

Under 33(b). However, EPR could continue to provide services or facilities payable from transitional funds without regard to property transferred.

E. As to contracts for construction, EPR could either (1) award the contract and make payments thereunder from funds made available to it by Alaska, or (2) prepare the contract for award by Alaska and thereafter EPR to supervise the work until completion with the State making payments to the contractors. The latter arrangement would be similar to that between EPR and the National Park Service relative to Park Roads and Pathways.

F. EPR is now furnishing services from some of its equipment depots and other facilities to other Federal agencies. Arrangements should be made with Alaska to continue such services as may be desirable.

G. Arrangements should be made for use by Alaska of sources of material on Federal lands now available to EPR.

H. As presently drafted, the bill would not be construed as applying the existing matching formula to the Federal-aid funds already apportioned for the fiscal year 1960. As it is intended that the existing matching requirements would be retained with respect to the 1960 funds, the Bureau of the Budget is giving consideration to a proposed amendment which would accomplish this objective.

I. As to maintenance, Alaska no doubt will want to preserve presently apportioned funds as long as possible for such purpose. Obligated funds as of January 31, 1959, amounted to \$22,398,977. Of this total fiscal year 1960 funds amounted to \$13,829,881. Including ten-percent matching funds, these totals would become \$14,638,673 and \$15,212,869 respectively. All fiscal year 1960 funds must be obligated before June 30, 1962. Actually three to four years of maintenance funds, from 15 to 20 million dollars, could thus be placed under project agreement if administratively advisable and acceptable. However, this would impair the construction program until fiscal year 1961 funds become available.

Transitional grants would total 27.5 million dollars beginning with fiscal year 1960 through fiscal year 1964. The Sectional Analysis referred to 4 million dollars a year in 1960, 1961, and 1962 from transitional grants for maintenance, which would total 12 million dollars. If, however, fiscal year 1960 funds are not made for maintenance, the aforesaid 12 million dollars of transitional grants could be used for administrative purposes and consecutively could be used to match fiscal year 1961 and subsequent fiscal year apportionments during the stated period.

### PLAN OF OPERATION

1. BPR to transfer to Alaska all property and interests in property not needed by BPR to continue its usual Federal functions. It is particularly important to include those properties previously administered by the former Alaska Road Commission which will not be a part of the Federal-aid highway program such as tramways, trails and other public works including airplane landing fields (usually referred to as bush landing fields).
  - a. Requires initially a complete inventory.
  - b. Form of conveyance to be drafted by BPR in cooperation with Alaska.
  - c. Certain properties that cannot effectively be transferred and utilized by Alaska will be disposed of prior to July 1, 1959, such as petroleum tanks on military reservation fed by military pipelines.
2. BPR will arrange with Federal agencies concerned for substitution of parties or issuance of new permits to Alaska in such matters as rights to remove road material from designated sites on public lands, and highway and related occupancy of railroad properties.
3. At Alaska's request, BPR may continue or may perform certain services under Section 33(c) in the design, construction or maintenance of Federal-aid highways, or maintenance of other improvements in the Federal-aid highway system. Note: Some of these services will consist of general pro rata expenses of a group of BPR employees below the top administrative level usually considered as a part of the required organizational setup of a satisfactorily operating highway department, hence are nonparticipating for Federal-aid reimbursement. Such expenses will exclude normal BPR administrative setup to administer the Federal-aid program generally.
4. Alaska may arrange to advance to BPR sufficient funds in trust to pay for services performed under paragraph 3 above, to be used as a drawing account. This advance will come from transitional funds made available by the President to Alaska, or from other Alaska funds. Forgoing arrangement is deemed preferable than for direct grants from President to BPR.
5. BPR will render to Alaska an accounting, job by job, of the costs of the requested services together with a periodic (monthly) statement of disbursements made from the trust fund.

6. Alaska may, on the basis of the cost statement under paragraph 5 above, voucher EPR on Form FR 20 for reimbursement of the Federal (Federal-aid highway funds) pro rata share of the cost of the services rendered. EPR will make payment thereof in the usual manner as payments are made to the other States. These vouchers and other documents will be subject to the usual Federal audit procedures.

7. Alaska may augment the trust fund (to EPR) from time to time as the needs require using funds received from Federal-aid reimbursement or other Alaska funds. In this way the State's matching obligation is handled automatically.

8. Alaska may (1) request EPR to contract in the name of the Federal Government in which case contract payments will come from the trust fund and all Federal contract and labor laws will govern, or (2) request that the contract be prepared for Alaska's signature and payment of contract earnings directly by the State to the contractors, EPR merely to administer the contract and supervise the work. The latter procedure would be similar to that now used in connection with road work in National Parks and Parkways.

9. All regular Federal-aid program, project agreement and reimbursement procedures would be followed as in the other States. It does not appear that EPR would have authority to reimburse itself, in part, directly from Federal-aid highway funds, nor does such authority seem necessary.

10. EPR now provides certain services to other Federal agencies with certain of the facilities that would be transferred to Alaska. In that regard EPR will use its good offices to have the State continue furnishing such services, but this will be a matter entirely between Alaska and the affected Federal agency.

11. Prior to June 30, 1964, and under the authority of Section 34, any Federal functions apart from the Federal-aid program that might be discontinued by EPR and assumed by Alaska would be the basis for transfer to Alaska of any related property. This emphasizes the intent that transfers under Section 20(a) shall be comprehensive and complete as to everything over and above usual Federal functions that are otherwise the obligation of EPR to exercise pursuant to law in administering the Federal-aid program and direct Federal obligations.

Alaska

April 13 1959

26-10

Honorable Hugh J. Wade  
Secretary of State  
Juneau, Alaska

Dear Mr. Secretary:

Secretary Strauss has asked me to thank you for your letter of March 27, 1959, transmitting to him a copy of Senate Joint Memorial No. 11 of the Alaska Legislative Assembly.

We are very much aware of the critical highway needs of Alaska. You may rest assured that we will do everything possible to promote the construction and improvement of an adequate system of highways in the new State.

Cordially yours,

John J. Allen, Jr.  
John J. Allen, Jr.

*Byron Jupp* 4-10-59  
*J. J. Allen*  
4-10-59

Bureau of Public Roads  
RLMayifpc (4/8/59)  
Control No. 43945  
cc: Signer (3)  
General Counsel (Dept)  
Bureau of Public Roads

*RSM*  
*SW*  
*lwb*  
*Richard Jupp*  
4-8-59

COPY TO UNDER SECRETARY FOR  
TRANSPORTATION

Cleared Through  
Secretary's Correspondence  
Section

MAILED APR 13 1959 BY *RH*

Cleared Through  
Administrator's Correspondence Unit

"RETURN TO BUREAU OF PUBLIC ROADS"

RG 30, Bur. of Public Roads  
E. 6 D, Gen Corr. + Related Recs, 1955-59  
Box 1127

57-10

ALASKA

Alaska

STATE OF ALASKA

SECRETARY OF STATE

JUNEAU

March 27, 1959

1959 MAR 6 PM 1 31

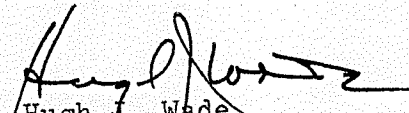
DEPARTMENT OF COMMERCE  
SECRETARY'S  
COMMUNICATIONS UNIT

Honorable Lewis L. Strauss  
Secretary of Commerce  
Washington 25, D. C.

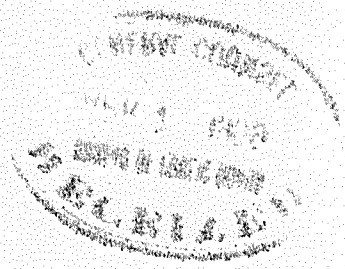
My dear Secretary Strauss:

At the request of the Legislature of the State of Alaska, I have the honor to transmit to you a certified copy of SENATE JOINT MEMORIAL NO. 11, respectfully urging the introduction and passage of any federal legislation necessary to the construction of a road between Anchorage and Nome by way of McGrath; and that all agencies responsible for such construction proceed at the earliest possible date to plan and build said road.

Sincerely yours,

  
Hugh J. Wade  
Secretary of State

Enclosure



43945

RG 30, Bur. of Public Roads  
E. 6 D, Gen Corr. + Related Recs, 1955-59  
Box 1127



IN THE SENATE

BY SENATORS BRONSON AND BELTZ

SENATE JOINT MEMORIAL NO. 11

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIRST LEGISLATURE - FIRST SESSION

TO THE HONORABLE LEWIS L. STRAUSS, SECRETARY OF COMMERCE; THE HONORABLE WILLIAM A. EGAN, GOVERNOR OF ALASKA; THE HONORABLE E. L. BARTLETT AND THE HONORABLE ERNEST GRUENING, SENATORS FROM ALASKA; THE HONORABLE RALPH J. RIVERS, REPRESENTATIVE FROM ALASKA; THE HONORABLE ELLIS L. ARMSTRONG, COMMISSIONER OF THE BUREAU OF PUBLIC ROADS; THE HONORABLE EDGAR H. SWICK, REGIONAL ENGINEER, REGION TEN, BUREAU OF PUBLIC ROADS; THE HONORABLE FRANK A. METCALF, STATE COMMISSIONER OF HIGHWAYS AND PUBLIC WORKS:

Your Memorialist, the Legislature of the State of Alaska in First Legislature, First Session assembled, respectfully submits that:

WHEREAS, Senator Ernest Gruening has indicated that plans are underway to submit a bill to Congress that would call for the construction of a road between Anchorage and Nome; and

WHEREAS, said proposed road will be routed through the community of McGrath; and

WHEREAS, such a road would be to the benefit of all Alaska and would make a vital contribution to national defense by connecting various White Alice stations by ground transportation; and

WHEREAS, this road would reduce freight costs both to residents and to important defense installations along the route;

NOW THEREFORE, Your Memorialist urges the introduction and passage of any federal legislation necessary to the construction of a road between Anchorage and Nome by way of McGrath; and

further urges that all agencies responsible for such construction proceed at the earliest possible date to plan and build said road.

Passed by the Senate March 10, 1959.

/s/ William E. Beltz  
President of the Senate

ATTEST:

/s/ Katherine T. Alexander  
Secretary of the Senate

Passed by the House March 19, 1959.

/s/ Warren A. Taylor  
Speaker of the House

ATTEST:

/s/ Esther Reed  
Chief Clerk of the House

I hereby certify that the above and foregoing constitutes a full, true and correct copy of Senate Joint Memorial No. 11 as passed by the Senate and House of Representatives of the State of Alaska.

Katherine T. Alexander  
Secretary of the Senate

LONG\* IN THE INTERESTS OF THE STATE OF ALASKA  
PROCESS OF THE STATE OF ALASKA TO BE BY THE STATE OF ALASKA  
IMPROVE THE STATE OF ALASKA FOR THE STATE OF ALASKA

APR 13 1959

Honorable Hugh J. Wade  
Secretary of State  
Juneau, Alaska

Dear Mr. Secretary:

Secretary Strauss has asked me to thank you for your letter of March 27, 1959, transmitting to him a copy of Senate Joint Memorial No. 11 of the Alaska Legislative Assembly.

We are very much aware of the critical highway needs of Alaska. You may rest assured that we will do everything possible to promote the construction and improvement of an adequate system of highways in the new State.

Cordially yours,

151  
John J. Allen, Jr.

Bureau of Public Roads

RM:fyf (4/6/59)

Control No. 43945

cc: Signer (3)

General Counsel (Dept)

Bureau of Public Roads

Mr. Tallamy; Mr. Armstrong; Mr. Royster; Mr. Niemi, Reg Engr (2);

General Counsel; Legis; Chron; CC Unit; Control No. 43945;

Files (2)

Cleared Through

Director's Correspondence Unit

RG 30, Bur. of Public Roads  
E. 6 D, Gen Corr. + Related Recs, 1955-59  
Box 1127



Alaska

BUREAU OF PUBLIC ROADS

WIM

Mr. E. D. Tullary, Federal Highway Administrator

April 10, 1959

26-10

C. W. Enfield, General Counsel

By **S. K. BOOTH**

S. K. Booth, Deputy General Counsel

Congressional Hearings on Alaska Omnibus Bill

We have just been advised that the hearing on the Alaska Omnibus Bill will be held before the Territories Subcommittee of the House Interior and Insular Affairs Committee on May 4 and 5, 1959. Hearings on the bill will also be held by the Senate on May 6 and 7, 1959, although the committee before which such hearings will be held has not yet been determined.

Copies of a proposed statement to be given by you at the hearings have been submitted to you previously. We advised in the memorandum transmitting the draft statement that Mr. Harold Seidman of the Bureau of the Budget will be the first and major witness concerning this subject and witnesses from other affected agencies will be expected to appear in his support. We are advised that Mr. Seidman plans to hold one or more "briefing" sessions well in advance of the dates of the hearings. At the briefing sessions it will be expected that all testimony will be coordinated and the various problems discussed.

In the meantime, Mr. Seidman will want to have draft copies of the proposed statements to be made by the representatives of each of the Federal agencies. We have advised Mr. Drance that we hope that by the early part of next week to submit to him for transmission to the Bureau of the Budget a copy of your draft statement, together with possible questions which may be raised by members of the Congress and answers thereto.

cc: Mr. Armstrong; Mr. Turner; Mr. Allen; Mr. Williams; Mr. Holmes; Mr. Monahan; Mr. Cunningham; Mr. Nisani

*p8m*

RLMay:fpc

cc: Files (2)

- Gen Counsel
- Mr. Enfield
- Mr. Booth
- Mr. May
- Legis
- Chron

*4110*

BUREAU OF PUBLIC ROADS

*Alaska*

WIM

Mr. C. W. Enfield, General Counsel

April 9, 1959

G. M. Williams, Assistant Commissioner

22-61

*J. Barnett*

Comments on S. 1541 - Alaska

Two recommendations are offered with respect to S. 1541.

1. This bill imposes on a newly created political entity a financial burden in the field of highways which is on the face of it beyond their initial capability. Consider these figures:

FY 1961 matching requirements	\$ 5.75 million
Annual maintenance obligations	5.00
Administration	0.90
	<u>11.65</u>
Annual fuel tax revenue	2.20
Excess highway cost over income	\$ 9.45 million

Agreed that the other States should not continue to carry Alaska indefinitely, but an opportunity should be afforded for the new State to get its financial house in order before imposing the full highway burden. It is recommended that transitional grants for highway purposes be included in the bill in the amounts of \$3 million for the first year, \$6 million for the second, \$4 million for the third, and \$2 million for the fourth year.

This is considered preferable to Senator Bartlett's proposal that consideration be given to using two-thirds of the area of Alaska in apportionment, continue the use of Federal-aid funds for maintenance, and pay administrative costs from Federal-aid funds. The need for highways to open up Alaska for development of her resources is tremendous. Senator Bartlett's plan would mean about \$12.75 million less a year for highways in Alaska, and continue indefinitely the preferential treatment Alaska enjoyed as a Territory but to which it has no moral right as a State.

2. It is also recommended that the portion of Federal-Aid Route 95 south of Haines, with connections to Skagway and Sitka, be considered a part of the Federal-aid system, with construction of an adequate ferry system including vessels and docking facilities, and maintenance and operation thereof beyond revenue derived by a fair and reasonable toll schedule, eligible for reimbursement from Federal-aid highway funds. Because of the geography of Southeast Alaska, highway service to the important communities, including the State Capital, scattered along its length requires extensive use of ferries, and this ferry system is considered a logical part of the Federal-aid highway system.

We recommend support of this bill with possible modification to bring the financing within reasonable reach of the State's ability to finance during the first few years.

ELPaige/JB/lmp  
 cc: Files (2) ✓  
 W. J. Niemi, Regional Engineer (2)  
 M. F. Maloney  
 J. L. Shotwell  
 G. M. Williams

## BUREAU OF PUBLIC ROADS

*Alaska*

10-00 Mr. William J. Niemi, Regional Engineer  
 Juneau, Alaska  
 C. W. Enfield, General Counsel  
 By ~~SK BOOTHS~~  
 26-01 S. K. Booth, Deputy General Counsel

April 6, 1959

## Proposed Omnibus Act for Alaska

I understand that you have been furnished copies of the bills H. R. 6091 and S. 1541 which have been recently introduced for purposes of the proposed Alaska Omnibus Act. I am not sure, however, that you have received the sectional analysis in connection therewith as printed in the Congressional Record on March 25. Therefore, I am attaching a copy of the analysis as contained in the Congressional Record.

We have furnished you with copies of the tentative outline plan of procedure to implement this proposed legislation as transmitted to the Assistant Commissioners on March 16. Upon receipt of comments from the Assistant Commissioners, we contemplate issuing a revised outline statement for such use as it may serve within the Bureau. If you have any comments thereon, we would appreciate receiving them as promptly as possible.

You, undoubtedly, will discuss this subject with Mr. Cunningham during his visit this week.

## Attachment

SKBooth:vms  
 CC: Files (2)  
 Mr. Cunningham  
 Mr. May  
 Legis File  
 Gen Counsel  
 Chron

4/6/59

BUREAU OF PUBLIC ROADS

Alaska

March 31, 1959

Mr. E. H. Swick, Regional Engineer  
Juneau, Alaska

23-10

Paul F. Royster, Assistant Commissioner  
Washington 25, D. C.

Alaska - Knik River Flood from Lake George

Attached is a copy of a memorandum from Mr. Ghiglione advising of a meeting attended by representatives of several Federal agencies at which time the annual Knik River flood situation was discussed. Mr. Ghiglione attended the meeting as a representative of Public Roads because of his direct knowledge of the problem as related to the Knik River highway bridge.

You will note that the Geological Survey has agreed to make a preliminary study of the situation utilizing available data and to roughly estimate the feasibility of certain control measures. The need for a long range study of the problem was also discussed. Another meeting is to be held following the completion of the preliminary study.

Please let us have your views on this situation. Your recommendation as to the need for or the desirability of participation by Public Roads in a long range study of the problem will be particularly helpful.

Attachment (1)

EEErhart:nk

cc - Files (2)

Federal Hwy. Projs. Div.

Mr. A. F. Ghiglione

Mr. Royster - Room 814

3/31/59



Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. P. F. Royster, Assistant Commissioner  
Washington, D. C.

DATE: March 24, 1959

FROM : A. F. Ghiglione, Regional Engineer  
15-00 Arlington, Virginia

SUBJECT: Alaska--Knik River Flood from Lake George

This memorandum is to summarize the discussions at a meeting held in the Geographical Survey office this morning on the subject matter. The meeting was called at the request of the Alaska Railroad, and I was invited to participate because of my background in Alaska and particularly on the Knik River Bridge construction. The meeting was held in the office of Mr. John Reed, Staff Coordinator of the Geological Survey, and was attended by the following:

Clarence M. Conway  
W. L. Lockwood  
Howard Edwards  
Daniel A. Jones  
A. N. Cameron  
John C. Reed  
A. F. Ghiglione  
  
A. M. Fitch

Army Engineers  
Army Engineers  
Bureau of Land Management  
Bureau of Land Management  
Geological Survey, Surface Water  
Geological Survey  
Bureau of Public Roads, 1440  
Columbia Pike, Arlington, Virginia  
Office of Territories

The "self-dumping" Lake George, caused by a glacier's damming off of the outlet to the lake and the annual overflowing by the lake in late July or early August, has caused serious floods in the Knik Valley for many years. The Anchorage-Palmer Highway crosses the Knik over a bridge of six 250-foot spans several miles upstream from the Alaska Railroad crossing, which includes several bridges of both clear-span and trestle design. The Alaska Railroad spends large sums annually in protecting their trestles and bridges during the flood stage by stationing cranes on the bridges to lift over debris and in protecting their piers from scour. The river at the site of the railroad crossing is in several channels; however, at the highway crossing the river is in but one channel, and maintenance of the highway bridge during floods has been relatively simple.

The Railroad now claims that the trend of the Lake George breakup in recent years is towards a faster runoff with a higher peak flood, though the volume of river flow is no greater than in the past. As a result, the danger to their bridges has increased to the point where they now feel they will be unable to protect them from future floods. They cite that the flood in 1958 cost them \$250,000 in maintenance and repairs. They also cite the increased troubles experienced at the highway bridge where the north approach was washed out in 1958 disrupting traffic for several days.



Since the railroad is the only means of transportation to the large Air Force installation being constructed at Clear, they are requesting assistance from the Air Force in protecting the Knik River crossing. The meeting was for the purpose of developing plans for such protection and, basically, two studies were considered: First, possible action to minimize damage from the flood to be expected this July; and, second, long-range plan to effect some control of the floods in the future.

The Geological Survey finally agreed to make a quick study of available data from various sources in Alaska and to develop rough estimates of the feasibility of control measures, such as dynamiting or bombing, and of the cost of the long-range studies necessary to reasonably evaluate the trend of the floods and the need for further action. The Alaska Railroad agreed to reimburse the Geological Survey in the amount of \$5,000 to cover this preliminary study.

Responsibility for financing the long-range studies was discussed, with the Railroad expressing the desirability of all participants assisting in this project. As justification for this cooperative study they pointed out the advantages to the highways and the Military in the assurance of flood control. It was generally agreed by each representative at the meeting that we would explore the possibility of financing for the long-range study, and that another meeting on this matter will be held in approximately 60 days, when the preliminary study of the Geological Survey is finished.

In line with the above it is recommended that this matter be brought to the attention of Region 10 for their consideration with the request that they indicate whether such participation is believed to be desirable or possible.



## BUREAU OF PUBLIC ROADS

*Alaska*  
*Hawaii*

WIM

March 27, 1959

25-00

Mr. E. H. Holmes

26-12

C. W. Enfield *C. W. ENFIELD*Diversion--Applicability of 23 U.S.C. 126 to Alaska and Hawaii  
upon becoming States

Section 126 of title 23, United States Code, requires, as a condition of Federal aid, that each State use at least the amounts from highway user taxes provided by law "...in each State..." for highway purposes on June 18, 1934. Mr. McCallum's memorandum dated March 18, 1959, inquires whether section 126 of title 23, United States Code, will become applicable to Alaska and Hawaii upon their achieving statehood. The memorandum specifically asks whether the new States are exempted from this statutory requirement by virtue of the fact that they were not States in 1934.

For the reasons hereinafter stated, it is the opinion of this office that (1) section 126 will apply to each of these new States as soon as statehood is achieved and (2) the applicable yardstick will be the respective provisions of law (governing the use of the revenues derived from the taxes specified in section 126) in effect on June 18, 1934, in the areas embraced within the respective boundaries of the new States.

The statutes providing for admission into the Union of Alaska (P. L. 85-508) and Hawaii (P. L. 86-3) provide that Alaska and Hawaii shall be admitted on "...an equal footing with the other States in all respects whatever...." Each statute also provides that "...the laws of the United States shall have the same force and effect within said State as elsewhere within the United States." (P. L. 85-508, § 8; P. L. 86-3, § 15).

To take the view that, since Hawaii and Alaska were not States on June 18, 1934, there is no 1934 yardstick which existed in "...each State...", would make it utterly impossible to apply the provisions of section 126 to Alaska and Hawaii; for, if there is no yardstick, how can anyone determine whether current use of revenues derived from State taxes on gasoline and motor-vehicle owners and operators complies with the condition prescribed by section 126. In effect, such a view would make section 126 wholly inoperative with respect to Hawaii and Alaska and, whereas other States must comply with that section, neither of these two States would be required to do so as a condition of receiving Federal aid, with the result that these States

SECTION 101  
SECTION 102  
SECTION 103  
SECTION 104  
SECTION 105  
SECTION 106  
SECTION 107  
SECTION 108  
SECTION 109  
SECTION 110  
SECTION 111  
SECTION 112  
SECTION 113  
SECTION 114  
SECTION 115  
SECTION 116  
SECTION 117  
SECTION 118  
SECTION 119  
SECTION 120

DEPARTMENT OF COMMERCE  
BUREAU OF PUBLIC ROADS  
WASHINGTON, D. C. 20540

MIN  
MAY 21 1954

2 210881

- 2 -

would, to that extent, be admitted on an unequal, although preferential, footing with the other States and, insofar as Federal-aid highway laws are involved, the application of Federal laws would not have the same force and effect in these two States as elsewhere.

Congress obviously intended no such results and, quite to the contrary, expressly required the direct opposite, as is unequivocally indicated by the above quoted sections 8 and 15 of the respective statehood acts. Statutes must, of course, be construed in a way which will carry out the legislative intent. Also, fundamental rules of statutory construction require that section 126 should, if at all possible, be given an interpretation consistent rather than in conflict with each of the statehood acts. It is my opinion, therefore, that the phrase "...in each State..." following the words "...on June 18, 1934, for such purposes..." in 23 U.S.C. 126(a) must be interpreted as being used in a geographical rather than governmental sense--i.e., it denotes a geographical area rather than its status as a unit of government. Accordingly, the laws (governing the use of revenues derived from the taxes specified in 23 U.S.C. 126) which were in effect on June 18, 1934, in the areas embraced within the respective boundaries of the new States constitute the yardstick for purposes of determining compliance with the anti-diversion provisions of 23 U.S.C. 126.

*JW*  
*p8m*

JAWoolman/jfp  
cc: Files (2)  
Gen Counsel  
Legis  
Opinions Branch  
Prec  
Chron

*JBH In*  
*Concurring*  
*D*

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. Hutton

FROM : W. R. McCallum

SUBJECT: Diversion

What would be your interpretation of the Section 126 - PL 85-767 to the finances of the Hawaii? If they are excepted by virtue of the "States" in 1934, are they for evermore except that the provisions of Section 126 apply retroactively?

Your comments will be appreciated.

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DATE ON CORRES.		CONTROL NO.			
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DATE RECEIVED		SUSPENSE DATE			
3-19-59		3-26-59			
DATE ACKNOWLEDGED - BY WHOM					
CLASSIFICATION		FILE DESIGNATION			
TO		DATE		ACTION	
Hutton		3-19		9/10	
3/20					



*Office Memorandum* • UNITED STATES GOVERNMENT

TO : Mr. Hutton

DATE: March 18, 1959

FROM : W. R. McCallum *WRC*

SUBJECT: Diversion

What would be your interpretation of the applicability of Section 126 - PL 85-767 to the finances of the new States of Alaska and Hawaii? If they are excepted by virtue of the fact that they were not "States" in 1934, are they for evermore excepted, or would it be construed that the provisions of Section 126 apply retroactively?

Your comments will be appreciated.



FAH-16

3-23-59

Alaska24-42

The Honorable  
The Secretary of the Interior  
Washington, D. C.

Dear Mr. Secretary:

In accordance with Title 23 United States Code, Sec. 113 and prior Acts, you have furnished as of June 30 each year, a statement by States showing the areas of unappropriated and unreserved public lands and unalienable Indian lands. The information is used for computing percentages of Federal funds applicable to the financing of Federal-aid highway projects in the several States.

Our letter of July 10, 1958, requested that your statement as of June 30, 1958, include the area of such lands in Alaska. The tabulation supplied by Acting Director Earl J. Thomas dated August 19, 1958, showed an estimated 270,000,000 acres of unappropriated and unreserved public lands for Alaska. This estimate has been used in connection with various analyses and considerations connected with Alaska statehood but has had no actual application up to this time, as the law has provided that contributions from the state by Alaska be determined by other means. However, it is anticipated that within a short time new legislation will provide that the Federal fund ratio for Federal-aid highway projects in Alaska be determined in exactly the same manner as for other States.

Alaska is greatly concerned with the problem of providing matching funds on Federal-aid highway projects. Our representation to Alaska citizens that questions had been raised internally as to whether the estimate of 270,000,000 acres includes all the unappropriated and unreserved public land in the State. There is also the question as to whether the areas of inland water have been landed in the same way in Alaska as in the other States.

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at NARA, College Park, Md.

BUREAU OF PUBLIC ROADS

*Alaska  
Alaska Maint  
Auth. 1*

Mr. C. W. Bafield

March 19, 1959

26-11

R. L. May, Jr. R. L. May, Jr.

Authority of the Bureau of Public Roads to construct and maintain roads for the State of Alaska on a reimbursable basis in the event that responsibility for road construction and maintenance now performed by the Bureau is transferred to the State of Alaska.

I

INQUIRY

You have inquired whether the Bureau of Public Roads would be authorized to construct and maintain roads for the State of Alaska on a reimbursable basis in the event that the Bureau's existing authority to construct and maintain roads in that State is terminated.

II

ORIGIN AND BASIS OF BUREAU'S AUTHORITY  
TO CONSTRUCT AND MAINTAIN ROADS IN ALASKA

On January 27, 1905, President Theodore Roosevelt approved an act which, among other things, provided for the construction and maintenance of roads in the district of Alaska (33 Stat. 416). Pursuant to this act there was established a board of road commissioners, to be composed of three officers of the United States Army, one of whom was to be an engineer officer, all to be appointed by the Secretary of War. This board was authorized under the terms of the act to locate, lay out, construct, and maintain wagon roads and pack trails from any point on the navigable waters of the district to any town, mining or other industrial camp or settlement. Funds to carry on these duties were derived from liquor, occupation, and trade licenses.

The act establishing the board of road commissioners was amended by the Act of May 14, 1906 (34 Stat. 192). On June 30, 1932, President Hoover approved an act (47 Stat. 446) transferring the duties and authority exercised by the board of road commissioners and the Secretary of War to the Secretary of the Interior who was authorized to execute all laws pertaining to the construction and maintenance of roads and trails and other works in Alaska. With the approval of the President, the Secretary of the Interior was authorized to distribute the duties and authority conferred upon him in such manner as he might deem proper

In order to accomplish an economical and effective organization pursuant to this authority, the Alaska Road Commission was established which was authorized to construct and maintain roads, tramways, ferries, bridges, and trails and other works in the Territory of Alaska. Funds to carry out these functions were provided by direct congressional appropriation to the Department of the Interior for use by the Alaska Road Commission.

As the result of strong congressional support, Alaska was brought within the purview of the Federal-aid highway program in 1956. Section 107(a) of the Federal-Aid Highway Act of 1956 (70 Stat. 377) provided that the Territory of Alaska should be entitled to share in funds authorized in the 1956 Act or thereafter authorized for projects on the Federal-aid primary or secondary system, and extensions thereof within urban areas, upon the same terms and conditions as the several States. Alaska's right to share upon the same terms and conditions as the several States was subject, however, to certain exceptions. First, only one-third of Alaska's area was to be used in the calculations for determining Alaska's apportionment of Federal funds. Second, Alaska was not required to contribute more than ten percent of the Federal funds apportioned to it. Third, the system or systems of roads on which Federal-aid apportionments could be expended was to be determined and agreed upon by the Governor of Alaska, the Territorial Highway Engineer of Alaska, and the Secretary of Commerce. Fourth, the Federal-aid funds apportioned to Alaska could be expended by the Secretary of Commerce either directly or in cooperation with the Territorial Board of Road Commissioners of Alaska and could be expended without regard to the matching provisions of the Federal Highway Act. Fifth, the funds could be expended for the maintenance of roads as well as for construction.

Section 107(b) provided for the transfer to the Secretary of Commerce of the functions, duties, and authority pertaining to the construction, repair and maintenance of roads, tramways, ferries, bridges, trails, and other works in Alaska which had been administered by the Secretary of the Interior pursuant to the Act of June 30, 1932. The Secretary of Commerce was authorized to administer the transferred functions through such officer or officers as he might designate.

Under the provisions of section 107(c) all personnel were transferred to the Department of Commerce and the Department of the Interior was directed to turn over to the Secretary of Commerce all equipment and property used in connection with the aforementioned duties and functions.



Since transfer of the above mentioned duties and functions to the Secretary of Commerce, the Bureau of Public Roads has been responsible for the construction and maintenance of roads and related public works in Alaska. The present statutory authority for carrying out these duties is to be found in title 23, United States Code, and for purposes of convenience, the pertinent provisions of title 23, insofar as they relate to the Bureau's authority and the expenditure of Federal-aid funds are quoted below:

Section 119 provides:

"(a) The Secretary [of Commerce] shall administer the functions, duties, and authority pertaining to the construction, repair and maintenance of roads, tramways, ferries, bridges, trails, and other works in Alaska, conferred upon the Department of Interior and, prior to September 16, 1956, administered by the Secretary of Interior under the Act of June 30, 1932 (47 Stat. 446; 48 U.S.C. 321(a) and following).

"(b) The Secretary shall, by order or regulations, distribute the functions, duties, and authority required to be administered by him under subsection (a) of this section and appropriations pertaining thereto as he may deem proper to accomplish the economical and effective organization and administration thereof."

Section 120(h) provides:

"The Territory of Alaska shall contribute funds each fiscal year in an amount that shall be not less than 10 per centum of the Federal funds apportioned to the Territory. The Federal funds apportioned to the Territory of Alaska and the funds contributed by the Territory may be expended by the Secretary either directly or in cooperation with the Alaska Highway and Public Works Board and may be so expended separately or in combination and without regard to the matching provisions of this chapter."

At the time title 23, United States Code, was revised and reenacted into law, the Alaska Statehood Act had been approved (72 Stat. 339), but Alaska had not been formally admitted. Neither the enabling legislation nor the formal admission of Alaska affected the authority conferred upon the Secretary of Commerce pursuant to section 119 nor upon his authority to expend Federal-aid funds as provided in section 120(h). (See printed transcript of Hearing before a Subcommittee of the Committee on Public Works, United States Senate on S. 3953 (H. R. 12776), July 9, 1958, pp. 66, 67, 68 and 69.) In a letter dated July 17, 1958, to Senator Chavez (printed on pp. 67, 68 and 69 of the transcript of hearing), the Acting Under Secretary of Commerce for Transportation [Bradley Nash] stated, in part:



"A detailed analysis of the Alaska Statehood Act and the legislative history thereof has led us to the conclusion that admission of Alaska to the Union will not change any of the existing Federal highway legislation pertaining to Alaska which is set forth in S. 3953 and H. R. 12776. For example, it is our opinion that the provisions of section 107 of the Federal-Aid Highway Act of 1956, which pertain to the apportionment and expenditure of Federal-aid highway funds for highways on the Federal-aid systems in Alaska, and to the functions, duties and authority of the Department of Commerce with respect to roads, etc., in Alaska, will remain in full force and effect."

The view that the Bureau's authority to construct and maintain roads in Alaska was not affected by either the Alaska Statehood Act or Alaska's formal admission is recognized in a current draft of a proposed omnibus bill and by the Bureau continuing to carry out road construction and maintenance functions in Alaska since Alaska's admission to the Union.

### III

#### LEGISLATIVE PROPOSALS RE ALASKA

The prevailing administration attitude is that the Federal Government should not continue to perform in or for Alaska those functions and duties normally performed by State or local governments, which functions and duties include highway construction and maintenance. This attitude was reflected by the President in his budget message of January 19, 1959, to the Congress, when he remarked as follows:

"In the long run interest of both the State and the Nation, the Federal Government should not continue special programs in Alaska which, in other States, are the responsibility of State and local governments or of private enterprise. The Federal Government should provide such financial assistance as is necessary to facilitate transfer to the State of such programs as highway construction and maintenance, airport operations, and public health services. Therefore, legislation will be proposed to authorize the payment of transitional grants to the State of Alaska in an amount not to exceed \$10.5 million for the fiscal year 1960 and in declining amounts for the subsequent four years. Under the proposed legislation Alaska could choose between receiving the entire transitional grant or requesting that a portion be used for financing continued Federal operations during an interim period.

"Expenditures for the transitional grants to Alaska will be largely offset by the elimination of existing special Federal programs in Alaska. Alaska will, of course, be eligible to participate in regular Federal grant-in-aid programs on a comparable basis with the other States."

Part IV of the budget contains special analyses of budget data and Federal programs. On page 984, the following statement relating to Federal aid to Alaska appears:

"Alaskan and other transitional grants. - To assist the first new State in 47 years, the Federal Government will provide Alaska with a special form of transitional grant in 1960 and 4 years thereafter. The Federal Government has a responsibility to provide such financial assistance as is necessary to facilitate assumption by Alaska of such programs as highway construction and maintenance, airport operations, and public health services. Previously, as a territory, special provisions applied which will no longer be effective with respect to Alaska. This transitional grant is being provided to prevent curtailment or disruption of these essential services which are now federally administered."

To implement the Administration policy announced by the President in his budget message, a proposed bill entitled "The Alaska Curibus Act" has been drafted and circulated among the various Federal departments and agencies for their comments before its submission to the Congress. Section 20 of the proposed bill relates to Federal-aid for highways in Alaska, and if the bill were to be enacted in its present form, section 20 would repeal certain portions of title 23, including the Bureau's authority to construct and maintain roads in Alaska. Section 20 as well as section 33 of the proposed bill are of special interest to this office.

Section 20 provides:

"(a) The Secretary of Commerce shall, on or before July 1, 1959, transfer to the State of Alaska by appropriate conveyance all lands or interest in lands, including buildings and fixtures, all personal property, including machinery, office equipment, and supplies, and all records pertaining to roads in Alaska, which are owned, held, administered by, or used by the Secretary in connection with the activities of the Bureau of Public Roads in Alaska, except such lands or interests in lands,

personal property, and records as the Secretary may determine are needed for the operation of the field offices of the Bureau of Public Roads in Alaska after July 1, 1959.

"(b) Notwithstanding any other provision of this section, any contract entered into by the Federal Government in connection with the activities of the Bureau of Public Roads in Alaska which has not been completed on July 1, 1959, may be completed according to the terms thereof.

"(c)(1) The State of Alaska shall be responsible for the maintenance of roads, including bridges, tunnels, and ferries, transferred to it under subsection (a) of this section, as long as any such road is needed for highway purposes.

"(2) Federal-aid funds apportioned to Alaska under Title 23, United States Code, for fiscal year 1960 and prior fiscal years, and unobligated on the date of enactment of this Act, may be used for maintenance of highways on the Federal-aid systems in Alaska.

"(d) Effective July 1, 1959, the following provisions of law are repealed:

- "(1) Title 23, United States Code, section 103(f);
- "(2) Title 23, United States Code, section 116(d);
- "(3) Title 23, United States Code, section 119;
- "(4) Title 23, United States Code, section 120(h);
- "(5) Sections 107(b) and (d) of the Federal-Aid Highway Act of 1956 (70 Stat. 374, 377, 378);
- "(6) Section 2 of the act of January 27, 1905 (33 Stat. 616), as amended (48 U.S.C., sec. 322 et seq.); and
- "(7) The Act of June 30, 1932 (47 Stat. 446), as amended (48 U.S.C., sec. 321(a) et seq.).

"(e) Effective July 1, 1959, the following provisions of law are amended:

"(1) The definition of the term 'State' in Title 23, United States Code, section 101(a), is amended to read as follows: 'The term "State" means any one of the forty-nine States, the District of Columbia, Hawaii, or Puerto Rico.';

"(2) Title 23, United States Code, section 104(b) is amended by deleting the phrase 'except that only one-third of the area of Alaska shall be included' where it appears in paragraphs (1) and (2) of said section 104(b);

"(3) Title 23, United States Code, section 116(a), is amended by deleting the phrase 'Except as provided in subsection (d) of this section,' and by capitalizing the word 'it' immediately following such phrase; and

"(4) Title 23, United States Code, section 120(a) is amended by deleting the phrase 'subsections (d) and (h)' and by inserting in lieu thereof the phrase 'subsection (d)'."

Section 33 provides:

"(a) In order to assist the State of Alaska in accomplishing an orderly transition from Territorial status to Statehood, and in order to facilitate the assumption by the State of Alaska of responsibilities hitherto performed in Alaska by the Federal Government, there are hereby authorized to be appropriated to the President, for the purpose of making transitional grants to the State of Alaska, the sum of \$10,500,000 for the fiscal year ending June 30, 1960; the sum of \$6,000,000 for each of the fiscal years ending June 30, 1961, and June 30, 1962; and the sum of \$2,500,000 for each of the fiscal years ending June 30, 1963, and June 30, 1964.

"(b) The Governor of Alaska may submit to the President a request that a Federal agency continue to provide services or facilities in Alaska for an interim period, pending the provision of such services or facilities by the State of Alaska. Such interim period shall not extend beyond June 30, 1964. In the event of such request, and in the event of the approval thereof by the President, the President may allocate, at his discretion, to such agency the funds necessary to finance the provision of such services or facilities. Such funds shall be allocated from appropriations made pursuant to subsection (a) hereof, and the amount of such funds shall be deducted from the amount of grants available to the State of Alaska pursuant to such subsection.



"(c) After the transfer or conveyance to the State of Alaska of any property pursuant to the Act of July 7, 1958 (72 Stat. 339), providing for the admission of the State of Alaska into the Union, or pursuant to this Act, and until June 30, 1964, the head of the Federal agency having administrative jurisdiction of such property prior to its transfer or conveyance may contract with the State of Alaska for the performance by such agency, on a reimbursable basis, of some or all of the functions authorized to be performed by it in Alaska in connection with such property immediately preceding the conveyance or transfer thereof."

#### IV

#### OPINION AND CONCLUSIONS

##### A. Bureau's Authority if Omnibus Bill is Enacted

If the proposed Omnibus Bill is enacted, the Bureau's current authority to construct and maintain roads in Alaska will terminate by virtue of the repeal of section 107(b) of the Federal-Aid Highway Act of 1956. Although the basis of existing authority would be repealed, the Omnibus Bill would authorize the Bureau to perform the following described functions and duties:

1. The completion of any contract entered into by the Federal Government in connection with the Bureau's activities which contract is not completed as of July 1, 1959;
2. The performance of construction and maintenance work until June 30, 1964, provided (1) the Governor of Alaska submits to the President a request for the Bureau's services and (2) the President approves such request; and
3. The performance of construction and maintenance work until June 30, 1964, provided the Secretary of Commerce and the State of Alaska enter into an agreement for the performance of such work on a reimbursable basis and such construction and/or maintenance work is performed by the Bureau with equipment transferred to the State pursuant to the Alaska Statehood Act.



B. Bureau's Authority to Construct and Maintain Roads in Alaska in the Event that Existing Authority is Terminated Without Provision Being Made for the Bureau to Continue Performing Present Functions and Duties

In the event that the Bureau's existing authority to construct and maintain roads in Alaska is terminated without any transitional authority to continue road construction and maintenance, the Bureau, nevertheless, would be authorized to perform construction and maintenance work for the State of Alaska, subject to the limitations hereinafter mentioned. Such authority stems from section 308(a) of title 23, United States Code, which provides:

"The Secretary [of Commerce] is authorized to perform by contract or otherwise, authorized engineering or other services in connection with the survey, construction, maintenance, or improvement of highways for other Government agencies, cooperating foreign countries, and State cooperating agencies, and reimbursement for such services, which may include depreciation on engineering and road building equipment used, shall be credited to the appropriation concerned." (Underlining supplied)

The authority conferred upon the Secretary by section 308(a) is not to be viewed, however, as authorizing the Bureau to undertake the construction and maintenance of all Federal-aid highways in a particular State. Such an arrangement would be tantamount to an admission that a State did not have a highway department equipped and organized to carry out highway construction and maintenance and, therefore, such an arrangement would run afoul of section 302(a) which provides:

"Any State desiring to avail itself of the provisions of this title shall have a State highway department which shall have adequate powers, and be suitably equipped and organized to discharge to the satisfaction of the Secretary [of Commerce] the duties required by this title. Among other things, the organization shall include a secondary road unit."

Unless a State has a highway department adequately organized and suitably equipped to carry out the requirements imposed upon a State highway department by title 23, the State is not eligible for Federal-aid highway funds. If the State of Alaska has such a highway department at the time the Bureau's existing authority for road construction and maintenance is terminated, there appears to be a valid basis under the authority of section 308(a) for the Bureau to undertake construction and

maintenance work for the State. In order to avoid any implication, however, that construction and maintenance is being undertaken because the State of Alaska does not have an adequate highway department, it is suggested that such work be performed on a project basis.

The problem of paying the salaries and wages of the Bureau's employees who are employed on construction projects would not appear to create any great difficulties since the Secretary is authorized under the provisions of 23 U.S.C. 124 to make advances to States and when Alaska reimbursed the Bureau, an appropriate share of the reimbursements could be credited back to the account from which the salaries and wages of Bureau employees were paid as provided in section 302(a).

Since Federal-aid highway funds are not available for highway maintenance, some difficulty, of course, may be encountered with respect to maintenance work because Alaska probably will not be in a position to provide funds for highway maintenance. In such case, I can perceive of no basis on which the Bureau could retain its present maintenance crews.

12/30/57  
*[Handwritten signature]*

Wormbeck/jfp  
cc: Gen Counsel  
Legis  
Opinions Branch  
Proc  
Chron  
Files (2) ✓

Alaska

BUREAU OF PUBLIC ROADS

WIM

March 18, 1959

26-00

Mr. C. W. Enfield

26-10

R. L. May, Jr. R. L. May, Jr.

Proposed revision of Alaska Omnibus Bill

On Tuesday, March 17, 1959, Mr. Andrew Drance submitted to Mr. Booth a proposed revision of section 20 of the Alaska Omnibus Bill with the request that the same be reviewed and comments or suggestions be submitted to him.

The major changes were deletion of the transfer date of July 1, 1959, and the addition of language which would permit retention of lands needed for purposes other than or in addition to road purposes and the imposition of conditions upon the transfer of easements. The inserted language which concerned us is as follows:

(ii) except such lands or interests in lands that were withdrawn from the public domain as the Secretary of the Interior may determine are needed for continued retention in Federal ownership for purposes other than or in addition to road purposes. In connection with the transfer under this section of any easement over public lands of the United States, the Secretary of Commerce shall impose such conditions as the head of the agency administering such lands may prescribe for the adequate protection and utilization of such public lands.

The matter was discussed with Mr. Krevor and the following questions raised:

1. Why should the lands to be retained be limited to those "which were withdrawn from the public domain." This would exclude acquired lands and lands which have not been withdrawn from the public domain.
2. If this is a desirable provision, why limit the same to lands determined by the Secretary of the Interior to be needed for continued retention in Federal ownership.
3. The purpose of the sentence pertaining to imposition of conditions is not clear.
4. The language used in the sentence pertaining to imposition of conditions would indicate that additional conditions could be imposed



upon existing easements prior to their transfer. This could lead to renegotiation or reopening of controversial negotiations relative to existing easements.

5. If these changes are desirable should they not apply to all lands to be transferred under the Omnibus Bill rather than solely to lands, etc., transferred by the Secretary of Commerce under section 20.

At Mr. Booth's request, I called Mr. Drance and presented to him the questions which I have outlined above. Mr. Drance advised that Mrs. Van Cleve of the Office of the Solicitor of the Department of the Interior (now acting for the Bureau of the Budget) was then in conference with Mr. Harold Seidman of the Bureau of the Budget and suggested that I call her. I did so and outlined the questions set forth above. Mrs. Van Cleve suggested I contact Mr. Irving Senzel of the Bureau of Land Management, which I did. Mr. Senzel had no objection to broadening the provisions relating to retention of lands which would otherwise be transferred but opposed any change in the sentence relating to imposition of conditions upon the transfer of easements.

Following these telephone calls, I discussed the matter with Mr. Frank Turner and, with his concurrence, prepared a proposed revision. A copy of the proposed revised section is attached hereto for your information.

Following my discussion with Mr. Turner, I again contacted Mrs. Van Cleve and read to her our suggested revision. She stated that she was in full sympathy with our objectives and indicated that she viewed our suggestion with favor. She stated that she would discuss the matter with the appropriate persons.

Subsequently, I discussed the matter with Mr. Drance who advised me that during the interim he had discussed the problem with Mr. Seidman of the Bureau of the Budget. In view of the problems involved and the urgency of submitting the Omnibus Bill to the Congress, it was tentatively agreed between Mr. Seidman and Mr. Drance that the sentence in the first revised draft referred to above which relates to imposition of conditions upon the transfer of easements would be deleted and that otherwise the section would be submitted as revised in the draft submitted by Mr. Drance to Mr. Booth on March 17.

Attachment

cc: Mr. Turner; Mr. Booth

RLMay:fpc

cc: Files (2) ✓

Legis

Chron

*Mr. Krewer*

## HIGHWAYS

SEC. \_\_\_\_ (a) The Secretary of Commerce shall transfer to the State of Alaska by appropriate conveyance without compensation, but upon such terms and conditions as he may deem desirable, all lands or interests in lands, including buildings and fixtures, all personal property, including machinery, office equipment, and supplies, and all records pertaining to roads in Alaska, which are owned, held, administered by, or used by the Secretary in connection with the activities of the Bureau of Public Roads in Alaska, (i) except such lands or interests in lands, including buildings and fixtures, personal property, including machinery, office equipment, and supplies, and records as the Secretary may determine are needed for the operations, activities, and functions of the Bureau of Public Roads in Alaska after such transfer, including services or functions performed pursuant to section \_\_\_\_ of this Act; and (ii) except such lands or interests in lands as he or the head of any other Federal agency may determine are needed for continued retention in Federal ownership for purposes other than or in addition to road purposes. Within 90 days after the date of enactment of this Act the head of any Federal agency who determines that any lands or interests in lands which would otherwise be transferred pursuant to this section are needed for retention in Federal ownership, or determines that conditions should be imposed upon the transfer of such lands shall so notify the Secretary of Commerce.

(b) Notwithstanding any other provision of this section, any contract entered into by the Federal Government in connection with the

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activities of the Bureau of Public Roads in Alaska which has not been completed on the date of the transfer provided under subsection (a)

hereof may be completed according to the terms thereof.

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