental Health and Developmental Disabilities can be responsive to the needs of the developmentally disabled sex offender, or potential sex offender population, through the DD service provider network.

- Community developmental disabilities services have demonstrated over the past five years that individualized "Wrap-around Services" provided in the community are successful and cost effective. Wrap around services for this population would involve participating in an established specialized Socio-Sexual Skill Training Program, which includes **early intervention training for the younger individuals, relapse training for offenders** and **behavioral risk management training.**

- With this approach, a DD consumer can be served outside of an institution while protecting the community.

- This bill would create an opportunity for the judicial system to solve part of the correctional systems overcrowding by filling up API with non-mentally ill defendants who are "incompetent". Thus resulting in the displacement of the mentally ill, which the State is mandated to serve.

- A person with mental retardation will not get well. This bill would have the effect of imposing a perpetual cycle of involuntary commitment and evaluation for an offense that a non-developmentally disabled person would otherwise receive a specific sentence, and then, on completion of the sentence, would be released back into the community without any support system.

- The daily rate at API is $507.82 for Medicaid eligible consumers and $682.00 for those not Medicaid eligible. Conversely, the community cost would not exceed a daily rate of $274.00 Institutionalization, which is a totally inappropriate treatment is at least 2 1/2 times more expensive than individualized community based services.

- For all the reasons stated above, the Department of Health and Social Services does not support this bill as written but due agree that a problem exists. We urge the legislature to create an interim task force, with representatives from Department of Corrections, Department of Law and Department of Health and Social Services, to explore viable solutions.

676

FISCAL NOTE

No. 2

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Bill Version: SB 321
(S) Publish Date: 4-11-96

Revision Date: _____
Title: An Act relating to civil commitment of a criminal defendant who is found to be mentally incompetent.
Sponsor: (S) Judiciary
Requestor: (S) Judiciary

Dept. Affected: Administration
BRU: Office of Public Advocacy
Component Office of Public Advocacy

COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ( )	0	0	0	0	0	0

FUND SOURCE: (Thousands of Dollars)

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

Estimate of any current year (FY 96) cost: $ -0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)
There is no fiscal impact to the Office of Public Advocacy.

Prepared by: Brant McGhee, Public Advocate
Division: Office of Public Advocacy
Phone: (907)274-1684
Date: _____

Approved by Commissioner: Mark Boyer
Agency: Department of Administration
Date: 4/11/96

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Rev: 12/95
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No. 1

FISCAL NOTE

Bill Version: SB 321

(S) Publish Date: 4/11/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Revision Date:
Title: "An Act relating to civil commitment of a criminal defendant if found to be mentally incompetent."
Sponsor: Senate Judiciary Committee
Requester: Senate Judiciary Committee

Dept. Affected: Department of Law
BRU: Criminal Division
Component: Criminal Division
COMPONENT SERIAL NO. 2085

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 47.30.915 to provide for the civil commitment of a criminal defendant who is mentally incompetent to stand trial on criminal charges. Generally, there are one or two occasions each year where retardation is so severe that this might occur. A mentally incompetent person committed under the state's civil commitment laws is initially committed for 30 days, which may be extended to 90 days. Thereafter, a person may be committed for succeeding periods of 180 days. However, a jury trial is required for each 180 day commitment. We do not anticipate that there will be a fiscal impact for the Department of Law initially, because of the low number of occurrences. However, there will be a fiscal impact at some point in the future if persons committed under the bill's provisions continue to present a danger to others over a long period of time, requiring repeated 180 day jury trials for an accumulating number of persons.

Prepared by: Richard I. Pegues, Director
Division: Administrative Services Division
Phone: 465-3672
Date: 4/10/96

Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law
Date: 4/10/96

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SJR

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(7)

HOUSE COMMITTEE REPORT

Date Referred to Committee: April 28, 1996 **FURTHER REFERRALS:**

Date of Committee Action: 5/1/96

The JUDICIARY Committee considered: **CSSSSJR 5(RLS)**

CS FOR SPONSOR SUBSTITUTE FOR SENATE JOINT RESOLUTION NO. 5(RLS)
CRIME VICTIMS RIGHTS CONSTIT AMDMT

Supporting an amendment to the Constitution of the United States establishing the rights of victims of crimes.

recommends it be replaced [ ] the same title
with the following committee substitute _____ [ ] a new title

[ ] additional referral to _____ Committee
[ ] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) _____ [ ] fiscal note(s) _____

[ ] zero fiscal note(s) _____ [✓] zero fiscal note(s) Senate Rules (4-25-96)

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
Brian D. Porter	✓			
	✓			
	✓			
	✓			

CHAIR'S SIGNATURE Brian D. Porter _____

II

104TH CONGRESS
2D SESSION

S. J. RES. 52

Proposing an amendment to the Constitution of the United States to protect the rights of victims of crime.

IN THE SENATE OF THE UNITED STATES

APRIL 22, 1996

Mr. KYL (for himself, Mrs. FEINSTEIN, Mr. HATCH, and Mr. CRAIG) introduced the following joint resolution; which was read twice and referred to the Committee on the Judiciary

---

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States to protect the rights of victims of crime.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission for ratification:

"ARTICLE —

"SECTION 1. To ensure that the victim is treated with fairness, dignity, and respect, from the occurrence of a crime of violence and other crimes as may be defined by law pursuant to section 2 of this article, and throughout the criminal, military, and juvenile justice processes, as a matter of fundamental rights to liberty, justice, and due process, the victim shall have the following rights: to be informed of and given the opportunity to be present at every proceeding in which those rights are extended to the accused or convicted offender; to be heard at any proceeding involving sentencing, including the right to object to a previously negotiated plea, or a release from custody; to be informed of any release or escape; and to a speedy trial, a final conclusion free from unreasonable delay, full restitution from the convicted offender, reasonable measures to protect the victim from violence or intimidation by the accused or convicted offender, and notice of the victim's rights.

"SECTION 2. The several States, with respect to a proceeding in a State forum, and the Congress, with respect to a proceeding in a United States forum, shall have the power to implement further this article by appropriate legislation.".

○

4/22/96

The Washington Times

Why victims need a Bill of Rights

By John Kyl

In July 1974, on a road just outside Flagstaff, Ariz., Patricia Pollard was silenced — first by an attacker, and then by the judicial system.

A man named Eric Mageary raped and beat her, broke her jaw and choked her. He ripped the top off a beer can and used the jagged edge to inflict nearly mortal wounds. The police deputy who arrived on the scene said it was the most brutal attack he had ever seen.

Patricia was left to die by the side of the road that night. But this remarkable woman survived the brutal attack. She endured a long hospital stay and months of rehabilitation. Mageary was caught and convicted.

If given the opportunity, Patricia would have wanted to tell the judge about the crime, about how dangerous Mageary was, and how a long prison sentence was needed to protect the community from this vicious criminal.

But Patricia was not given the right to be heard at the time of Mageary's sentencing; indeed she was not even told about the proceeding.

Years later, still 10 years shy of serving his minimum sentence, Mageary was paroled — again without notice to Patricia. Fortunately, his parole was soon revoked for serious narcotics violations and he was back in prison.

In 1990, something happened that finally gave Patricia a chance to be heard.

Victims across our state joined with the business community and law enforcement to propose the strongest constitutional rights for crime victims in the country. In the face of opposition from judges and criminal defense attorneys, the people of Arizona overwhelmingly voted to amend the state constitution to add the Victims' Bill of Rights. The amendment established that victims have the right to be informed, present, and heard at important stages in their case. No longer would Arizona victims be treated as mere pieces of evidence for the convenience of the state — forced to remain silent, or denied access to the courtroom on the day of trial, or caught off guard when their attacker is released from prison.

It would ensure that victims are treated with fairness, dignity, and respect.

Or so supporters of the amendment thought. Incredibly, in 1993, the Arizona Board of Pardons and Paroles, again without notice to Ms. Pollard, granted Eric Mageary a release to "home arrest." Because of the Victims' Bill of Rights in the Arizona Constitution, Patricia was supposed to be informed of the hearing and given the opportunity to be heard, but the Board ignored the law.

The matter was brought to the attention of Gov. Fyfe Symington, and he started a chain of events that included filing a lawsuit to stop Mageary's release and ensure Patricia's rights would be protected. With just hours to go until Mageary was scheduled to be set free, the Arizona Court of Appeals stopped the release. The Court said Patricia's state constitutional rights to notice and due process had been violated, and it ordered the Board to hold another hearing. After listening to Ms. Pollard tell her story, the Board finally understood the horrible trauma of Mageary's crime, and kept him behind bars.

Sadly, while the rights of crime victims in Arizona are now protected, crime victims across America are still slighted by the system. That is why we are initiating a proposed amendment to the U.S. Constitution to extend to victims throughout the country a threshold of basic fairness. The amendment will be unveiled in Washington today at the start of National Crime Victims' Rights Week.

The proposed Victim's Bill of Rights will restore balance to our justice system. It will not infringe upon or diminish any constitutional right now enjoyed by a person accused of or convicted of a crime. But it would reform, once and for all, a system that ignores victims. It would ensure that victims are treated with fairness, dignity, and respect by protecting fundamental rights to be informed, present and heard at all the important stages of a case. It would establish for victims the right to a speedy trial, a final conclusion free from unreasonable delay, full restitution when possible, notice of any release or escape of an offender, and reasonable protection from the defendant. Most importantly, it would ensure that victims are given notice of each of these rights.

These basic, yet profound, ideas will restore integrity to the justice system at a time when many Americans have all but lost faith in the promise of "justice to all." Without constitutional safeguards, Ms. Pollard would still be choked by silence by the law. For the hundreds of thousands of victims like her around the country, the chokehold must be broken. Victims must be given a voice — not a veto, but a meaningful opportunity to stand and speak for justice and the rights of the law-abiding in our communities.

Sen. John Kyl is an Arizona Republican.

Cinder

Here we go again. Th week we dust off o puters, make our fac tions look cozy and comfy, p engines in the firehouse ar our daughters to come in an us work.

It's the fourth annual "T Daughters to Work Day," sc for April you're w about beir pink-slip downs you're pr safe for or day on when daughter between your boss. the boss o be esp pleasant brings daughter to the office, too.

Suzanne Fields

Every year, we hear prote the mothers of sons — or of s daughters — and lots of squ at home between siblings t the girls get a day off from and the boys don't. This ho sponsored by the Ms. Four an organization eager to s Citadel and the Virginia M Institute teach co-eds the killing people and breaking But integrating girls and mommy's work-place is a nc

Last year, the Ms. Four prepared "information kits" little girls that femininity gerous for their health: "Ma give up the struggle for au relationships and pursue th nine ideal — of being kind ar of swallowing their anger, o selfless — at great cost to th chological health." (Have the

Suzanne Fields, a colum The Washington Times, is nat syndicated. Her column appe Monday and Thursday.

Queen for a lifetime

By David Pitts

Yesterday, Elizabeth II, by the Grace of God, Queen of the United Kingdom and Northern Ireland, Head of the Commonwealth and Defender of the Faith, the breakup of the United Kingdom itself. The queen once traveled in Britain with minimal protection, but she now is surrounded by an elaborate security apparatus, recently beefed up in the wake of the IRA bomb attacks in London earlier this year.

mous mistrust of the foreigners across the English Channel. There is a much warmer feeling — for cultural and historical reasons — toward the people of the United States across a much larger Atlantic.

In 1996, the queen looks out on a

As if that were not enough, the queen, at 70, reigns over a nation with very different values than the traditional beliefs still cherished

Mother

By Eric Peters

As we snuggle up to A Earth today, it's fitting notice of a particularly bit of government obnoxio

A Bill of Rights for Crime Victims

How shocking it would be to describe a criminal justice system in which a defendant had no constitutional right to be treated fairly, no right to information about the progress of the case, no right to notice of when critical proceedings would be held, no right to be present and heard at those proceedings, and no right to a speedy trial or reasonable finality to the matter—in short, no constitutional rights at all. Yet this precisely describes the plight of a victim of crime. While the Bill of Rights enumerates extensive rights for criminal defendants, it contains not even a single word on behalf of crime victims.

Rule of Law

By Paul G. Cassell
And Steven J. Twist

On Monday a bipartisan group of senators and congressmen introduced a constitutional amendment that would extend these basic rights to crime victims. The Victims' Bill of Rights Amendment would bring balance to a system whose scales of justice are tipped decidedly in favor of the accused.

How did we arrive at a system that gives so little consideration to the interests of victims? The problem is traceable to the peculiar evolution of the office of public prosecutor. The first colonists imported the English common law tradition of private prosecutions, which gave the victim of a felony the right to initiate and prosecute a criminal case against the offender. The Framers of the Constitution probably saw little need for separate "victims' rights" because victims could act on their own.

Over time, public prosecutors gradually displaced the system of private prosecutions. While the reasons for this transformation are disputed, the undeniable effect was to exclude crime victims from meaningful participation in the criminal justice process. They lost any status as parties to the case. Their primary role became to report crimes to police and serve as witnesses if called. Meanwhile, it became accepted that prosecutors represented only the public interest, not the victims' interest.

This imbalance was exacerbated in the 1960s, when the Warren Court expanded the rights of criminal defendants and constitutionalized most aspects of criminal procedure. Trial judges who had previously accommodated victims' concerns informally within their courtrooms now found they had to follow prescribed formulas. Without a constitutional basis for considering victims' interests, a defendant's claim of a procedural right always prevailed. The court's one-sided expansion of defendants' rights slid victims out of the picture.

These developments leave us with a criminal justice system that pays scant attention to victims. Often victims do not even find out about critical proceedings, such as hearings about releasing a defendant on bail or allowing him to cop a plea to a reduced charge. When victims do learn about these proceedings, they frequently have no right to speak about why releasing the defendant is a bad idea or why the proposed plea bargain is undesirable. In many trials, victims are told that while the defendant is entitled to be present, they must leave the courtroom and sit outside in the room reserved for witnesses. Even after the conviction of the defendant, victims have often been denied the right to speak at sentencing or parole hearings.

Every year, 43 million Americans are the victims of violent or property crimes. The need for constitutional protection of their rights was first recognized by the President's Task Force on Victims of Crime, whose 1982 report concluded that "the criminal justice system has lost its essential balance." The Task Force proposed a constitutional amendment guaranteeing crime victims the basic rights to be present and heard at critical stages of the proceedings.

Since that recommendation, more than 20 states have adopted victims' amendments. In 1994 alone, voters in Alabama, Alaska, Idaho, Maryland, Ohio and Utah gave their overwhelming approvals. While the amendments vary in

form and effect, they have generally improved the treatment of crime victims throughout the criminal justice process. The federal Victims' Bill of Rights Amendment would draw upon the successful experience with the state amendments and require protection for victims under the federal Constitution.

The core of the amendment would guarantee victims of violent and other serious crimes the rights to be informed of and to attend court hearings. At proceedings concerning bail, plea bargains and sentencing, victims could speak—not to dictate the court's decision but to suggest what the decision should be. The amendment also would guarantee victims protection, including the right to a warning if a defendant escapes from custody.

The amendment would further grant victims a right to a speedy trial. Defendants have always had such a right but are often the only ones with no interest in seeing it enforced. Victims also deserve an end to interminable delays in capital and other cases. The defendant's right to appeal should be protected, but under the amendment courts would be required to rule finally and without unreasonable delay.

While victims have won many state legislative victories in recent years, the overall protection of their interests is piecemeal and inadequate. A federal amendment would establish a basic package of victims' rights, a floor below which states could not go and which defendants could no longer automatically trump. Victims' rights, no less than defendants' rights, would apply in state proceedings under current constitutional doctrine, because the rights would be incorporated into the 14th Amendment's nationally applicable guarantees of due process of law. This works no new violence to the important value of federalism. Rightly or wrongly, the Supreme Court has already federalized many aspects of criminal procedure and extended substantial rights for defendants throughout country. The proposed amendment simply adopts the view that victims deserve equal treatment.

A 1991 national public opinion poll found that 89% of Americans would support an amendment to their state constitution guaranteeing victims' rights. In recent years, state voters have given such amendments approvals as high as 92%. The American public recognizes what many criminal justice professionals seem to ignore—that the system must protect the rights of victims, too.

Mr. Cassell, a professor at the University of Utah College of Law, and Mr. Twist, a Phoenix attorney, are on the executive board of the National Victims' Constitutional Amendment Network.

Victims'-rights amendment proposed

Bipartisan bloc introduces bill

ASSOCIATED PRESS

Victims of violent crime would have the right to speak at the sentencings of their attackers and would be protected from intimidation under a constitutional amendment proposed yesterday.

Three lawmakers — Sens. Dianne Feinstein, California Democrat, and Jon Kyl, Arizona Republican, and Rep. Henry J. Hyde, Illinois Republican and chairman of the House Judiciary Committee — introduced the amendment to mark National Crime Victims' Rights Week.

"This year, 43 million Americans will be victimized by serious crime," Mr. Kyl told a news conference.

Mrs. Feinstein said that while accused criminals "have all kinds of basic rights guaranteed," such as the rights to remain silent when arrested and to a speedy trial, victims "have no rights at all."

The lawmakers cited a Justice Department survey indicating that crime costs Americans at least $450 billion a year, including factors such as legal fees, lost work time and the cost of police.

The proposed amendment would give victims the right:

• To be present at significant legal proceedings in the offender's case and to speak at sentencings, including the right to object to a previously negotiated plea or to the offender's release from custody.

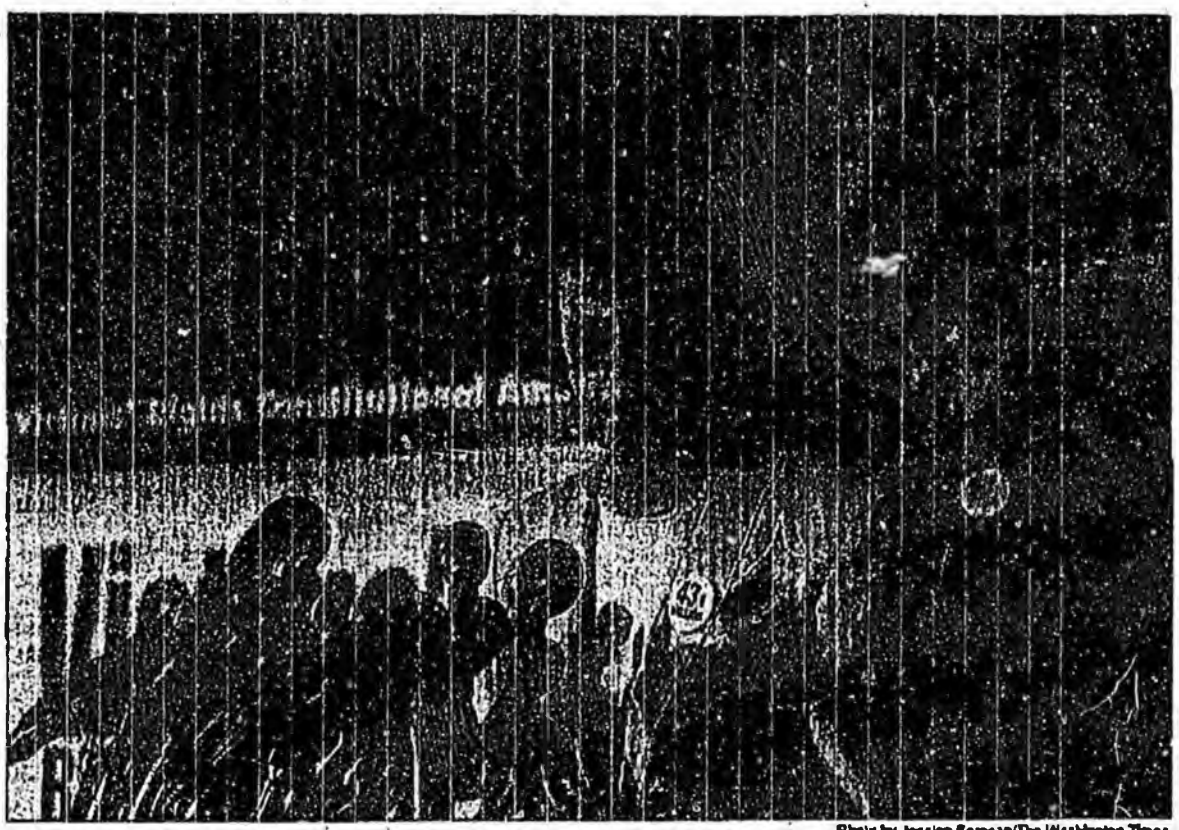

Photo by Jessica Persson/The Washington Times

Sen. Dianne Feinstein and Rep. Henry J. Hyde announce the victims'-rights legislation on Capitol Hill.

• To be informed of any release or escape of the criminal.

• To a speedy trial of the alleged attacker.

• To full restitution from convicted offenders. An anti-terrorism bill passed by Congress last week, which President Clinton has said he will sign, requires such compensation.

• To "reasonable measures" to protect them against further violence or intimidation by accused or convicted offenders.

For an amendment to become part of the Constitution, 290 House members and 66 senators must vote for it and 38 state legislatures must ratify it.

Mrs. Feinstein noted that 20 states, including California, have passed their own victims'-rights amendments. But only an amendment to the U.S. Constitution, she said, "can ensure that all victims of serious crimes are treated with fairness, dignity and respect."

The Senate Judiciary Committee plans a hearing on the amendment today.

WASHINGTON TIMES 4/23/96

Clinton should withdraw court nominee, Dole says

35-year career as a litigator." White

VICTIMS' RIGHTS CONSTITUTIONAL AMENDMENT (S.J. Res. 52)

- Introduced on April 22
- Senate Judiciary Committee held a full committee hearing on April 23
- Feinstein and Hatch are original cosponsors
- Henry Hyde is House sponsor

The amendment is supported by major national victims' rights groups:

* Mothers Against Drunk Driving (MADD)
* Parents of Murdered Children
* National Organization for Victim Assistance
* National Victim Center
* National Victims' Constitutional Amendment Network
* National Center for Missing & Exploited Children
* Victim Assistance Legal Organization
* Doris Tate Victims Bureau
* Citizens for Law and Order

United States Senate

SENATOR JON KYL

Facsimile Cover Sheet

Date: _____

Total pages, including cover: 7

To: KAREN BRANO

_____

From:

Jon Kyl _____	Ted Maness _____
Tom Alexander _____	Dan Ciechanowski _____
Colleen Deegan _____	Jeanine Esperne _____
Elizabeth Flessner _____	Tim Glazewski _____
Glenn Hamer _____	Liz Hickey _____
Stephen Higgins ✓	Julie Johnson _____
Kathleen Leavenworth ____	Elizabeth Maier _____
Lori Payne _____	Tricia Polen _____
John Ragan _____	Peggy Reizes _____
Sherry Reichel _____	Greg Smith _____
Sara Waddington _____	Lauren Weiner _____
Ashley Winkler _____	Other _____

907/465-6595

Comments: DON'T HESITATE TO CALL IF YOU NEED ANYTHING ELSE.

United States Senate, Washington D.C. 20510-0304
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Please call if there are any transmission problems.

SENATOR DAVE DONLEY
ALASKA STATE LEGISLATURE

SPONSOR STATEMENT - CS SS SJR 5 (RLS)

Supporting an Amendment to the Constitution of the United States Establishing the Rights of Victims of Crimes

CSSS SJR5(RLS) supports an amendment to the Constitution of the United States establishing the rights of victims of crimes. CSSS SJR5(RLS) requests the Congress of the United States support and submit to the states an amendment to the Sixth Amendment to the US Constitution addressing victims' rights.

In a 1982 final report of the President's Task Force on Victims of Crime to President Ronald Reagan, the US Department of Justice recommended the following language to amend the US Constitution to address victims' rights:

> "the crime victim has the right to be present at all criminal proceedings where the accused has the right to be present and the victim has the right to be heard, upon request, at sentencing, before or after conviction, and at any proceeding where the accused's release from custody is considered."

A fairer criminal justice system that establishes rights of victims of crime has become a national bi-partisan effort and the Alaska legislature has an opportunity to help balance the scales between rights of criminals and rights of crime victims on a national level by passing CSSS SJR5(RLS).

The United States criminal justice system has not provided adequate protection to victims of crime. There has been more emphasis on the rights of criminals to ensure due process than the rights of victims of crime. The innocent, honest, and helpless are first victimized by the criminal, and then again in the criminal justice system. The US Constitutional Amendment supported by CSSS SJR5(RLS) helps return a balance of fairness to our federal criminal justice system.

If you have further questions, please contact myself, or Karen Brand of my staff at 3892.

DD/kb

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June-December: 716 W. 4TH AVE. • STE. 430 • ANCHORAGE, AK • 99501 • (907) 258-8181 • FAX: (907) 258-1648

MEMBER: Senate Finance Committee • Senate State Affairs Committee

FISCAL NOTE

No. 1

STATE OF ALASKA
1996 LEGISLATIVE SESSION

ill Version: SSJR 5
(S) Publish Date: 4-26-96

Revision Date: April 25, 1996
Title: Crime Victim Rights Constitutional Amendment
Sponsor: Donley
Requester:

Dept. Affected:
BRU:
Component:
COMPONENT SERIAL NO.

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 100	FY 01	FY 02
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0	0	0	0	0	0

Estimate of any current year (FY96) cost: $ 0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: M Corio
Division: Senate Rules Committee
Phone: 465-3770
Date: 4/25/96

Approved by Commissioner: Mike Miller IRC Chair
Agency: Senate Rules Committee
Date: 4/25/96

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MADD

Mothers Against Drunk Driving

Anchorage Chapter
615 East 82nd Avenue, Ste. B 1
Anchorage, AK 99518-3157

19 April 1996

Senator Robin Taylor
Chair, Senate Judiciary Committee
State Capitol Building
Juneau, Alaska 99801

Dear Senator Taylor:

On behalf of the MADD - Anchorage Board of Directors, staff and our general membership, I urge you to schedule SS SJR 5 for hearing at the soonest opportunity.

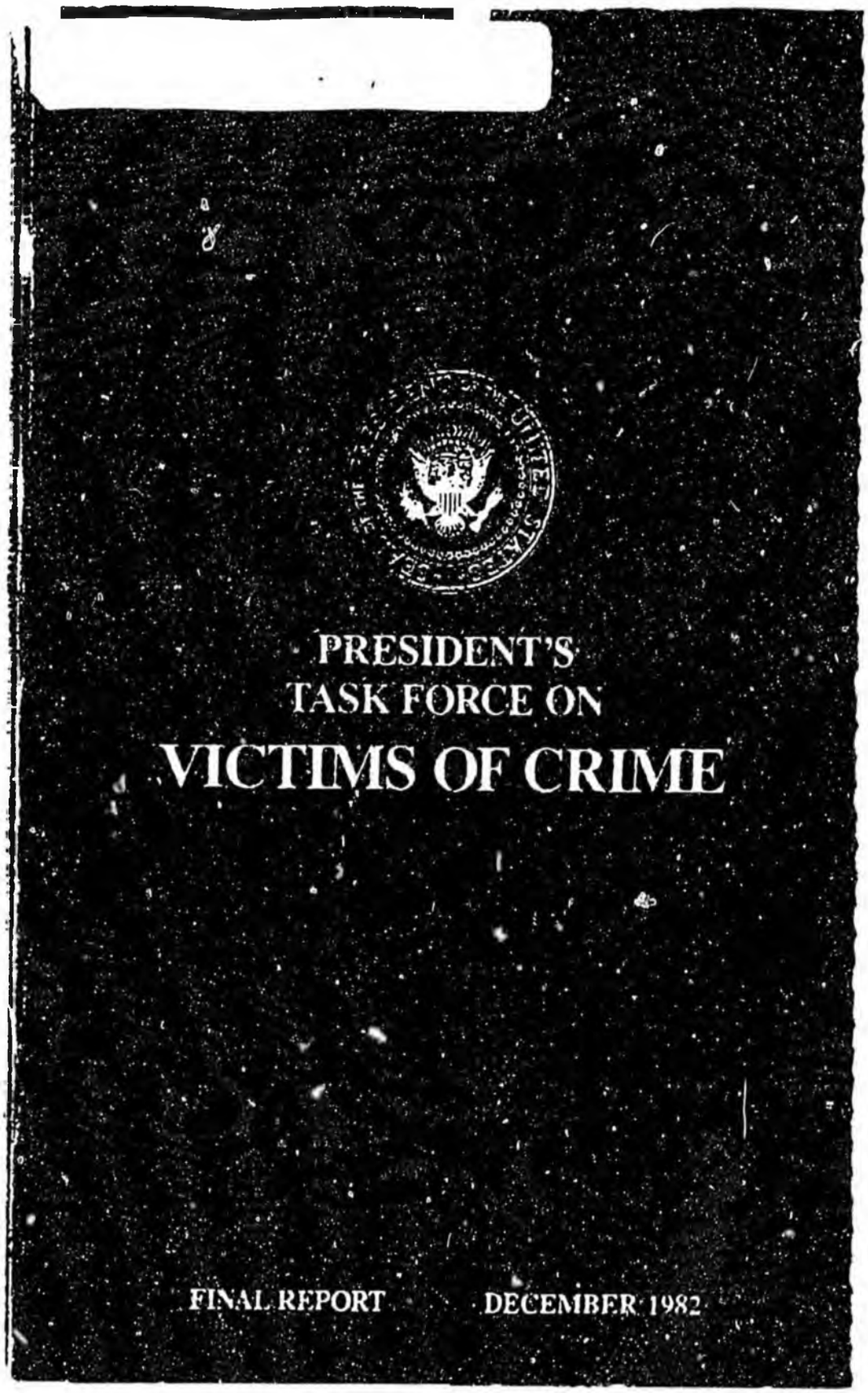
Let there be no doubt we fully believe in and support our national philosophy and constitutional right to the assumption of innocence until proven guilty. However, we also firmly believe that in establishing myriad procedures and laws ensuring that right, the victims of criminals have largely been overlooked or forgotten. Surely the innocent victims have as much right to be seen and heard as do those who have been charged with a crime!

Again, please schedule SS SJR 5 for hearing immediately so that Alaska has a chance to join other humanitarian states calling for the appropriate constitutional amendment.

Sincerely,

Palmira Santos

Palmira Santos
President


PRESIDENT'S
TASK FORCE ON
VICTIMS OF CRIME
FINAL REPORT
DECEMBER 1982

Contents

A Proposed Amendment to the Constitution

In applying and interpreting the vital guarantees that protect all citizens, the criminal justice system has lost an essential balance. It should be clearly understood that this Task Force wishes in no way to vitiate the safeguards that shelter anyone accused of crime; but it must be urged with equal vigor that the system has deprived the innocent, the honest, and the helpless of its protection.

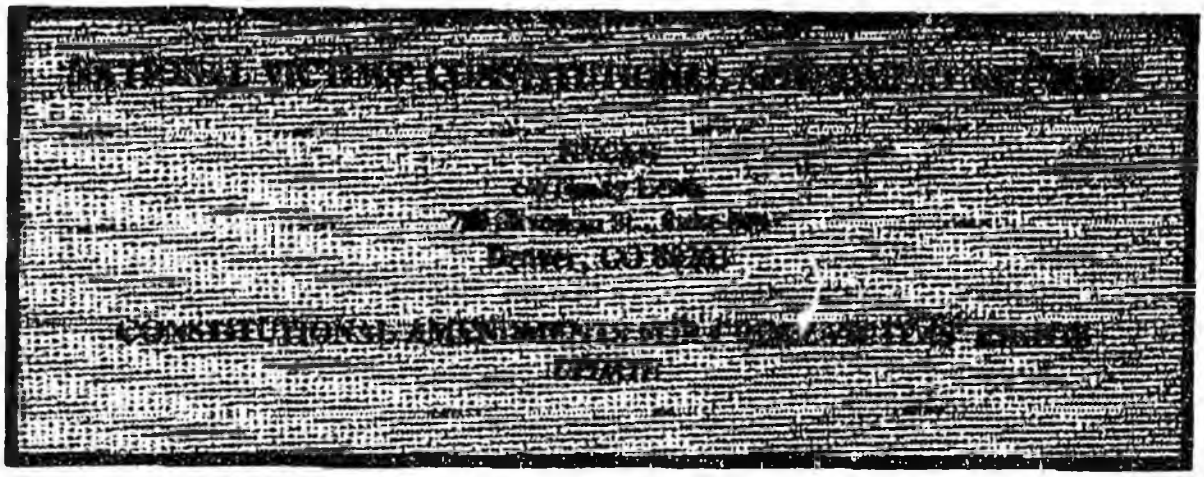
They explained the defendant's constitutional rights to the nth degree. They couldn't do this and they couldn't do that because of his constitutional rights. And I wondered what mine were. And they told me, I haven't got any.—a victim

The guiding principle that provides the focus for constitutional liberties is that government must be restrained from trampling the rights of the individual citizen. The victims of crime have been transformed into a group oppressively burdened by a system designed to protect them. This oppression must be redressed. To that end it is the recommendation of this Task Force that the Sixth Amendment to the Constitution of the United States be augmented.

We propose that the Amendment be modified to read as follows:

> In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor and to have the Assistance of Counsel for his defense. *Likewise, the victim, in every criminal prosecution shall have the right to be present and to be heard at all critical stages of judicial proceedings.*

We do not make this recommendation lightly. The Constitution is the foundation of national freedom, the source of national spirit. But the combined experience brought to this inquiry and everything learned during its progress affirm that an essential change must be undertaken; the fundamental rights of innocent citizens cannot adequately be preserved by any less decisive action. In this we follow Thomas Jefferson, who said: "I am not an advocate for frequent changes in laws and constitutions, but laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths discovered and manners and opinions change, with the change of circumstances, institutions must advance also to keep pace with the times."



With constitutionally-guaranteed rights for crime victims now in effect in *twenty* states, victims and their support rs across the nation are experiencing a virtual "domino effect" of new states interested in passing this important legislation. In the elections in 1996, at least five states – Indiana, Nebraska, Nevada, North Carolina and Virginia – will be presenting victims' rights constitutional amendments to voters for ratification. Members of the National Victims' Constitutional Amendment Network (NVCAN) have been hard at work providing experts, resources and technical assistance to those states anticipating the introduction of the amendment, along with those currently working through the legislative process.

Strong support for the constitutional protection of crime victims' rights is evident not only in the overwhelming electorate support that ballot amendments receive from voters, but also in the public-at-large. A 1991 national public opinion poll sponsored by the National Victim Center – *America Speaks Out: Citizens Attitudes About Violence and Victimization* – found that nine out of ten Americans (89%) say that they would probably or definitely support an amendment to their state's constitution which would increase victims' rights protection. Indeed, nearly half of those surveyed (49%) said they would *definitely* support a state constitutional amendment to increase victims' rights protection.

Furthermore, a 1993 report entitled *South Carolina Speaks Out: Attitudes About Crime and Victims' Rights* found that over eight out of ten citizens of South Carolina (86%) would definitely or probably support an amendment to that state's constitution increasing the protection of crime victims' rights.

The following report highlights the status of state-by-state efforts to pass constitutional rights for crime victims.

State Constitutional Amendments Enacted

Alabama: Passed constitutional amendment in both houses during the summer of 1994. The amendment was ratified in November with 80% of the voters in favor of the amendment.

Alaska: Passed constitutional amendment in their legislature in Spring 1994. The amendment was ratified in November with 87% of the voters in favor of the amendment.

Arizona: After the amendment failed in the 1988 legislative session, a state coalition of victims' rights organizations began a citizens' initiative to qualify the amendment for the November 1990 ballot. The amendment received support from 58% of the voters and was passed into law in 1990.

California: Proposition 8 -- the *Victims' Bill of Rights* -- was ratified by voters in 1982. Among the rights granted to crime victims are the right to speak at sentencing and at parole hearings.

Colorado: During the 1991 National Crime Victims' Rights Week, supporters kicked off the Colorado campaign to pass a constitutional amendment. Two weeks later, the amendment had passed both the Senate and the House, and was signed by the Governor. Comprehensive enabling legislation was also passed in 1992. The amendment was ratified with support from 86% of voters in the November 1992 General Election.

Florida: The state legislature passed the amendment during the 1987 legislative session, which was ratified by 90% of the voters during the 1988 November General Election.

Idaho: Passed constitutional amendment in both house and senate in March 1994. The amendment was ratified in November ballot with 79% of the voters in favor of the amendment.

Illinois: House Joint Resolution Constitutional Amendment 21 was introduced during the 1990 legislative session. It failed to move out of Committee. A strong coalition succeeded in getting a new amendment introduced and passed during the 1992 legislative session. Illinois voters overwhelmingly supported constitutional rights for crime victims with 77% of the vote in the 1992 November General Election.

the voters in November with 68% in favor of the amendment.

Washington: Submitted by Attorney General Elkenberry, the amendment was passed by the 1989 legislature and ratified by 78% of voters in November 1989.

Wisconsin: Legislation was introduced in 1990 and was re-introduced in April 1991, where it worked through the Senate Judiciary Committee. During the 1992 session, the bill was passed by the Senate and the House. By law, an amendment to the Wisconsin Constitution must be passed by two consecutive legislative sessions; it did so in the 1993 legislative session, and was ratified on April 6, 1993.

Amendments Passed and Pending Voter Ratification in 1996

Indiana: A Victims' Rights Constitutional Amendment passed the House of Representatives and Senate for the second time, as required, during the spring 1995 legislative session and will go to voters for ratification in 1996.

Nebraska: A constitutional amendment passed this state's unicameral legislature, and will be put before the voters for ratification at the primary election in May, 1996.

Nevada: A constitutional amendment received final passage by the legislature in 1995, and will be presented to voters for ratification in 1996.

N. Carolina: A constitutional amendment passed the General Assembly in 1995, and will be put before the voters for ratification in November, 1996.

Virginia: A Victims' Bill of Rights Amendment to the Virginia Constitution passed the General Assembly during the 1995 and 1996 sessions, and will go to the voters in November, 1996, for ratification.

SJR

19

#1

SENATE LETTER OF INTENT

B DAVIS

CS SJR 19 (Resources)

Offered by [redacted]

It is not the intent of the legislature for this resolution to be construed as a subsistence resolution.

No. 1

Bill Version: SJR 19

(S) Publish Date: 4/11/95

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. S

Revision Date:

Dept. Affected: Fish and Game

Title: Ask Feds to Amend ANILCA

BRU: Subsistence

Component: Subsistence

Sponsor: Senator Miller

Requester: Senate Resources

COMPONENT SERIAL NO. 483

Expenditures/Revenues (Thousands of Dollars)

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY95) cost: $ 0.0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

There are no direct costs to the Department of Fish and Game that result from passage of this resolution. Should Congress amend ANILCA as the resolution requests, fiscal implications could result but they would be variable depending on subsequent actions of the federal government and the Alaska Legislature.

Prepared by: Rob Bosworth Phone: 465-6143

Division: Subsistence Date: 3/15/95

Approved by Commissioner: Date: 3/20/95

Agency: Fish and Game

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1 of 1

SJR

31

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

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DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

December 1, 1995

Honorable Mike Navarre
Alaska House of Representatives
State Capitol
Juneau, Alaska 99801-1182

Re: Legislature's Authority to Amend Alaska's Statehood Compact

Dear Representative Navarre:

You have requested an opinion on whether the legislature has authority to bind the state to an amendment of Alaska's statehood compact to reduce the amount of property Alaska is entitled to receive, or whether an effective amendment requires acquiescence by the voters of Alaska.

As the law-making branch of the state government, the legislature has authority to bind the state to such an amendment of the statehood compact by passing legislation. The provisions of Alaska's statehood compact are not implicitly incorporated into its constitution, which was adopted two years before Congress passed and Alaskans accepted the Alaska Statehood Act. While amendment of provisions appearing in both the statehood act and the constitution might require a vote of the people, few provisions appear in both.

ALASKA'S ADMISSION TO THE UNION.

Alaska proceeded to statehood in a manner different than the vast majority of states. Generally, when Congress agrees to admit a new state into the Union, it passes an enabling act providing that the state draft and adopt a constitution acceptable to

Congress.[1/] Alaskans took the initiative, however, and drafted and adopted a state constitution before Congress had agreed to statehood for Alaska. In 1949, the Alaska territorial legislature created the Alaska Statehood Committee and appropriated $80,000 to promote statehood. In 1955, the territorial legislature and Governor B. Frank Heitzleman approved the calling of a constitutional convention.[2/] The convention convened at College in November 1955 and adopted a state constitution for Alaska on February 5, 1956.[3/] Alaskan voters approved it on April 24, 1956, along with the Alaska-Tennessee Plan ordinance which provided for the election of two provisional Senators and one provisional Representative to assist Delegate E. L. Bartlett in the Congressional fight for statehood.[4/]

On May 28, 1958, the House of Representatives passed the Alaska Statehood Bill, H.R. 7999. The Senate then passed the bill and President Eisenhower signed it on July 7, 1958.[5/] Alaskans ratified the Act in a referendum election held August 26, 1958, agreeing that Alaska should be accepted into the Union, agreeing to the boundaries set by the statehood act, and agreeing to accept the terms and conditions of the United States' grants of land and other property.[6/] Alaska officially became a state of the Union on January 3, 1959 with the signing of a presidential proclamation.

ALASKA STATEHOOD ACT AS A COMPACT.

Alaska's Statehood Act forms the basis of a compact setting forth the terms and conditions of Alaska's admission to the Union. The social compact theory, devised by political philosophers, has been taken literally in America, where

---

1/ For example, Congress approved Colorado's enabling act March 3, 1875, and the voters adopted the constitution as submitted by the constitutional convention on March 14, 1876. President Ulysses S. Grant issued a proclamation providing for admission of Colorado as a state to the Union on August 1, 1876.

2/ State v. Lewis, 559 P.2d 630, 636 (Alaska 1977); see also History of Alaska Statehood, found in 1 Alaska Statutes 11, 12.

3/ History of Alaska Statehood, supra, at 12.

4/ Id

5/ Id.

6/ Alaska Statehood Act, section 8(b).

governments are founded upon contract.[7/] The words "compact" and "contract" are synonymous and denote a voluntary agreement of the people to unite as a political community and to establish a government.[8/] The theory explains that individuals should obey the law because in a government that exists with the consent of the governed, each person freely and continuously consents to the constitution of his community.[9/] As Chief Justice John Jay observed, "every state constitution is a compact made by and between the citizens of a state, to govern themselves in a certain manner . . . ."[10/]

Just as constitutions can be viewed as compacts among a group of individuals, statehood or government relation acts approved by the affected entities are considered compacts between or among sovereigns. "That a State and the nation are competent to enter into an agreement of such nature with one another has been affirmed in past decisions of [the United States Supreme Court], and that they have been frequently made in the admission of new States . . . is a matter of history."[11/] The distinction between a state constitution and a statehood compact is that in the case of a constitution the people agree to the structure and authority of their state government, and in the case of a statehood compact they agree to the terms and conditions under which the state will join the Union.

As with contracts, one party cannot unilaterally amend the controlling terms of a compact; any alteration which adversely affects a party requires consent of that party. The U.S. Supreme Court discussed this aspect of compacts in Cooper v. Roberts[12/] as it applies to the federal grant of section 16 of every township to Michigan at statehood:

> The State of Michigan was admitted to the Union with the unalterable condition "that every section no. 16, in every township of the public lands, and where such section has been sold or otherwise disposed of, other

---

7/ 4 L. Levy, Encyclopedia of the American Constitution (1986), at 1700.

8/ Id.

9/ Id.

10/ Chisholm v. Georgia, 2 (Dall) U.S. 419, 471 (1793).

11/ Stearns v. Minnesota ex rel. Marr, 179 U.S. 223, 244-245 (1900).

12/ 59 U.S. (18 How.) 173 (1855).

lands equivalent thereto, and as contiguous as may be, shall be granted to the state for the use of schools."[13/]

The U.S. Supreme Court also found the provision of the Wisconsin Statehood Act that transferred section sixteen of every township to the state to be an unalterable condition of a compact.[14/]

In Alaska's case, the compact sets forth the terms and conditions of statehood to which the voters of Alaska agreed in August 1958, including promises Congress made to convey to Alaska real property, mineral rights, and oil and gas revenues.[15/] In return for this and other consideration, the Alaskan people agreed to assume the responsibilities of self-governance, which relieved the United States of the expense of territorial rule.

AMENDMENT OF ALASKA'S STATEHOOD COMPACT.

Although neither the United States nor Alaska can amend the essential provisions of the statehood compact unilaterally, both parties can agree to an amendment. The Alaska Legislature has authority to bind the state to an amendment of the statehood

---

13/ Id. at 179 (emphasis added).

14/ Beecher v. Wetherby, 95 U.S. (5 Otto) 517, 523 (1877); see also United States v. Morrison, 240 U.S. 192 (1915)(Compact between Oregon and federal government designating sections sixteen and thirty-six of each township to state was a convenient method of devoting a fixed proportion of public lands to school uses, but warranted only that the state would receive these sections or their equivalents); State of Louisiana v. William T. Joyce Co., 261 F.128 (5th Cir. 1919)(The action of Congress in setting apart the sixteenth sections of each township amounted to a compact with the inhabitants of Louisiana and purchasers of the lands in the future state which was consummated by the state's admission into the Union and the identification of the donated sections by appropriate surveys); Mora v. Torres, 113 F.Supp. 309, 313, 314-315 (D.P.R. 1953)(Public Law 600 and the Federal Relations Act incorporated therein establish a compact between the United States government and the people of Puerto Rico).

15/ See sections 6 and 28 of the Alaska Statehood Act.

compact without the vote of the people.[16/] Because the compact (along with the United States Constitution) dictates the terms of the state's agreement to constitute part of the Union, it deals with the relationship between the state and the United States as separate governmental entities. In this context, the state government can act in its representative capacity on behalf of the citizens of Alaska.

The essential difference between Alaska's statehood compact and its constitution determines how each can be amended as an internal state matter. In voting to approve a constitution, the people of a state agree to be bound by the constitution as a set of internal foundational rules of law. Alaska's constitution comprises the fundamental law that defines how the state government is structured, how it must operate, and its relationship to individuals. By its terms it cannot be amended without agreement by the voters of the state[17/]; the government has no authority to amend it without a vote of eligible citizens.

In contrast, the statehood compact does not govern internal matters of state government, but is an intergovernmental document that dictates the terms and conditions of the state's relationship to the federal government, to the extent that this is not dictated by the equal footing doctrine and express terms of United States Constitution. Initially, the agreement was made between the people of Alaska and the United States. By necessity, the people of Alaska rather than the state approved the terms of admission to the Union. The United States could not compact with the state government in August 1958 because it did not yet exist. The state began its existence and entered the Union simultaneously; the Alaska Constitution became operative with the formal proclamation of statehood on January 3, 1959.[18/] At the moment Alaskans formed a state government and became the 49th state of the Union, the compact became effective as an agreement between the state and the United States. Unlike the Constitution, nothing limits the authority of the legislature, acting on behalf of the state, to agree to amend the compact.

Some have argued that amendment of the statehood act

16/ This memorandum does not address the authority of the executive to amend compacts between Alaska and another sovereign, because Alaska law provides that no amendment that affects an interest of the state under the Alaska Statehood Act is effective as to the state unless approved by law enacted by the legislature or the people of the state. AS 01.10.110 (1976).

17/ Alaska Constitution, Art. XIII, Sec. 1, 4.

18/ Alaska Constitution, Art. XV, Sec. 25.

requires a constitutional amendment because the Act contains a provision that purports to have incorporated the terms and conditions of Congress' property grants into the constitution. Section 8(b) states in part that in the event Alaskans voted in favor of the three ballot measures accepting statehood and the conditions of admission,

> the proposed constitution of the proposed State of Alaska, ratified by the people at the election held on April 24, 1956, shall be deemed amended accordingly.

Were this provision effective, an amendment of a provision of the statehood compact reducing the state's property entitlement might require an amendment of the constitution. The Alaska Supreme Court has examined this provision, however, and found that it did not amend the Alaska Constitution.[19/] The court held that the Alaska Constitution cannot be amended by a majority vote of Alaskans, but can be amended only by a two-thirds vote of each house of the legislature thereafter approved by a majority vote, or by a constitutional convention subject to ratification by the people.[20/] Therefore, although 8(b) of the statehood act purported to amend the Alaska Constitution, it could not have that effect because it was approved only by a majority of voters without the requisite legislative approval or a constitutional convention.[21/]

CONCLUSION.

State acquiescence to an amendment of Alaska's statehood compact does not require a vote of the people, but can be accomplished through the approval of the legislature and signature of the governor as representatives of the state. Amendment of a provision in the statehood act that also appears in Alaska's constitution might require a constitutional amendment, but this memorandum assumes that the provision subject to amendment appears only in the Alaska Statehood Act.

19/ State v. Lewis, 559 P.2d 630, 639 (Alaska 1977), cert. denied 432 U.S. 901 (1977).

20/ Id.; Alaska Constitution, Art. XIII, Sec. 1, 4.

21/ Opinion No. 6 of the Attorney General, issued in 1969 and later withdrawn, was based upon a contrary interpretation of section 8(b), and therefore was overruled by State v. Lewis. It is referenced in the annotations to section 28 of the statehood act published by the Michie Company, but does not appear in the published Attorney General opinions.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: Joanne M. Grace
Joanne M. Grace
Assistant Attorney General

Alaska State Legislature

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Juneau, Alaska 99801-1182
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Drue Pearce
President of the Senate

Sponsor Statement for Senate Joint Resolution 31

The Statehood Compact, entered into by a vote of the people of the State of Alaska in 1958, is an agreement outlining Alaska's relationship with the federal government. The provisions within this agreement were designed to assure Alaskans that their rights are protected.

Concerns have been expressed by Alaskans about the State's role if and when any amendments are proposed to the Statehood Compact. There is no Constitutional guidance as to the proper process to be used for amendments, but AS 01.10.110, passed in 1976, allows the Legislature to amend the Statehood Compact either by law, which assumes Gubernatorial approval, or to bring the proposed change to a vote of the people by resolution.

This issue has been raised as the debate about opening the Arctic National Wildlife Refuge to oil and gas exploration and development rages here in Alaska and in Congress.

The question of what royalty share Alaskans will accept should not be decided by Congress alone. We need a clear method which will direct future Legislatures as to the proper method to use to make any decision concerning a change to the Compact.

I offer this resolution so we can resolve the question of process at this fall's election.

No. 1

FISCAL NOTE

Bill Version: CS S.TR 31(Jud)

(S) Publish Date: 2/13/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Revision Date: 2/7/96
Title: Constitutional Amendement RE: Alaska Statehood Act
Sponsor: Senator Pearce
Requester: Senator Taylor

Dept. Affected: Office of the Governor
BRU: Elective Operations
Component: General and Primary Elections
COMPONENT SERIAL NO. 22

Expenditures/Revenues

(Thousands of Dollars)

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

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

FULL-TIME	0					
PART-TIME	0					
TEMPORARY	0					

ANALYSIS: (Attach a separate page if necessary)

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

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

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

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No. 2

FISCAL NOTE

Bill Version: CS SJR 31 (Jud)

(S) Publish Date: 2/13/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

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

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 100	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

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

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

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SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 1/8/96

FURTHER: Finance

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

DATE TURNED INTO OFFICE: 2/12/96

The Judiciary Committee considered SENATE JOINT RESOLUTION NO. 31

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

FN & OPN attached

and recommends:

[✓] be **replaced** with ____ CS SJR 31 (JUD)

[ ] adopt **previous** ____ CS _____ (____)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ Committee

[ ] further referral to the _____ Committee

Senate Bill:
[ ] same title
[ ] new title

House Bill:
[ ] same title
[ ] technical title
[ ] new: SCR* ____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
Mike Miller	✓	Jerry Ellis		X	
Lyda Green	✓				
		Al Adams		X	
CHAIR: Loren Leman	✓				

NEW FISCAL NOTE(S):

	Department	Date	Zero	Fiscal
CS-	Office of Gov	2/7/96		2-2
CS-	Office of Gov	1/26/96	X	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

[ ] **APPROPRIATION -- no fiscal note**

***include fiscal notes accompanying Governor's bill**

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT OF SFC 3/13/96

DATE: 2/13/96 DATE TURNED INTO OFFICE. _____

The Finance Committee considered SENATE JOINT RESOLUTION NO. 31

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

and recommends:

Senate Bill:

[ ] be **replaced** with _____ CS SJR 31 (FIN) [✓] new title

[ ] adopt **previous** _____ CS _____ (_____) [ ] same title

House Bill:

[ ] technical change

[ ] attached amendment(s) [ ] new: SCR# _____

[ ] adopt Letter of Intent by _____ Committee

[ ] further referral to the _____ Committee

SIGNING DO PASS	*DP*	*OTHER RECOMMENDATIONS*	*NR*	*DNP*	*AM*
	✓		✓		
	✓		✓		
	✓				
Co-Chair:	✓	*Co-Chair:*			
Co-Chair:	✓	*Co-Chair:*			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
Gov/Elections	2/7/96		*2.2
office of Governor	1/26/96	ø	

[ ] **APPROPRIATION -- no fiscal note**

***Include fiscal notes accompanying Governor's bill**

SENATE RULES COMMITTEE REPORT

DATE: 3/14/96 DATE TURNED INTO OFFICE: 4/19/96

The Rules Committee considered SENATE JOINT RESOLUTION NO. 31

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

and recommends it be placed on the calendar:

[ ] replace with _____ CS _____(RULES)

[ ] attaches amendment(s)

[ ] adopts _____Letter of Intent

[ ] same title
[ ] new title
[ ] technical title change (HB only)

NEW FISCAL NOTES

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal

[ ] Appropriation No Fiscal Note

MEMBERS SIGNING FOR PLACEMENT ON THE CALENDAR

Pearce

Mike Miller

Chair: Signature and Recommendation

OTHER RECOMMENDATIONS:

Duncan - no rec

D. E. Sale no rec

Calendar on: 4/22/96

Approved by: Jr Gore

Article 4. The Statehood Act.

Section
110. Effect of amendments to Statehood Act

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

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

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

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

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

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

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

Rule of Law

By Charles E. Cole

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

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

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

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

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

Alaskans studied and considered the Statehood Act provisions before voting in the statewide referendum. Local newspapers published the text of the act in August 1958, and Interior Secretary Fred Seaton visited Alaska and delivered speeches outlining the act's terms. In a speech to the Anchorage Chamber of Commerce on Aug. 25, Secretary Seaton discussed the land and mineral rights grant and the 90% revenue provision. He assured his listeners that according to an analysis prepared by the Department of the Interior, the additional costs of statehood would be more than offset by these additional revenues to be provided to the state.

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

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

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

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

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

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

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

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

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

Mr. Cole is attorney general of Alaska.

Alaska Statehood Act

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

Cross references. — For sections implementing this act, see Act of December 2, 1980, P.L. 96-487, Title IX, 94 Stat. 2430-2448, set out at the end of this pamphlet.

Editor's notes. — The individual subject-matter headings, shown in brackets, were added by the publisher, based on marginal notations in the original.

The provisions of the Alaska Statehood Act may be found in the notes preceding 48 U.S.C. 21.

NOTES TO DECISIONS

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

But is part of background of settlement act. — The Alaska Statehood Act is important insofar as it is a significant part of the background of the Alaska Native Claims Settlement Act and contributes to an understanding of legislative intent in the settlement act. United States v. Atlantic Richfield Co., 435 F. Supp. 1009 (D. Alas. 1977), aff'd, 612 F.2d 1132 (9th Cir.), cert. denied, 449 U.S. 888, 101 S. Ct. 244, 66 L. Ed. 2d 113 (1980).

Applied in Edwardsen v. Morton, 369 F. Supp. 1359 (D.D.C. 1973).

Cited in File v. State, Sup. Ct. Op. No. 1827 (File Nos. 3482, 3537), 593 P.2d 268 (1979); DeBoer v. United States, 470 F. Supp. 1137 (D. Alas. 1979); United States v. Atlantic Richfield Co., 612 F.2d 1132 (9th Cir. 1980); Marrone v. State, Ct. App. Op. No. 156 (File No. 5368), P.2d (1982).

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

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

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

[TERRITORY]

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

NOTES TO DECISIONS

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

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

[CONSTITUTION]

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

NOTES TO DECISIONS

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

[COMPACT WITH UNITED STATES]

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

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

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

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

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

NOTES TO DECISIONS

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

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

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

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

The United States has preempted the power of an Alaskan borough to tax the land, homes or other permanent improvements on Alaska Native allotments or restricted lots in native townsites. People of S. Naknek v. Bristol Bay Borough, 466 F. Supp. 870 (D. Alas. 1979).

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

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

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

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

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

[TITLE TO PROPERTY]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

86-786 § 4, 74 Stat. 1025; October 3 1963, P.L. 88-135, 77 Stat. 223; March 25 1964, P.L. 88-289, 78 Stat. 169; November 2 1966, P.L. 89-702, Title IV, § 408(b), 80 Stat. 1098; December 2 1980, P.L. 96-487, Title IX, § 906(a), (f)(3), 94 Stat. 2437, 2440)

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

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

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

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

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

Since the Alaska Statehood Act did not authorize execution by the state of third-party leases and sales on lands not tentatively approved, those lands which are merely selected by the state and which thus remain under administration by the Bureau of Land Management appear to be subject to § 2 of P.L. 94-204, 89 Stat. 1146, Jan. 2, 1976, as a federal, and not state, obligation. June 14, 1979, Op. Att'y Gen. See also, June 28, 1979, Op. Att'y Gen. and July 3, 1979, Op. Att'y Gen.

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

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

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

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

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

NOTES TO DECISIONS

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

I. GENERAL CONSIDERATION.

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

The purpose of land grants under the Alaska Statehood Act is to serve Alaska's overall economic and social well-being. Some of the lands so selected will probably be used to protect mineral deposits. Others will safeguard wildlife. Still others will be used to protect domestic water supplies. Udall v. Kalerak, 396 F.2d 746 (9th Cir. 1968), cert. denied, 393 U.S. 1118, 89 S. Ct. 990, 22 L. Ed. 2d 123 (1969).

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

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

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

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

IV. CONSTRUCTION WITH ALASKA NATIVE CLAIMS SETTLEMENT ACT.

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

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

V. LANDS AVAILABLE FOR SELECTION.

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

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

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

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

VI. FISH AND WILDLIFE RESOURCES.

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

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

The Secretary of the Interior has the authority under the "BLM Organic Act," 43 U.S.C. § 1701 et seq., Pub. L. 94-579, to halt the wolf kill program, instituted by the Alaska Department of Fish and Game to help protect the Western Arctic caribou herd, which was taking place entirely on federally controlled land. State v. Andrus, 429 F. Supp. 958 (D. Alas. 1977), aff'd on other grounds, 591 F.2d 537 (9th Cir. 1979).

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

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

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

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

VII. MINERAL LAND GRANTS.

Alaska Constitution not amended to include terms and conditions set forth in subsection (i). — Although included in Alaska Statehood Act, § 3(b) was the provision that in the event that three propositions to be submitted to the voters, one of which required the consent by the state and its people to provisions of the Alaska Statehood Act reserving rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property therein made to the state of Alaska, were adopted by a majority vote, "the proposed constitution of the proposed State of Alaska ... shall be deemed amended accordingly," and although the propositions were adopted, the Alaska Constitution was not thereby amended to include "the terms or conditions of the grants of land" set forth in subsection (i) of this section. State v. Lewis, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, appeal dismissed, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

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

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

Rather, compact formed as to federal restrictions on alienability of land. — Alaskans by ratification of the constitution including the provisions of Alaska Const., art. VIII, § 9 and art. XII, § 13; and again, separately, by approving proposition 3 of Alaska Statehood Act, § 6(b), agreed to be bound by restrictions on alienability of land imposed by the federal government. This constituted a compact. State v. Lewis, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, appeal dismissed, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

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

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

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

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

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

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

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

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

VIII. SUBMERGED LANDS.

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

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

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

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

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

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

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

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

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

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

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

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

[CERTIFICATION BY PRESIDENT]

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

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

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

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

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

"(2) The boundaries of the State of Alaska shall be as prescribed in the Act of Congress approved . . . . . (date of approval of this Act) and all claims of this State to any areas of land or sea outside the boundaries so prescribed are hereby irrevocably relinquished to the United States.

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

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

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

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

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

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

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

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

Congress cannot limit supreme court's power to discipline Alaskan lawyers either directly or by continuing in force the provision of a territorial statute claimed to have that effect. In re Mackay, Sup. Ct. Op. No. 279 (File No. ABA 8), 416 P.2d 823 (1965), rehearing denied, 385 U.S. 890 (1966).

[HOUSE OF REPRESENTATIVES MEMBERSHIP]

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

[NATIONAL DEFENSE WITHDRAWALS; JURISDICTION]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Only on a military reservation under the exclusive legislative jurisdiction of the federal government could enforcement of game and fish laws be in the hands of the federal government exclusively. 1964 Op. Att'y Gen., No. 2.

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

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

[JUDICIAL AND CRIMINAL PROVISIONS]

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

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

"81A. Alaska";

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

"§ 81A. Alaska

"Alaska constitutes one judicial district.

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

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

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

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

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

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

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

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

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

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

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

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

(n) Subsection (q) of section 376 of title 28, United States Code, is amended by striking out the words: "the District Court for the Territory of Alaska,": *Provided*, That the amendment made by this subsection shall not affect the rights under such section 376 of any present or former judge of the District Court for the Territory of Alaska or his survivors;

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

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

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

[CONTINUATION OF SUITS]

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

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

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

Cross references. — See note to AS 33.15.240.

[APPEALS]

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

Cross references. — See note to AS 33.15.240.

NOTES TO DECISIONS

This section was obviously an expedient provided by Congress while the State court system was being organized.

Moody v. State, Sup. Ct. Op. No. 221 (File No. 401), 392 P.2d 466 (1964).

[SUCCESSION OF COURTS]

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

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

Cross references. — See note to AS 33.15.240.

[TRANSFER OF CASES]

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

Cross references. — See note to AS 33.15.240.

[CASES PENDING IN DISTRICT COURT FOR TERRITORY OF ALASKA]

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

Cross references. — See note to AS 33.15.240.

[JURISDICTION OF DISTRICT COURT; TERMINATION DATE]

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

Cross references. — See note to AS 13.15.240.

[FEDERAL RESERVE SYSTEM]

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

[REPEAL]

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

[UNITED STATES NATIONALITY]

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

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

[IMMIGRATION AND NATIONALITY ACT AMENDMENT]

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

[IMMIGRATION AND NATIONALITY ACT AMENDMENT]

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

[IMMIGRATION AND NATIONALITY ACT AMENDMENT]

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

[IMMIGRATION AND NATIONALITY ACT AMENDMENT]

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

[IMMIGRATION AND NATIONALITY ACT AMENDMENT]

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

[TRANSPORTATION BY WATER]

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

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

[MINES AND MINING]

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

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

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

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

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

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

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

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

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

NOTES TO DECISIONS

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

Applied in United States v. Atlantic Richfield Co., 435 F. Supp. 1009 (D. Alas. 1977), aff'd, 612 F.2d 1132 (9th Cir.), cert. denied, 449 U.S. 888, 101 S. Ct. 244, 66 L. Ed. 2d 113 (1980).

[SEPARABILITY CLAUSE]

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

[REPEAL OF CONFLICTING LAWS]

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

Approved July 7, 1958.