

H B

3 3 9

COMMITTEE REPORT

HOUSE

FURTHER: JUDICIARY

3/16/81

(5)

Date:

1-21-87

Mr. Speaker:

The Committee on STATE AFFAIRS has had HR 330

"An Act relating to the judicial review of administrative regulations."

under consideration and reports it back as follows:

do pass  do not pass

do pass with attached amendments(s)

replace with CS for \_\_\_\_\_  same title

and recommends \_\_\_\_\_  new title

AND attaches a "Letter of Intent"  New Fiscal Note

reports it back without recommendation

referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

[Handwritten Signature]  
\_\_\_\_\_  
[Handwritten Signature]  
\_\_\_\_\_  
[Handwritten Signature]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

[Handwritten Signature] No Rec  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[Handwritten Signature]  
CHAIRMAN

A M E N D M E N T

OFFERED IN THE HOUSE:

By: STATE AFFAIRS

To: CS HOUSE BILL No. HB 339

SENATE BILL No. \_\_\_\_\_

PAGE: \_\_\_\_\_

LINE: \_\_\_\_\_

Page 1, lines 14 & 15: delete "absolutely necessary" and insert "there is a clearly demonstrated need"

Page 1, line 12: delete "is not absolutely necessary" and insert "does not clearly demonstrate need for the regulation"



# Alaska State Legislature

## House of Representatives

### Committee on State Affairs

Official Business

NOTIFICATION SHEET

BILL NO. HB 340,339, HJR 58

Pouch V  
State Capitol  
Juneau, Alaska 99811

NAME	ORGANIZATION	PHONE NO.
Jim Clark	Alaska Lumber & Pulp	63340
<sup>left message</sup> Kent-Teida Dawson	Alascon	62667
Brooks Bradford	Odom Corporation	63737
Ann Kline	Assoc Gen Contractors	64940
Richard Lauber	<sup>notified 1-20</sup> Ak Seafood Savin-Trom	61324
Robert Walker	<sup>824 of message</sup> Evon <sup>1-20 will take up after 11:00</sup>	6-2660
Beverly Ward	Atlantic Richfield	63680
Theodore Wieting	New Trendwell Mining Co.	62590
Ed Wojcik	ak Trollers Assn.	69400
Eugene Wills	Alaska Pipelines Service	62660
Dorine Mierzon	Resource Dev. Council of AK	62660
Clyde Gordon	Cherson	2799666

STATE OF ALASKA  
THE LEGISLATURE  
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL  
JUNEAU ALASKA 99811  
907-465-3600

MEMORANDUM

April 29, 1982

SUBJECT: Judicial review of administrative rules  
(SCS HB 339)

TO: Senator Patrick M. Rodey  
Chairman, Senate Judiciary Committee

FROM: Diane T. Colvin *DTC*  
Legislative Counsel

Attached is a draft SCS for HB 339, version 2. The original request on this version contemplated the use of an executive order to trigger a shifting of the burden of proof, presumably to allow the legislature the opportunity to override the governor's decision. However, the use of an executive order is not appropriate in this instance. By Article III, Sec. 23 of the Alaska Constitution, executive orders are reserved for matters pertaining to the organization of the executive branch. Section 23 specifically provides a mechanism for legislative disapproval of these executive orders.

Because an executive order is not appropriate here, I have substituted an administrative order. This leaves the governor with little motivation not to execute one of these orders whenever a rule is challenged. Thus it may be appropriate for the committee to consider setting some legislative standards for when an order could be adopted by the governor.

If you wish further information, please contact us.

DTC:ljb

Enclosure

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST  
Bill/Resolution No. CSHB 339 (State Affairs)  
Title "An Act relating to the judicial review of administrative regulations."  
Requested by the Office of the Governor Date March 22, 1982

II. FISCAL DETAIL  
Agency Affected Department of Law  
Program Category Affected General Government  
BRU, Program, Or Subprogram(s) Affected Legal Services  
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		155.9	168.4	181.9	196.5	212.2
200 TRAVEL		10.0	10.8	11.7	12.6	13.6
300 CONTRACTUAL		22.0	23.8	25.7	27.8	30.0
400 COMMODITIES		10.8	5.2	5.6	6.0	6.5
500 EQUIPMENT		14.0	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		212.7	208.2	224.9	242.9	262.3

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND		212.7	208.2	224.9	242.9	262.3
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME		3.0	3.0	3.0	3.0	3.0
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)  
This bill changes the judicial standard of review for the state's administrative code from "reasonably necessary" to "there is a clearly demonstrated need for the regulation." The department anticipates that the primary regulatory areas which will be challenged as a result of this bill will be those with high monetary values, such as the permitting regulations which govern oil and gas drilling and development. Regulations which deal with the public health aspects of food preparation and food processing are also likely candidates for challenge. Because the new burden of proof, provided by this bill, will be very great, it will be necessary for the state to increase its legal resources to advise the various agencies, and to defend against those kinds of challenges.

IV. DATE April 1, 1982 PREPARED BY Richard I. Pegues, Director, Admin. Svcs.  
AGENCY Department of Law  
Original: Legislative Finance PHONE 465-3672  
cc: Budget and Management  
Prime Sponsor (First Legislator Named)  
33-001 (Rev. 12/81)

The addition of two attorneys and one legal secretary will be required to deal with problems and to defend against expected challenges, particularly those which will arise from the highly complex resources development area. The department notes that the sole exclusion of certain Board of Fisheries and Board of Game regulations, exempted by the bill from the new standard, may, by their exemption, be the cause of additional litigation.

Lastly, the department notes that it may be impossible to prove that the costs to the private sector of the regulations will not adversely affect the economic viability of private business, as provided for in AS 44.62.030(3). In a depressed marketplace, the cost of regulations may well affect the viability of a marginally profitable business. The effect of this section appears to exempt those businesses which would be so affected. In the case, for instance, of a depressed canned salmon market the exemption of the industry from the state's public health regulations could prove disastrous, both socially and economically. In addition, some regulations will require some businesses to spend additional money. Is that expenditure an "adverse" effect? What, exactly, is the "economic viability" contemplated by this statute? This provision is almost certain to cause prolonged and costly litigation.

#### Cost Detail

##### Personal Services:

1 Attorney IV (2 (Anchorage)	\$ 64,241
1 Attorney IV (24A, Anchorage)	64,241
1 Legal Secretary I (10) (Anchorage)	27,388
	<u>\$155,870</u>

##### Travel:

\$5,000 for each attorney for litigation and witness travel; 2 x 5,000 =	\$ 10,000
	<u>\$ 10,000</u>

##### Contractual:

Communications and copying expense \$500 per attorney, per month; 500 x 2 12 =	\$ 12,000
Expert witness and other outside litigation expense	10,000
	<u>\$ 22,000</u>

Commodities:

Expendable desk top materials \$100 per month, per month, per employee, 100 x 3 x 12 =	\$ 3,600
Recurrent library expense	1,200
Startup library and office furniture (one-time)	6,000
	<u>\$ 10,800</u>

Equipment:

New position equipment 600 x 3 = (one-time)	\$ 1,800
Word processor (one-time)	12,200
	<u>\$ 14,000</u>

Total Costs: \$212,670

Costs beyond FY83 have been increased using an 8% annual inflation factor.

# MEMORANDUM

State of Alaska

TO: Keith Specking  
Legislative Assistant  
Governor's Office

DATE: April 1, 1982

FILE NO:

TELEPHONE NO: 465-3600

FROM: WILSON L. CONDON  
ATTORNEY GENERAL

SUBJECT: CSHB 339(SA) am --  
Judicial Review of  
Administrative  
Regulations

By:   
Arthur H. Peterson  
Assistant Attorney General

As you know, this bill has passed the House and is now in the Senate Judiciary Committee. The version that passed the House is worse than the version that came out of the State Affairs Committee, but perhaps not as bad as the original one (which would have required regulations to be "absolutely necessary"). The bill presents several very serious problems and definitely should not be enacted. A very brief description of some of those problems is set out in the attached fiscal note, prepared by this department's director of administrative services. Also attached is a draft of a proposed committee substitute which we believe the executive branch could live with.

The attached draft bill is a compromise. The Department of Law firmly believes that the existing law should not be amended. It is consistent with the overwhelming weight of administrative law throughout the country. In addition, it has served Alaska well.

If CSHB 339(SA) am should be scheduled for a committee hearing in the Senate, the Department of Law plans to be represented in order to oppose the bill. The prime sponsor of the bill has said that his intent is to "narrow the window" through which regulations may be adopted, thus perhaps reducing the number of regulations. That objective could be met, at least in part, without such a violent upheaval of the law in this area, by the attached proposed committee substitute bill.

The current title of the bill is not really as descriptive as it might be, but, for the moment, I have used it on the attached draft. It probably should be changed, whether or not this draft is accepted.

WLC/AHP/lw

I. REQUEST  
 Bill/Resolution CSHB 339(SA) am  
 Title Relating to Judicial Review of Administrative Regulations  
 Requested by Representative Metcalfe Date April 1, 1982

II. FISCAL DETAIL  
 Agency Affected Administration  
 Program Category Affected \_\_\_\_\_  
 BRU, Program, Or Subprogram(s) Affected \_\_\_\_\_  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

HB 339 as amended will have no fiscal impact on the Department of Administration.

IV. DATE April 1, 1982 PREPARED BY Kenneth R. Ryals  
 AGENCY 465-2211  
 Original: Legislative Finance PHONE \_\_\_\_\_  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named) Metcalfe, Aboc. Barnes et al  
 33-001 (Rev. 12/81) Office of the Governor: Keith Sneckino

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST  
Bill/Resolution No. CSHB 339  
Title "An act relating to the judicial review of administrative regulations."  
Requested by Rep. Barnes, House Judiciary Date 2/5/82

II. FISCAL DETAIL  
Agency Affected Department of Law  
Program Category Affected General Government  
BRU, Program, Or Subprogram(s) Affected Legal Services  
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars) -

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

	0	0	0	0	0	0
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	0	0	0	0	0	0
FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

No fiscal impact is anticipated by the department through the enactment of this bill.

IV. DATE February 8, 1982 PREPARED BY Richard I. Peques, (Director, Admin. Svcs  
AGENCY Department of Law  
Original: Legislative Finance PHONE 465-3672  
cc: Budget and Management  
Prime Sponsor (First Legislator Named)  
33-001 (Rev. 12/81)

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST  
 Bill/Resolution No. CS for HB 339  
 Title Judicial Review of Administrative Regulations  
 Requested by House Judiciary Date 2/5/82

II. FISCAL DETAIL  
 Agency Affected Alaska Court System  
 Program Category Affected Administration of Justice  
 BRU, Program, Or Subprogram(s) Affected \_\_\_\_\_  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

IV. DATE 2/9/82 PREPARED BY Richard P. Barrier  
 AGENCY Alaska Court System  
 Original: Legislative Finance PHONE 264-0546  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)  
 33-001 (Rev. 12/81)

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3801

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 28, 1982

SUBJECT: Agency regulations  
(SCS HB 339)

TO: Senator Nels A. Anderson, Jr.

FROM: Diane T. Colvin  
Legislative Counsel

In considering amendments to HB 339, you have expressed your concern that agency regulations often appear to be adopted with no specific statutory authority. You and Senator Parr have suggested that one way to cure this problem might be to require that no regulation be adopted unless it is under the authority of a specific section of the statutes.

Theoretically, this problem should not require a statutory cure, because at the present time no agency has authority, with regard to substantive regulations, other than to adopt rules pursuant to statutory authority and which implement a statute. The Administrative Procedure Act does not expand this authority, and, in fact, AS 44.62.020 specifically provides:

. . . AS 44.62.010 - 44.62.320 do not confer authority upon or augment the authority of a state agency to adopt, administer, or enforce a regulation. To be effective, each regulation adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

In addition, AS 44.62.200 requires that each notice of a proposed adoption, amendment or repeal of a regulation published by an agency contain the following:

(2) reference to the authority under which the regulation is proposed and a reference to the particular code section or other provisions of law which are being implemented, interpreted, or made specific;

Senator Nels Anderson, Jr.  
Page 2  
April 28, 1982

Despite strictures such as these, abuses do occur, and, this, of course, is your concern. In regard to your suggestion concerning adoption of rules only on specific statutory authority, I would make the following suggestion. While it does not prohibit anything not already prohibited by law, it may help to solve some of the problems that are of concern to you.

Amend AS 44.62.020 to read:

Sec. 44.62.020. AUTHORITY TO ADOPT, ADMINISTER, OR ENFORCE REGULATIONS.

Except for the authority conferred upon the lieutenant governor in AS 44.62.130 - 44.62.170, AS 44.-62.010 - 44.62.320 do not confer authority upon or augment the authority of a state agency to adopt, administer, or enforce a regulation. To be effective, each regulation adopted must be within the scope of authority conferred, specifically authorized by law, and in accordance with standards prescribed by other provisions of law.

Note that this section is not now affected by HB 339, so that if adopted a new bill section would be added.

If you have further questions, please do not hesitate to contact us.

DTC:ljb

cc: Senator Patrick M. Rodey

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 30, 1982

SUBJECT: Statutory authority for regulations  
(SCS HB 339)

TO: Senator Patrick M. Rodey  
Chairman, Senate Judiciary Committee

FROM: Diane T. Colvin *DC*  
Legislative Counsel

In connection with committee work on HB 339, you asked me to prepare a proposal in response to Senator Parr's suggestion on the need for specific, rather than general, statutory authority for administrative regulations. I had previously proposed an amendment to AS 44.62.020; suggested language for that amendment is contained in my memorandum to Senator Nels Anderson of April 28th.

Another possibility would be to amend AS 24.30, relating to the enactment of statutes, to require that all bills contain express language on the adoption of regulations. I believe this may be closer to meeting Senator Parr's intent. A new section could be added to this chapter to read:

Sec. 24.30.032. REGULATIONS STATEMENT ON BILLS. Each bill shall contain a statement regarding the adoption of regulations by the agency affected by the bill. The statement shall grant the express authority to adopt regulations to implement the provisions of the bill. If a bill does not contain this statement of authority an agency may not adopt regulations to implement the statutes affected by the bill.

It is the opinion of this office that this proposal, if enacted, would have a detrimental effect on the operations of all state departments and agencies. There would be a great deal of confusion resulting from any bills enacted which did not contain this statement but which affected

Senator Rodey  
Page 2  
April 30, 1982

statutes which are part of a broad statutory scheme or part of an integrated title.

In our opinion, there is no single approach which would cure this problem. The only solution would be to go through the statutes and remove, title by title or chapter by chapter, the general authority of departments and agencies to adopt regulations.

If we can be of further assistance, please do not hesitate to contact us.

DTC:ljb

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

JAY S. HAMMOND, GOVERNOR

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

May 24, 1982

The Honorable Ray Metcalfe  
Alaska State House of Representatives  
Pouch V  
Juneau, Alaska 99811

Re: Variations on HB 339  
(administrative regulations)

Dear Representative Metcalfe:

This is a follow-up on our conversation of last Friday, during which we discussed various possible amendments to AS 44.62.030. You will recall that I said that, although the Department of Law does not think that the change is a good idea, I would mull over your proposal for the following amendment which would be the sole change made by the bill:

. . . no regulation adopted is valid or effective unless consistent with the statute and the public benefits resulting from the regulation clearly warrant the burdens placed on persons who are adversely affected by the regulation [REASONABLY NECESSARY TO CARRY OUT THE PURPOSE OF THE STATUTE].

However, after mulling it over, I think that the following version would be better, avoiding some interpretation problems:

. . . no regulation adopted is valid or effective unless it is consistent with the statute, [AND] reasonably necessary to carry out the purpose of the statute, and, in situations in which persons are adversely affected by the regulation, the public benefits resulting from the regulation warrant the burdens placed on the persons adversely affected by the regulation.

The "it is" is merely a grammatical clarification. The main change in your wording is that this version adds rather than substitutes your new standard, so that, in the situations in which no person can be identified as "adversely" affected, the traditional "reasonableness" standard will still apply. This version also deletes "clearly" from your wording (in

May 24, 1982

front of the word "warrant").

I must repeat that the Department of Law can not support this amendment of AS 44.62.030. However, we will agree that, if this is the version that is finally passed by the legislature, we will not advise the governor to veto it. But, if he should want to veto it anyway, we would not urge him not to do so.

You also have asked that I put my comments regarding the unconstitutionality of the Senate's version, SCS CSHB 339(Jud), in writing. The problem lies in the third sentence of sec. 1's new AS 24.30.032, stating: "If a bill does not contain this statement of authority, an agency may not adopt regulations to implement the statute or statutes enacted by or otherwise affected by the bill." As I mentioned to the Senate Judiciary Committee, that sentence does not recognize the distinction between "legislative" type administrative regulations and "interpretive" or "interpretative" type administrative regulations. The distinction is imbedded in many statutes and court decisions, as well as in scholarly literature. If that sentence is interpreted as applying to interpretive regulations, then it would be an undue interference with the executive branch's execution of the laws. An administrative regulation is one kind of indispensable tool the executive uses in meeting its constitutional obligations and performing its constitutional duties. An administrative regulation sets out in writing, for prospective application, the rules applicable to a particular program or function. It thus avoid purely arbitrary decision making on a case-by-case basis. (Obviously, the regulation will be applied to situations as they arise, but the room for decisions made without guidelines is much smaller.)

The Senate version has other problems in it, too. The most obvious and most serious one is that of inadvertent failure by a future legislature or drafter to include the required regulations statement. To the extent that legislative type regulations are needed, that simple failure could virtually close down or prevent a program or function that has overwhelming legislative and public support. While the idea of having legislation deal more specifically with the permissible area of administrative regulations for a particular program is a good one, the provisions in that version of the bill do not achieve that result. Instead, they create problems.

The Honorable Ray Metcalfe -3-

May 24, 1982

Yours truly,

WILSON L. CONDON  
ATTORNEY GENERAL

By: Arthur H. Peterson  
Assistant Attorney General  
and Regulations Attorney

WLC/AHP/11b

cc: Senator Patrick Rodey  
Senator Nels Anderson  
Honorable Keith Specking  
Legislative Assistant  
Governor's Office

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 28, 1982

SUBJECT: Adoption of administrative regulations  
(HB 339)

TO: Senator Patrick M. Rodey  
Representative Ray H. Metcalfe  
Chairmen, Conference Committee on HB 339

FROM: Richard A. Bradley   
Legislative Counsel

The last sentence of the proposed Sec. 24.30.032 contains the following proposed language:

If a bill does not contain a statement prohibiting the adoption of regulations, an agency may adopt regulations to implement the statute or statutes enacted or otherwise affected by the bill.

The language appears to reverse the rule apparently conceded by Assistant Attorney General Art Peterson in his May 24th memorandum to Representative Metcalfe on an earlier version of HB 339: that an agency may only adopt "legislative type" regulations (as opposed to "interpretive type" regulations) to implement a statutory scheme if the legislature grants the agency the authority to adopt regulations. The committee may have intended the result and it may not be undesirable.

But since the focus of this bill is on the practices of the executive in the adoption of regulations, if the committee had in fact not intended this result, I did not want the committees to miss the implication of the language. It says that in the absence of an affirmative prohibition, an agency automatically is granted the authority to adopt regulations, at least once a general statutory scheme is modified by a bill not containing a prohibition.

RAB:ljb

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CSHB 339

Title "An act relating to the judicial review of administrative regulations."

Requested by Rep. Barnes, House Judiciary Date 2/5/82

II. FISCAL DETAIL

Agency Affected Department of Law

Program Category Affected General Government

BRU, Program, Or Subprogram(s) Affected Legal Services

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	Ø	Ø	Ø	Ø	Ø	Ø

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	Ø	Ø	Ø	Ø	Ø	Ø
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME	Ø	Ø	Ø	Ø	Ø	Ø
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

No fiscal impact is anticipated by the department through the enactment of this bill.

IV. DATE February 8, 1982

PREPARED BY Richard I. Peques, (Director, Admin. Svcs.)

AGENCY Department of Law

PHONE 465-3672

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

*Richard I. Peques*

FEB 9 1982

Introduced: 3/16/81  
Referred: State Affairs and  
Judiciary

BY METCALFE, ABOOD, BARNES,  
BEIRNE, BETTISWORTH, BYLSMA,  
HALFORD AND RANDOLPH

1 IN THE HOUSE

2 HOUSE BILL NO. 339

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the judicial review of adminis-  
7 trative regulations."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 44.62.030 is amended to read:

10 Sec. 44.62.030. CONSISTENCY BETWEEN REGULATION AND STATUTE. If,  
11 by express or implied terms of a statute, a state agency has authority  
12 to adopt regulations to implement, interpret, make specific or other-  
13 wise carry out the provisions of the statute, no regulation adopted is  
14 valid or effective unless consistent with the statute and absolutely  
15 [REASONABLY] necessary ] to carry out the purpose of the statute.

16 \* Sec. 2. AS 44.62.300 is amended by adding a new subsection to read:

17 (b) In <sup>addition to</sup> an action under (a) of this section brought on the ground  
18 that a regulation <sup>is not</sup> ~~is not~~ <sup>absolutely necessary</sup> ~~absolutely necessary~~ as required by AS 44.62.-  
19 030, the state has the burden of proving that

20 (1) the burdens imposed on the public by the regulation are  
21 outweighed by the benefits accruing to the public from the regulation;  
22 and

23 (2) there is no less restrictive means available to achieve  
24 the purpose of the regulation.



# MEMORANDUM

# State of Alaska

TO: Committee Staff  
House State Affairs  
Committee

DATE: January 11, 1982

FILE NO:

TELEPHONE NO: 465-3500

FROM: Rebecca L. Engen *RE*  
Special Assistant  
Governor Hammond's  
Legislative Office

SUBJECT: Departmental Legislative  
Liaisons

Your committee will undoubtedly wish to contact agencies of the Executive Branch for information and testimony before your committee. A list of legislative liaisons is attached for your information. These people serve as a contact point for you and should be called if you need testimony, fiscal notes or other information about their departments.

Additionally, do not hesitate to contact Susan Rogers or myself (465-3500) if we can be of help to you. We look forward to working with you.

Attachment

<u>DEPARTMENT</u>	<u>LEGISLATIVE LIAISON*</u>	<u>ALTERNATE*</u>	<u>FISCAL NOTE</u>
Administration	Ken Ryals 465-2277 789-9595	Fred Muller 465-2200 789-2674	Ken Ryals
Commerce & Economic Development	Katie Wallen 465-2504 586-2633	Alix Wilkerson 465-2500 789-0096	Katie Wallen
Community & Regional Affairs	Richard Aks 465-4700 364-3142	Lee McAnerney 465-4700 586-6095	Rod Mourant 465-4709 364-3382
Education	Steve Hole 465-2890 789-0085	Bob Van Slyke 465-2800 586-4097  Marilou Madden 465-2890 586-3847	Steve Hole
Environmental Conservation	Glen Akins 465-2600 789-7589	John Halterman 465-2640 789-4192	Dale Wallington 465-2621 789-9523
Fish and Game	Mary Jablonski 465-4100 789-2592	Kathy Libbey 465-4100 586-1907	M. Jablonski
Health & Social Services	Deborah Behr 465-3030 586-2872	Helen Beirne 465-3030 586-6410  Allen Korhonen 465-3030 586-3466	Marsha Hubbard 465-3331 586-1315
Labor	Judy Knight 465-2700 586-9562	Eileen Plate 465-2700 789-9883	Judy Knight
Law	Art Peterson 465-3600 586-6374	Pete Froehlich 465-3600 586-2806  Ken Vassar 465-3600 586-1009	Dick Pegues 465-3675 789-0463

\* First phone number listed is office; second phone number is home.

<u>DEPARTMENT</u>	<u>LEGISLATIVE LIAISON*</u>	<u>ALTERNATE*</u>	<u>FISCAL NOTE</u>
Military Affairs Anchorage contact	Brig. Gen. Sharrow 243-0656 ext 517 279-4190	Col. John Hoyt 273-0656 ext 515 333-4445	Richard Roundtree 465-4600 - Juneau 586-2496
Juneau contact	Richard Roundtree 465-4600 536-2496	Lois Richardson 465-4600 789-7304	Richard Roundtree
Natural Resources	Mark Wittow 465-2400 364-2326	Sharon Barton 465-2400 364-2360	Mark Wittow
Public Safety	Walter Lawson 465-4336 789-7395	Paul Conger 465-4336 789-2889	Walter Lawson
Revenue	Denna Cline 465-2300 364-3429	Joe Donohue 465-2300 364-3148  Phil Wall 465-2313 789-3243	Bob Stevenson 465-2300 586-3965
Transportation & Public Facilities	Robert Ward 465-3900 789-3713	Ron Lind 465-3900 364-2267  John Bates 465-3900 789-9472	Ron Lind
Agencies within the Governor's Office	Karen Slack 465-3500 586-2947	Mike Nizich 465-3616 789-9970	Karen Slack

\* First phone number listed is office; second phone number is home.

DELANEY, WILES, HAYES, REITMAN & BRUBAKER, INC.

ATTORNEYS AT LAW

SUITE 400

1007 WEST 3RD AVENUE

ANCHORAGE, ALASKA 99501

TELEPHONE 279-3581

TELECOPIER 279-3587

AREA CODE 907

November 25, 1981

JAMES J. DELANEY  
EUGENE F. WILES  
GEORGE N. HAYES  
STANLEY H. REITMAN  
JOHN K. BRUBAKER  
RAYMOND E. PLUMMER, JR.  
DANIEL A. GERETY  
ROBERT L. EASTAUGH  
STEPHEN M. ELLIS

CLAY A. YOUNG  
KAREN L. HUNT  
FRANK S. KOZIOL, JR.  
RICHARD S. THWAITES, JR.  
WILLIAM E. MOSELEY  
MARC D. BOND  
JACQUELINE CARR-AGNI  
J. MICHAEL MOXNESS  
J. D. CELLARS

Representative Ray Metcalfe  
Chairman  
Committee on State Affairs  
House of Representatives  
600 W. 41st Avenue, Suite 201-A  
Anchorage, Alaska 99503

Re: HB 339, HB 340, and HGR 28

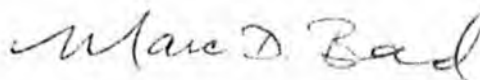
Dear Representative Metcalfe:

Once again I would like to thank you for the opportunity to appear before your committee and testify on behalf of Chevron U.S.A. Inc. in favor of the legislature's reacquisition of authority over regulations lost as a result of the A.L.I.V.E. decision. State v. A.L.I.V.E. Voluntary, 606 P.2d 769 (Alaska 1980). We are certainly interested in the legislative oversight of regulations promulgated by various agencies of the administration.

As I was leaving the committee hearing, you indicated that you might be able to give me some information concerning the dates and times of the mark-up sessions on these bills. I would certainly be interested knowing that, so that I may communicate it to the other members of the AOGA Regulatory Reform Committee.

Very truly yours,

DELANEY, WILES, HAYES,  
REITMAN & BRUBAKER, INC.



Marc D. Bond

MDB/cs

# STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

P.O. BOX 3-2000  
JUNEAU, ALASKA 99802  
PHONE: (907) 465-4100

December 1, 1981

Honorable Ray Metcalfe, Chairman  
House State Affairs Committee  
600 W. 41st Ave., Suite 201-A  
Anchorage, AK 99503

Dear Mr. Metcalfe:

I regret that a representative of the Department of Fish and Game was not able to attend your hearing of November 23, 1981. I do appreciate the opportunity to comment in writing, particularly since three of the items you will have discussed could seriously impact the Department's and Boards of Fisheries' and Game's ability to manage the State's fish and game resources in an efficient manner that benefits the public.

## HB 339

The substitution of "absolutely" for "reasonable" in AS 44.62.030 has the very real potential of having the courts negate all regulatory actions relative to fish and game management. The Boards of Fisheries and Game were established for the purpose of conservation and development of fish and game resources and may adopt regulations to accomplish those goals (AS 16.05.221, 251, and 257). Groups such as Greenpeace could challenge that sport hunting of Dall sheep is not absolutely necessary for conservation and development of that resource; the court would issue a temporary restraining order closing the season until the State could prove the regulation was absolutely necessary and the State would lose recreational opportunities and income. Similarly, spinning lure fishermen could challenge regulations establishing fly fishing only areas and commercial fishermen could challenge regulations that ensure an equitable harvest for sport fishermen. As you can see, these types of litigation could very easily hinder management of the resources and create frustration and animosities between resource users.

## HB 340

First of all, I would like to say that statement number (1) of the findings is an insult to those citizens of the State that have donated their time to serve on the Boards of Fisheries and Game. These people have been selected by the Governor, confirmed by the Legislature, and have maintained a very high level of integrity and justice in their decisions on management of the State's resources. Rather than prejudge their abilities, I would recommend that if you are not satisfied with their performance you recommend to the Governor that they be removed. If you think the Boards have acted beyond their statutory authority, then amend that authority by making it more specific.

The requirement for legislative approval of regulations before they become effective could seriously delay implementation of fish and game management systems. The Boards currently meet twice a year to consider proposals for changes to hunting and fishing regulations. These meetings are timed to allow the greatest amount of input and involvement from the public, provide the best and most current data, and to ensure that any changes made are in place and the public so informed before the start of the various seasons. The Legislature is a very busy body with tremendous responsibilities and heavy work loads and thus will not have the time to devote to fish and game resource issues that the Boards do. The issues may not be a legislative priority compared to oil and gas revenue, power projects, social programs, etc. with the result that new resource management programs may not be approved by the Legislature early enough in a session to be in place by the mid-April start of some of the major commercial fisheries.

In the case of fish and game management, the establishment of a citizen's review committee is not warranted. Fish and game regulations are reviewed annually by three public bodies: local Fish and Game Advisory Committees, Regional Resource Councils, and the Boards. To insert another committee made up of people attuned to issues other than fish and game would frustrate the present system and increase the administrative burden of the Department.

#### HJR 28

The Legislature has mandated broad public input in the formalization and adoption of fish and game regulations by its creation of public regulatory bodies (the Boards), public advisory bodies (local Advisory Committees), and the Administrative Procedures Act. The adoption of the proposed constitutional amendment would allow a committee or committees to annul a regulation that had gone through this extensive public review. This would be frustrating those who have involved themselves in the above public process only to find that some small, influential group had convinced a legislative committee to annul a regulation. Eventually the public would turn to the Legislature rather than the other public groups as the decision making body.

In summary, the bills reviewed would hinder efficient and equitable management of the State's fish and game resources and frustrate the present systems established to maximize public involvement in the decision making process.

I thank you again for the opportunity to comment on these bills and request the chance to submit additional comments in the future.

Sincerely,



Ronald O. Skoog  
Commissioner  
(907) 465-4100

DELANEY, WILES, HAYES, REITMAN & BRUBAKER, INC.

JAMES J. DELANEY  
EUGENE F. WILES  
GEORGE N. HAYES  
STANLEY H. REITMAN  
JOHN K. BRUBAKER  
RAYMOND E. PLUMMER, JR.  
DANIEL A. GERETY  
ROBERT L. EASTAUGH  
STEPHEN M. ELLIS

ATTORNEYS AT LAW  
SUITE 400  
1007 WEST 3RD AVENUE  
ANCHORAGE, ALASKA 99501  
TELEPHONE 279-3581  
TELECOPIER 279-3587  
AREA CODE 907

CLAY A. YOUNG  
KAREN L. HUNT  
FRANK S. KOZIOL, JR.  
RICHARD S. THWAITES, JR.  
WILLIAM E. MOSELEY  
MARC D. BOND  
JACQUELINE CARR-AGNI  
J. MICHAEL MOXNESS  
J. D. COLLARS

November 25, 1981

Representative Ray Metcalfe  
Chairman  
Committee on State Affairs  
House of Representatives  
600 W. 41st Avenue, Suite 201-A  
Anchorage, Alaska 99503

Re: HB 339, HB 340, and HGR 28

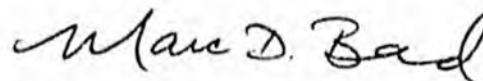
Dear Representative Metcalfe:

Once again I would like to thank you for the opportunity to appear before your committee and testify on behalf of Chevron U.S.A. Inc. in favor of the legislature's reacquisition of authority over regulations lost as a result of the A.L.I.V.E. decision. State v. A.L.I.V.E. Voluntary, 606 P.2d 769 (Alaska 1980). We are certainly interested in the legislative oversight of regulations promulgated by various agencies of the administration.

As I was leaving the committee hearing, you indicated that you might be able to give me some information concerning the dates and times of the mark-up sessions on these bills. I would certainly be interested knowing that, so that I may communicate it to the other members of the AOGA Regulatory Reform Committee.

Very truly yours,

DELANEY, WILES, HAYES,  
REITMAN & BRUBAKER, INC.



Marc D. Bond

MDB/cs

From Tape 6/10/81

Dave, You've got those proposed rules changes as well as the 3 others that I asked to kinda work on and consider. When we get the changes made in that proposed rules change and then I want you to talk to legal services (dept.) about that would be done if it were to be put into law rather than as part of the joint rules. So we could consider to carry a petition, actually what I'm going to be trying to do is get them to work up the leg work that later turn into a possible petition. And adding to the rules changes that want to make: 1) I will be requiring a 3 second pause between any request for unanimous consent or hearing no objection, some is approved, that sort of thing) and that that question be asked twice before a unanimous consent is binding and legal, 2 - 3 second pauses with the question asked on two separate times. If there is another 3 second lapse recorded on the tape, it then should not be a unanimous consent accepted. and so on. 2) it should take those 2-3 second pauses to adjourn and that is to adjourn without abjecting. And in either case, failure to recognize an objection is sufficient reason to remove the speaker and should be addressable at a court room. And don't forget the one change about the paper work having to be done alone with the advance notice.

Have Barb call Senator Steven's office and Don Young's office. if you can't get the information here in town, call D.C. I need to know what the exemption for members of Legislative bodies for the year 1980 was. And then when you get done doing that and you get that figure, you need to check how many days we were in session last year and call that figure into my CPA.

6/1/81  
David, Charlie Willis called from Cottons office to say that they're not going to allow any maintenance money in the Capitol Budget referring to the stuff for stuff for the park. and he said he was going to try to get it over operating budget. Have Dave give Charlie Willis a call to see what's going on. Charlie wanted to talk to Dave.

Barbara, on those Rules Changes, I wish to work up three more. Cause I'm going to be working on a petition with some people to change the rules.

Tell David I want to draft legislation that requires all motions to adjourn to require a roll call vote of all members present and that means in the house, in committee, anything. Must require a majority roll call vote of members present to adjourn. In that same rule to require that should the presiding officer call or for any other reason leave the podium speaker stand for a period of time greater than one hour, the majority leader shall take his place if he does not, the minority leader will take his place and the body will continue it's business. Should make reference to adjournments in excess of an hour or recesses in excess of one hour requiring a roll call vote to do so. Should an hour pass, and they do not call back to order, there should be other methods for the body to be called back to order.

Secondly, I have received a lot of criticism over the way we worked up that "similar office supply and equipment thing" I'm still reselling with that and also similar access to money for travel, spending, research, on and on and on. I'm still trying to figure how that might be done in the rules, so that all Legislators have similar access to those things.

I want to have proposals prepared on those subjects to send to the Free Committee, to get them to incorporate into the proposed Rules changes.

Put a note on your calendar to get a copy in about a week off to (all that stuff) off to Jan faiks with the Free Committee with a brief letter requesting that those items be considered as part for possibly part of the Proposed Rules changes Initiative.

Get a message off to the girl who runs our office in D.C. that I want to be kept advised as to the progress of Senate Bill 434 and SB 668.

These things on Binding Arbitration, they go on that file with the teachers.

Barbara, the bills that I needed by Munson, get the bills by the special committee on Roads and Highways. Those would be the bills I was looking for from last year. I mentioned that to Dave once, and he may have forgotten. Remind him.

Time to pay some bills....

Introduced: 2/16/81  
Referred: State Affairs and  
Judiciary

BY METCALFE, ABOOD, BARNES,  
BEIRNE, BETTISWORTH, BYLSMA,  
HALFORD AND RANDOLPH

1 IN THE HOUSE

2 HOUSE BILL NO. 339

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the judicial review of adminis-  
7 trative regulations."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 44.62.030 is amended to read:

10 Sec. 44.62.030. CONSISTENCY BETWEEN REGULATION AND STATUTE. IF,  
11 by express or implied terms of a statute, a state agency has authority  
12 to adopt regulations to implement, interpret, make specific or other-  
13 wise carry out the provisions of the statute, ~~no regulation adopted is~~  
14 valid or effective unless consistent with the statute and ~~absolutely~~  
15 *is as minimally restrictive as possible to enable the regulation*  
~~(REASONABLY)~~ ~~necessary~~ to carry out the purpose of the statute.

16 \* Sec. 2. AS 44.62.300 is amended by adding a new subsection to read:

17 (b) In an action under (a) of this section brought on the ground  
18 that a regulation is not absolutely necessary as required by AS 44.62.-  
19 030, the state has the burden of proving that

20 (1) the burdens imposed on the public by the regulation are  
21 outweighed by the benefits accruing to the public from the regulation;  
22 and

23 (2) there is no less restrictive means available to achieve  
24 the purpose of the regulation.

*Handwritten notes:*  
no regulation adopted is  
the regulation as ~~absolutely~~ *is*  
is as minimally restrictive as possible to enable the regulation  
Karl  
Ben

.....  
The legislation to be reviewed today is as follows:

HB 339, An act relating to judicial review of administrative regulations. Which is a bill designed to substantially restrict regulatory promulgation authority within the various departments of the bureaucracy. The bill also would give the public a substantial advantage in any effort to challenge, in court, both the validity and the need for any particular regulation promulgated. HB 340, an Act providing for the review of regulations and the cessation of effectiveness of regulations not approved by law. HB 340 provides for the termination of all regulations promulgated from within the bureaucracy unless it is subsequently reviewed and found to be reasonable by the legislature. HJR 28 proposing amendments to the Constitution of the State of Alaska relating to the review and annulment of regulations by standing committees of the legislature. HJR 28, is not assigned to the State Affairs Committee, but is currently awaiting formal hearings in the Judiciary Committee. Irrespective of its committee assignment, it is a companion bill to HB 340 and its enactment would be necessary in order to allow the intended effect of HB 340 to occur in a reasonable and functional manner. Therefore, we are soliciting comments on each. HJR 28 streamlines and makes the constitutional requirements of regulation annulment a far easier task. The purpose of the meeting is to gather public input, both technical and philosophical on the value of these legislative proposals. Those wishing to present testimony, please sign up at the docr, giving your name and organization affiliation and a one-sentence comment on the nature of your input. For the record, please begin your testimony with your name and organization affiliation and the nature or applicability of your testimony to follow.

Time: 2-700

SUMMARY OF ATTACHED LEGISLATIVE PROPOSALS  
(HB 339, HB 340, HJR 28)

The attached legislative proposals consist of three bills designed to bring about reduction in regulation and regulative authority. The first of the three bills is relatively simple and stands by itself on its own merits. The other two proposals become far more complicated and are basically companion pieces of legislation.

Under current Alaska law, any department who has the authority to promulgate regulations may do so at any time it is able to rationalize, under its own initiative, that the regulation it desires is reasonably necessary, for the purpose of implementing the intent of the Legislature.

The first half of the legislative proposal changes the circumstances under which a department can promulgate regulations. The passage of this legislation would remove the term "reasonably necessary" for the purpose of implementing legislative intent and replace the language with terminology that would require regulations to be "absolutely necessary" before they could be promulgated.

Also under current law, if a private citizen were to challenge a regulation on the basis that it was not "reasonably necessary", the burden falls upon the challenging party to prove that a regulation was not reasonable. In the absence of proof that it is "not reasonable", the regulation is sustained and left on the books.

Should this legislative proposal become law, the burden of proof would reverse. Any private citizen challenging a regulation would then place the burden on the State and the regulating authority to prove that, in fact, the regulation was "absolutely necessary for the purpose of implementing the intent of the Legislature."

In the absence of proof, the regulation would be stricken from the Alaska Administrative Code.

The goal of the change in the law would be to reverse the current rate of growth of the Administrative Code. Currently, the incentives under the law are resulting in a constant growth of regulation. This proposal would provide a release valve allowing regulation to trickle away at a rate that would be hopefully equal to, if not faster than the rate at which it currently trickles into the Administrative Code.

The following two legislative proposals are far more complicated.

To this point, the Legislature has shied away from requiring a sunset of regulations. The dominant reason is because many members of the Legislature feel that this would create an avalanche of paper work reviewing regulations for the purpose of either sustaining them or allowing them to automatically expire and be removed from the code.

The attached regulation sunset proposal would require the creation of a citizen committee to undertake the initial avalanche of paper work resulting from the regulatory review.

Following a two year review, the citizen's committee would report to the Legislature regulations which it recommended to be sunset, be sustained, and found to be too controversial and should be reviewed by the Legislature.

Following the completion of the committee's work, all regulations not sustained by the Legislature would be automatically removed from the Administrative Code. From that point on, all regulations would periodically come up for review on a rotating basis at which time, they would be either allowed to fall by the wayside or found to be important enough to be sustained by the Legislature.

Even with required reviews being rotated over a period of years, most Legislators feel that even that amount of review would cause an avalanche of paper work adding months to the length of any given legislative session. Therefore, it seems that there is a need to divide and delegate the review authority. To do so would require a constitutional amendment.

Until a recent Supreme Court decision, the Legislature occasionally exercised it's authority to annul regulations via a resolution of both houses of the Legislature. The Court has now given regulations equal authority and weight of statutes acted upon by the Legislature. As a result, it is now necessary for a bill, rather than a resolution to be pushed through the entire legislative process in order to remove a regulation. Without the incentive of the regulation review authority compounded with a disincentive stemming from the requirement that both houses must act in unison to review and overrule each regulation, the result has been very little annulment of regulations.

The attached proposed constitutional amendment not only re-establishes the authority to annul regulations via resolutions, it goes one step further to delegate that authority to the respective committees that are normally charged with the duty of dealing with the department that wrote the regulation. (Example): If the Dept. of Transportation were to promulgate a regulation, a joint resolution, by the House and Senate Transportation Committees could annul that regulation.

Although the annulment of a regulation would be removed from the scrutiny of the entirety of each body of the Legislature, the work load would be divided sufficiently to insure that the job was done. Secondly, Joint Committees of the Legislature would be far more representative of the feeling of the public, than would a single bureaucrat hidden within the bureaucracy who is not subject to public opinion at election time.

Please review the attached legislative proposals and share with me whatever thoughts you might have which you feel would improve upon their intent.

STATUS of Activity: (based on dictaphone notes 4/27 & 28)

1. State Affairs hearing on HB 339/34).

Testified on Thursday. Bills were both referred to a sub-committee consisting of Jack Fuller and Mitch Abood. This is essentially a referral to the Administration Regulation Review Committee. Reg. Review will hold interim hearings on the two bills along with their proposed legislative package. They will invite you to participate if you desire. Fish and Game and Dept of Law both had people testify against the bills. Bob Bettisworth came in at my request and testified in support of the bills. Be sure to say thanks when you get a chance.

2. Judiciary hearing on SB 6.

I testified on Saturday. No action was taken at the time of the hearing. I suggested that state publication be postponed till Jan 1, 1982, in order to give the private sector time to get underway with their version. I also recommended that the index (at least) be put on electronic, statewide information systems.

3. Call to Mr. Barth at 272-8859.

I overlooked this call. will try it today.

4. Call DOT/PF re Skycap bid process.

will call today.

5. Coal info.

not sure exactly what you need. Let's discuss.

6. Letter from Radisch.

Talked to Mike Miller's people. None of the folk in question are Juneau residents. they say that if someone will sponsor a bill, they will give it a fair hearing. Not their problem was the attitude.

7. HB 428.

Fred Brown has NOT scheduled a hearing on this. has not made a commitment to me to do so yet.

8. Harry Goldbar/ANFC

Harry was out of town when I called. Talked to Jay Kennedy, Dep. Director. He is compiling figures now. He knows we have a deadline of tomorrow.

Legal services is also cranking out a bill draft to do the things you requested. Their may be federal restrictions that prevent us from doing some of the things you wanted. They will advise us at once if their research shows that to be the case. They also are aware of our tuesday deadline.

9. Glen Alps Road Service District.

Their request has been submitted on a Form 35.

10. 500,000 dollar dist ll Road fund.

Dick Swain is back and the money has been requested. However their are serious complications we should talk about. It won't be easy to operate the fund.

11. Transportation planning bill.

Preliminary draft is being done. We may, in review, find other projects to add.

An appropriation can't include a statutory change, so we are also having a bill drafted to change the six year plan statute to require:

- a. Planning to be done five years ahead of ta get date.
- b. Governor to advise legislature of all outstanding project designs.



Alaska State Legislature  
House of Representatives  
Committee on Rules

Pouch V  
State Capitol  
Juneau, Alaska 99811

Official Business

MEMORANDUM

TO: Rep. Ray Metcalfe  
FROM: Rep. Jack Fuller  
Chairman, Rules Committee  
DATE: March 2, 1981

You have requested floor scheduling of HCR 46, proposing amendments to the Uniform Rules, and (HB 339) relating to judicial review of administrative regulations.

I brought these two pieces of legislation up at today's Policy Committee meeting. The measures may be calendared when you have 21 votes.

REC'D MAR 3 1982



FOR THE PRESS

.....  
The legislation to be reviewed today is as follows:

HB 339, An act relating to judicial review of administrative regulations. Which is a bill designed to substantially restrict regulatory promulgation authority within the various departments of the bureaucracy. The bill also would give the public a substantial advantage in any effort to challenge, in court, both the validity and the need for any particular regulation promulgated. HB 340, an Act providing for the review of regulations and the cessation of effectiveness of regulations not approved by law. HB 340 provides for the termination of all regulations promulgated from within the bureaucracy unless it is subsequently reviewed and found to be reasonable by the legislature. HJR 28 proposing amendments to the Constitution of the State of Alaska relating to the review and annulment of regulations by standing committees of the legislature. HJR 28, is not assigned to the State Affairs Committee, but is currently awaiting formal hearings in the Judiciary Committee. Irrespective of its committee assignment, it is a companion bill to HB 340 and its enactment would be necessary in order to allow the intended effect of HB 340 to occur in a reasonable and functional manner. Therefore, we are soliciting comments on each. HJR 28 streamlines and makes the constitutional requirements of regulation annulment a far easier task. The purpose of the meeting is to gather public input, both technical and philosophical on the value of these legislative proposals. Those wishing to present testimony, please sign up at the door, giving your name and organization affiliation and a one-sentence comment on the nature of your input. For the record, please begin your testimony with your name and organization affiliation and the nature or applicability of your testimony to follow.

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME

### OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

P.O. BOX 3-2000  
JUNEAU, ALASKA 99802  
PHONE: (907) 465-4100

December 1, 1981

Honorable Ray Metcalfe, Chairman  
House State Affairs Committee  
600 W. 41st Ave., Suite 201-A  
Anchorage, AK 99503

Dear Mr. Metcalfe:

I regret that a representative of the Department of Fish and Game was not able to attend your hearing of November 23, 1981. I do appreciate the opportunity to comment in writing, particularly since three of the items you will have discussed could seriously impact the Department's and Boards of Fisheries' and Game's ability to manage the State's fish and game resources in an efficient manner that benefits the public.

#### HB 339

The substitution of "absolutely" for "reasonable" in AS 44.62.030 has the very real potential of having the courts negate all regulatory actions relative to fish and game management. The Boards of Fisheries and Game were established for the purpose of conservation and development of fish and game resources and may adopt regulations to accomplish those goals (AS 16.05.221, 251, and 257). Groups such as Greenpeace could challenge that sport hunting of Dall sheep is not absolutely necessary for conservation and development of that resource; the court would issue a temporary restraining order closing the season until the State could prove the regulation was absolutely necessary and the State would lose recreational opportunities and income. Similarly, spinning lure fishermen could challenge regulations establishing fly fishing only areas and commercial fishermen could challenge regulations that ensure an equitable harvest for sport fishermen. As you can see, these types of litigation could very easily hinder management of the resources and create frustration and animosities between resource users.

#### HB 340

First of all, I would like to say that statement number (1) of the findings is an insult to those citizens of the State that have donated their time to serve on the Boards of Fisheries and Game. These people have been selected by the Governor, confirmed by the Legislature, and have maintained a very high level of integrity and justice in their decisions on management of the State's resources. Rather than prejudge their abilities, I would recommend that if you are not satisfied with their performance you recommend to the Governor that they be removed. If you think the Boards have acted beyond their statutory authority, then amend that authority by making it more specific.

December 1, 1981

The requirement for legislative approval of regulations before they become effective could seriously delay implementation of fish and game management systems. The Boards currently meet twice a year to consider proposals for changes to hunting and fishing regulations. These meetings are timed to allow the greatest amount of input and involvement from the public, provide the best and most current data, and to ensure that any changes made are in place and the public so informed before the start of the various seasons. The Legislature is a very busy body with tremendous responsibilities and heavy work loads and thus will not have the time to devote to fish and game resource issues that the Boards do. The issues may not be a legislative priority compared to oil and gas revenue, power projects, social programs, etc. with the result that new resource management programs may not be approved by the Legislature early enough in a session to be in place by the mid-April start of some of the major commercial fisheries.

In the case of fish and game management, the establishment of a citizen's review committee is not warranted. Fish and game regulations are reviewed annually by three public bodies: local Fish and Game Advisory Committees, Regional Resource Councils, and the Boards. To insert another committee made up of people attuned to issues other than fish and game would frustrate the present system and increase the administrative burden of the Department.

#### HJR 28

The Legislature has mandated broad public input in the formalization and adoption of fish and game regulations by its creation of public regulatory bodies (the Boards), public advisory bodies (local Advisory Committees), and the Administrative Procedures Act. The adoption of the proposed constitutional amendment would allow a committee or committees to annul a regulation that had gone through this extensive public review. This would be frustrating those who have involved themselves in the above public process only to find that some small, influential group had convinced a legislative committee to annul a regulation. Eventually the public would turn to the Legislature rather than the other public groups as the decision making body.

In summary, the bills reviewed would hinder efficient and equitable management of the State's fish and game resources and frustrate the present systems established to maximize public involvement in the decision making process.

I thank you again for the opportunity to comment on these bills and request the chance to submit additional comments in the future.

Sincerely,



Ronald O. Skoog  
Commissioner  
(907) 465-4100

## Summary of Attached Legislative Proposals:

### Designed to Bring About Reduction in Regulation and Regulative Authority

The attached legislative proposals consist of three separate bills. The first of the three bills is relatively simple and stands by itself on its own merits. The other two proposals become far more complicated and are basically companion pieces of legislation.

Under current Alaska Law, any department who has the authority to promulgate regulation may do so at any time which it is able to rationalize under its own initiative that the regulation it desires is reasonably necessary, for the purpose of implementing the intent of the Legislature on any given piece of legislation that grants the authority to the department to promulgate regulations for the purpose of implementing a statute.

The first half of the legislative proposal changes the circumstances under which a department can promulgate regulation. The passage of this legislation would remove the term "reasonably necessary" for the purpose of implementing legislative intent and replace the language with terminology that would require promulgated regulations to be "absolutely necessary" before they could be promulgated.

Also under current law, if a private citizen were to challenge a regulation on the basis that it was not "reasonably necessary", the burden falls upon the challenging party to prove that a regulation was not reasonable. In the absence of proof that it is "not reasonable", the regulation is sustained and left on the books.

Should this legislative proposal become law, the burden of proof would reverse. Any private citizen challenging a regulation would then place the burden on the State and the regulating authority to prove that in fact the regulation was "absolutely necessary for the purpose of implementing the intent of the legislature".

In the absence of proof by the State that the challenged regulation was "absolutely necessary", the regulation would be stricken from the Alaska Administrative Code.

The goal of the change in the law would be to reverse the current rate of growth of the Administrative Code. Currently, the incentives under the law are resulting in a constant growth of regulation. This proposal would provide a release valve that would allow regulation to trickle away at a rate that would be hopefully equal to, if not faster than the rate at which it currently trickles into the Administrative Code.

The following two legislative proposals are far more complicated.

To this point, the Legislature has always shied away from requiring a sunset of regulations. The dominant reason is because many members of the Legislature feel that this would create an avalanche of paper work reviewing regulations for the purpose of either sustaining them or allowing them to automatically expire and be removed from the code.

WHAT IS THE TOTAL COST IN FY 83?

	<u>Increased Benefit Formula</u>	<u>EPORS Earlier Retirement</u>	<u>Temporary Service Credit</u>	<u>Judicial Earlier Retirement</u>	<u>Total</u>
STATE EMPLOYER PERS TRS	\$ 19,559.0	\$ 63.2	\$ 231.8	\$ 357.9	\$ 95,310.0
TRS EMPLOYER	\$ 7,143.3				\$ 29,711.4
PERS EMPLOYER	\$ 6,960.8		\$ 131.3		\$ 39,243.2
TRS MEMBERS					\$ 5,939.2
PERS MEMBERS					\$ 12,162.9
EPORS MEMBERS		\$ 13.2			\$ 13.2
JRS MEMBERS				\$ 74.8	\$ 74.8
	\$ 182,454.7				\$ 182,454.7
- Employee Contribution					- 18,102.1
TOTAL EMPLOYER CONTRIBUTION	\$ 33,663.1	\$ 76.4	\$ 363.1	\$ 432.7	\$ 164,352.6

IF IN FY 83 THE PRESENT FOUR PERCENT ACROSS THE BOARD PRPA IS QUANTIFIED TO ALL EMPLOYERS THE TOTAL COST TO THE EMPLOYER WILL BE \$156,105.0. THERE WILL BE NO EMPLOYEE CONTRIBUTION. THIS EMPLOYEE PORTION OF \$18,102.10 WOULD BE PAID BY THE EMPLOYER AND COST THE EMPLOYEES \$18,102.10.

Costs are in thousands of dollars

HB 339 TITLE & SPONSOR SUMMARY 16:12 4/21/82 PAGE 1 OF 3  
 AMENDED TITLE: CSHB 339(SA)AM  
 AN ACT RELATING TO THE JUDICIAL REVIEW OF ADMINISTRATIVE REGULATIONS

PRIME SPONSOR: METCALFE.  
 CO-SPONSORS: ABOOD, BARNES, BEIRNE, BETTLEWORTH, BYLSMA, HALFORD, RANDOLPH.  
 CURRENT STATUS: 3/18/82 IN (S) JUDICIARY

HB 339 HOUSE ACTION 16:12 4/21/82 PAGE 2 OF 3  
 DATE SEQ PAGE LEGISLATIVE ACTION

DATE	SEQ	PAGE	LEGISLATIVE ACTION
03/16/81	01	0571	FIRST READING -- COMMITTEE REPORTS
01/25/82	02	0130	S.A. -- CS03, NR02
02/24/82	03	0584	JUD -- S.A. CS03
02/24/82	04	0584	THREE F/NOTES EQUALS ZERO
03/15/82	05	0796	SECOND READING
03/15/82	06	0796	S.A. CS ADOPTED BY UNAN CONSENT
03/15/82	07	0797	RECOMM TO JUD FAILED BY DIV 11-23-06
03/15/82	08	0797	AM01 NOT ADOPTED BY DIV 07-29-04
03/15/82	09	0798	AM02 WITHDRAWN
03/15/82	10	0798	AM TO AM03 ADOPTED BY UNAN CONSENT
03/15/82	11	0799	AM03 ADOPTED BY DIV 19-16-05
03/15/82	12	0799	AM04 ADOPTED BY DIV 21-14-05
03/15/82	13	0800	ADVANCED TO 3RD READING BY UNAN CONSENT
03/15/82	14	0800	THIRD READING
03/15/82	15	0800	PASSED BY DIV 25-11-04
03/15/82	16	0800	NOTICE OF RECONSIDERATION GIVEN
03/17/82	17	0833	POSTPNMT TO 03/19/82 FLD BY DIV 13-22-05
03/17/82	18	0833	RECONSIDERATION NOT TAKEN UP

\*\*\*\* \*\* \*\* \*\*\* \*\* \*

HB 339 SENATE ACTION 16:13 4/21/82 PAGE 3 OF 3  
 DATE SEQ PAGE LEGISLATIVE ACTION

DATE	SEQ	PAGE	LEGISLATIVE ACTION
03/18/82	19	0601	FIRST READING -- COMMITTEE REPORTS JUDICIARY

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CSHB 339(SA) am  
Title Relating to Judicial Review of Administrative Regulations  
Requested by Representative Metcalfe Date April 1, 1982

II. FISCAL DETAIL

Agency Affected Administration  
Program Category Affected \_\_\_\_\_  
BRU, Program, Or Subprogram(s) Affected \_\_\_\_\_  
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

HB 339 as amended will have no fiscal impact on the Department of Administration.

IV. DATE April 1, 1982 PREPARED BY Kenneth R. Ryaal  
AGENCY 465-2277  
PHONE \_\_\_\_\_

Original: Legislative Finance  
cc: Budget and Management

Prime Sponsor (First Legislator Named) Metcalfe, Abood, Barnes et al  
33-001 (Rev. 12/81) Office of the Governor: Keith Specking

MEMORANDUM

*Ray Metcalfe*  
*OK*  
*AAA 3.8.82*

TO: Al

FROM: Cheryl (✓)

SUBJECT: CSHB 339 - an act relating to judicial review of administrative regulations

You requested I look over Metcalfe's bill. It looks OK and would recommend you support it.

The statutes currently require that an agency's regulations be consistent with the statute and be "reasonably necessary to carry out the purpose of the statute". "Reasonably necessary" has been changed to require that there is a "clearly demonstrated need for the regulation". The purpose for the change is that it is fairly easy for the state to prove that a regulation is "reasonably necessary"; it is more difficult to prove a "demonstrated need".

The bill also adds a section to the Court Review of regulations which sets out guidelines of what the state has to prove when a person seeks relief in Superior Court. These two specific guidelines do not exist in current statute.

Original sponsors: Metcalfe, Abood,  
Barnes, et al

Offered: 1/25/82  
Referred: Judiciary

*Pls check  
to give  
opinion*

1 IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 339 (State Affairs)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the judicial review of minis-  
7 trative regulations."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 44.62.030 is amended to read:

10 Sec. 44.62.030. CONSISTENCY BETWEEN REGULATION AND STATUTE. If,  
11 by express or implied terms of a statute, a state agency has authority  
12 to adopt regulations to implement, interpret, make specific or otherwise  
13 carry out the provisions of the statute, no regulation adopted is valid  
14 or effective unless consistent with the statute and there is a clearly  
15 demonstrated need for the regulation [REASONABLY NECESSARY] to carry out  
16 the purpose of the statute.

17 \* Sec. 2. AS 44.62.300 is amended by adding a new subsection to read:

18 (b) In an action under (a) of this section brought on the ground  
19 that there is no clearly demonstrated need for the regulation as  
20 required by AS 44.62.030, the state has the burden of proving that

21 (1) the burdens imposed on the public by the regulation are  
22 outweighed by the benefits accruing to the public from the regulation;  
23 and

24 (2) there is no less restrictive means available to achieve  
25 the purpose of the regulation.

26  
27  
28  
29

*(a) seek  
sup it  
for relief  
guidelines*

fairly easy to prove

reason necessary

[ much stronger <sup>burden</sup> proof ]



Mr. Pellerson

can you define Reasonably  
Necessary.

Do you have an alternative  
is there any reason that ~~the~~  
in those reg's you feel are  
so important could not be brought  
before the

Do you have any comments on  
the second portion