

HOUSE JOINT RESOLUTION NO. 16

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES NEUMAN, Saddler, Kopp

Introduced: 3/22/17

Referred: Judiciary

A RESOLUTION

1 **Urging federal executive departments and agencies to recognize the powers reserved to**
2 **the states under the Tenth Amendment to the Constitution of the United States; and**
3 **urging federal executive departments and agencies to reduce existing and future**
4 **regulatory burdens on the states.**

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

6 **WHEREAS** the structure of government established by the Constitution of the United
7 States is premised on a system of checks and balances; and

8 **WHEREAS** the Constitution of the United States created a federal government of
9 supreme, but limited and enumerated, powers; the sovereign powers not granted to the federal
10 government are reserved to the people or to the states, unless prohibited to the states by the
11 Constitution of the United States; the constitutional relationship among sovereign
12 governments, state and federal, is memorialized in the Tenth Amendment to the Constitution
13 of the United States; under that constitutional framework, the states also confer governmental
14 powers to municipalities; and

15 **WHEREAS** the system of government established by the Constitution of the United

1 States encourages a healthy diversity in the public policies adopted by the people of the
2 several states according to their conditions, needs, and desires; and

3 **WHEREAS** effective public policy is achieved when there is competition among the
4 several states in the fashioning of different approaches to public policy issues; the search for
5 enlightened public policy is advanced when individual states and municipalities are free to
6 experiment with a variety of approaches to public policy issues; a one-size-fits-all national
7 approach to public policy issues inhibits the creation of effective solutions to those problems;
8 and

9 **WHEREAS**, in the absence of clear constitutional or statutory authority, the
10 presumption of sovereignty should rest with the individual states; uncertainties regarding the
11 legitimate authority of the federal government should generally be resolved in favor of state
12 and municipal authority and regulation; and

13 **WHEREAS**, to the extent permitted by law, federal executive departments and
14 agencies should not construe, in regulations or otherwise, a federal statute to preempt state or
15 municipal authority unless the statute contains an express preemption provision or there is
16 some other firm and palpable evidence compelling the conclusion that the United States
17 Congress intended to preempt state or municipal authority, or unless the exercise of state or
18 municipal authority directly conflicts with the exercise of federal authority under the relevant
19 federal statute or the Constitution of the United States; and

20 **WHEREAS**, when a federal executive department or agency proposes to act through
21 adjudication or regulatory action to preempt state or municipal authority, the department or
22 agency is required to provide notice to the affected states and municipalities and an
23 opportunity for appropriate participation in the proceedings; and

24 **WHEREAS**, with respect to federal statutes and regulations administered by states
25 and municipal governments, the federal government should grant states and municipalities the
26 maximum administrative discretion possible; federal oversight of state and municipal
27 administration should not unnecessarily intrude on state and municipal discretion or create
28 undue burdens on state and municipal resources; and

29 **WHEREAS** actions having federalism implications include federal regulations,
30 proposed federal legislation, policies, rules, guidances, directives, programs, reviews, budget
31 proposals, budget processes, and strategic planning efforts that have substantial, direct effects

1 on the states and municipalities, on the relationship of the states and municipalities to the
2 federal government, or on the distribution of power and responsibilities between the federal
3 government and the states and municipalities;

4 **BE IT RESOLVED** that the Alaska State Legislature urges each federal executive
5 department and agency to establish a clear, consistent, and accountable process to provide
6 states and municipalities with early, meaningful, and substantive input in the development of
7 regulatory actions that have federalism implications; and be it

8 **FURTHER RESOLVED** that independent regulatory agencies should be required to
9 comply with the same federalism-related requirements as other federal executive departments
10 and agencies; and be it

11 **FURTHER RESOLVED** that the head of each federal executive department and
12 agency should be required to designate an official who is responsible for ensuring that the
13 federalism consultation process is executed appropriately and completely; the designated
14 official should certify in a federalism assessment that the regulatory action has been assessed
15 in light of federalism principles, criteria, and requirements; and be it

16 **FURTHER RESOLVED** a regulatory action with federalism implications should
17 trigger preparation of a federalism assessment, which should be considered when adopting
18 and implementing the regulatory action; and be it

19 **FURTHER RESOLVED** that the federalism assessment should accompany any
20 submission concerning the regulatory action that is made to the Office of Management and
21 Budget under Executive Order No. 12291; and be it

22 **FURTHER RESOLVED** that a federalism assessment should identify any provision
23 or element of the regulatory action that is inconsistent with federalism principles, criteria, and
24 requirements; and be it

25 **FURTHER RESOLVED** that a federalism assessment should specifically identify
26 the extent to which the regulatory action imposes additional costs or burdens on states or
27 municipalities, including the likely source of funding for the states and municipalities and the
28 ability of the states and municipalities to fulfill the purposes of the regulatory action; and be it

29 **FURTHER RESOLVED** that a federalism assessment should specifically identify
30 the extent to which the regulatory action would affect the ability of states and municipalities
31 to discharge traditional state and municipal governmental functions or other aspects of state

1 sovereignty and municipal authority; and be it

2 **FURTHER RESOLVED** that a federal executive department or agency should not
3 adopt a regulation that is not authorized by federal statute; and be it

4 **FURTHER RESOLVED** that, if a regulation is appropriate, authorized, and
5 constitutional but has federalism implications or imposes substantial, direct effects on the
6 states or municipalities, the federal executive department or agency should ensure that the
7 federal government provide new funds sufficient to pay the direct costs incurred by the states
8 or municipalities in complying with the regulation during the time the regulation is in effect;
9 and be it

10 **FURTHER RESOLVED** that, before the formal adoption of a regulation, in a
11 separately identified portion of the preamble to the regulation as it is to be issued in the
12 Federal Register, the federal executive department or agency should provide to the Director of
13 the Office of Management and Budget a description of the extent to which the executive
14 department or agency consulted with representatives of affected states and municipalities, a
15 summary of the concerns of the states and municipalities, and the federal executive
16 department's or agency's position supporting the need to adopt the regulation; and be it

17 **FURTHER RESOLVED** that the federal executive department or agency should
18 make available to the Director of the Office of Management and Budget any written
19 communications submitted to the department or agency by the states or municipalities; and be
20 it

21 **FURTHER RESOLVED** that the Alaska State Legislature urges federal executive
22 departments and agencies to review the process under which states and municipalities apply
23 for waivers of statutory and regulatory requirements and take appropriate steps to streamline
24 that process; and be it

25 **FURTHER RESOLVED** that each federal executive department or agency should, to
26 the extent practicable and permitted by law, favorably consider an application by a state or
27 municipality for a waiver of statutory or regulatory requirements; if a waiver is consistent
28 with federal policy objectives and is otherwise appropriate, a federal department or agency
29 should operate with a view toward increasing opportunities for using flexible policy
30 approaches at the state or municipal level; and be it

31 **FURTHER RESOLVED** that each federal executive department or agency should, to

1 the extent practicable and permitted by law, render a decision on a complete application for a
2 waiver of statutory or regulatory requirements within 120 days after receiving the application;
3 if the application is not granted, the department or agency should provide the applicant with
4 timely written notice of the decision and the reasons for the denial; this process would apply
5 only to waivers of statutory or regulatory requirements that are discretionary and subject to
6 waiver by the department or agency.

7 **COPIES** of this resolution shall be sent to the Honorable Donald J. Trump, President
8 of the United States; the Honorable Michael R. Pence, Vice President of the United States and
9 President of the U.S. Senate; the Honorable Paul D. Ryan, Speaker of the U.S. House of
10 Representatives; the Honorable Mitch McConnell, Majority Leader of the U.S. Senate; the
11 Honorable Nancy Pelosi, Minority Leader of the U.S. House of Representatives; and the
12 Honorable Lisa Murkowski and the Honorable Dan Sullivan, U.S. Senators, and the
13 Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.