

H B
580

COMMITTEE REPORT

HOUSE

FURTHER:

5/18/81

(5)

Date: _____

Mr. Speaker:

The Committee on STATE AFFAIRS has had HB 580

"An Act relating to 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
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

Section 1. Sets forth that the intent of providing the Reg Review Committee with the power to suspend regulations during the interim is to prevent the public suffering harm before the full legislature has an opportunity to annul a regulation by law.

Section 2. Present statute enables the Reg Review Committee to suspend adoption or amendment of a regulation during the interim by a committee report. This is amended to require adoption of a resolution instead of a committee report.

Section 3. Adds the following to the powers of the Reg Review Committee:

- promote needed revisions of existing regulations;
- investigate the findings of standing committees following their review of regulations.

Section 4. Adds a new chapter to Title 24 requiring review of regulations by legislative standing committees:

Standing committees shall review any proposed regulatory action before the date action is to be taken to determine if the regulations comply with legislative intent. This review will be done both during session and the interim. Any instances of proposed action not complying with legislative intent will be forwarded to the Reg Review Committee.

Section 5. Amends "Notice of Proposed Action" section of the Administrative Procedures Act to require 60 day notice instead of the present 30 days. Also requires that notices be sent to the standing committee having jurisdiction over the regulation's subject matter as set out in the Uniform Rules, as well as the staff of the Reg Review Committee.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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May 29, 1981

The Honorable Mike Miller
Chairman
State Affairs Committee
House of Representatives
Alaska State Legislator
Pouch V
Juneau, Alaska 99811

Re: HB 580 -- Administrative Regulations

Dear Mike:

Here are some brief comments to state the Department of Law's opposition to this bill (which is identical to SB 569). I would like to make a general comment regarding constitutionality and then offer comments on specific provisions.

The foundation of the bill is the statute being amended in section 2 which provides the Administrative Regulation Review Committee the power to "suspend" an administrative regulation -- AS 24.20.445. Section 2 may, in fact, be an improvement on the current wording of AS 24.20.445(b) but it relies on a statute which we believe is unconstitutional. Three lines of reasoning come immediately to mind:

1. An administrative regulation that is in effect has the "force of law." The "suspension" of a regulation changes the law. In State v. ALIVE Voluntary, 606 P.2d 769 (Alaska 1980), the Alaska Supreme Court ruled that the legislature cannot change the law by means other than those specified in the constitution for "lawmaking."
2. The legislature cannot "legislate" by means of one of its committees. When it delegates to a committee the power to change the law, that is an unconstitutional delegation of the legislative authority.
3. The power to suspend a regulation, and thus interfere with an executive agency's efforts to execute the law, and prevent it from performing its constitutionally mandated duties, is a

violation of the separation-of-powers doctrine which is embodied in both the national and state constitutions.

Section 1 of the bill offers little to justify the suspension power. With its stated intent to "prevent the public suffering harm," it assumes that the public is a single entity with a single interest. As you know, administrative regulations govern the procedures by which a person may receive benefits from the state, regulate the relationship among various interests of private citizens, and imposes limitations or burdens on the government as well as the public. It is difficult to see exactly how that phrase in section 1 of the bill fits into those four basic types of regulation.

Section 2 of the bill, as noted above, may in fact be an improvement on the current language. But it is not a substantial change nor does it make any substantive difference with regard to the constitutional questions involved. The resolution mentioned in section 2 is not related to the kind of resolution discussed by the supreme court in the ALIVE Voluntary case.

With regard to section 3, we do not object to the assignment to the committee the functions of promoting needed revision of regulations or investigating findings, but you will note that paragraph 8 which is being added to AS 24.-20.460 again refers to the suspension power.

With regard to section 4, we do not object to the standing committees of the legislature reviewing proposed regulations. We note, however, that that was the system employed before creation of the Administrative Regulation Review Committee. It didn't seem to work. Reading regulations is not fun. It is tedious and time-consuming. We are assuming that it is not the intent of subsection (a) in the new statute added by section 4 to attempt to defer the adoption of a regulation until the standing committee reviews it. If that were the intent, that provision would be another unconstitutional interference with the executive branch's execution of the laws.

Also, the new statute added in section 4 treats standing committees of the legislature as though they were interim committees. Article 2, sec. 11 of the Alaska Constitution establishes the Legislative Council as an interim committee and authorizes the legislature to establish other

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interim committees. It states that interim committees may meet between legislative sessions. By negative implication, this constitutional provision prevents the legislature from using bodies other than "interim committees" to perform interim legislative work. Perhaps the legislature could designate its standing committees as "interim committees." But, without such a designation, section 4 of this bill raises another constitutional problem.

Section 5. We strongly oppose the change of 30 days to 60 days as the amount of time that must lapse following public notice before a regulation can be adopted. Thirty days is a relatively standard provision in the court rules and the statutes for many different kinds of notice. This office has received no complaints that the current amount of time is inadequate. Furthermore, the extension to 60 days would further delay the activities of the executive-branch agencies and would not necessarily benefit the public at all.

Near the end of section 5, at page 3, lines 11 through 18, new provisions would add duplicative notice requirements. Since AS 44.62.190(a)(6) already requires that notice of proposed regulation adoption be furnished to all incumbent legislators and the Legislative Affairs Agency, it is difficult to understand why a standing committee of the legislature and the staff of the Administrative Regulation Review Committee would not already be receiving copies. These two new provisions would require wasteful effort and wasteful xeroxing and mailing.

Thank you for your consideration of these comments.

Yours truly,

WILSON L. CONDON
ATTORNEY GENERAL

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

AHP:cb

cc: Keith Specking
Legislative Assistant
Governor's Office

ALASKA STATE LEGISLATURE

TWELFTH Legislature FIRST Session

HOUSE BILL NO. 580

By THE RULES COMMITTEE BY REQUEST OF THE ADMINISTRATIVE REGULATION REVIEW COMMITTEE

"An Act relating to administrative regulations."

Administrative regulations

Introduced in the House 5/18, 1981

HISTORY IN THE HOUSE

1981

May 18

Read first time and referred to Committee on State Affairs

Reported back with recommendation that

Read second time and

Read third time and

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reconsideration

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reported correctly engrossed
Signed by Speaker
Sent to Senate

CHIEF CLERK OF THE HOUSE

HISTORY IN THE SENATE

19

Read first time and referred to Committee on

Reported back with recommendation that

Read second time and

Read third time and

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reconsideration

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reported correctly engrossed
Signed by President
Returned to House

SECRETARY OF THE SENATE

HISTORY IN THE HOUSE

19

Received from Senate

Concurred in Senate amendment thus adopting:
VOTE

Failed to concur in Senate amendment; asked Senate to recede
VOTE

Senate receded from amendment
VOTE

Senate failed to recede from amendment
VOTE

CC appointed by House

CC appointed by Senate

CC adopted by House
VOTE

CC adopted by Senate
VOTE

To be rolling
Reported correctly enrolled
Sent to Governor

by Governor

Filed with Lt. Governor

Chapter No.