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COMMITTEE REPORT

SENATE

3/18/82

FURTHER: State Affairs

Date:

May 7, 1982

Mr. President:

The Committee on JUDICIARY has had CSHB 339(SA) am
judicial review of administrative regulations

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HB 339 LD same title
 new title
- and recommends has introduced become DRAFTS
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

NO REC.

Original sponsors: Metcalfe, Abood,
Barnes, et al

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 339 (Judiciary)

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 adoption of administrative regula-
7 tions."

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

9 * Section 1. AS 24.30 is amended by adding a new section to read:

10 *Statement* Sec. 24.30.032. REGULATIONS STATEMENT ON BILLS. Each bill that
11 would require the adoption of regulations ~~if~~ enacted into law shall
12 contain a statement granting express authority to adopt those regula-
13 tions. If a bill does not contain this statement of authority, an
14 agency may not adopt regulations to implement, interpret, or otherwise
15 carry out the provisions of the statute or statutes enacted by or other-
16 wise affected by the bill.

17 * Sec. 2. APPLICABILITY. AS 24.30.032 added by sec. 1 of this Act applies
18 to bills introduced into the Alaska legislature after the adjournment of the
19 Second Session of the Twelfth Legislature. The authority granted by a state-
20 ment required by AS 24.30.032 applies to statutory provisions added or amended
21 by the Thirteenth Legislature or subsequent legislatures, and does not affect
22 regulations adopted under statutory provisions added or amended before the
23 Thirteenth Legislature, regardless of whether these regulations were adopted
24 by express authority, implied authority, or under the general authority
25 granted to a department or agency to adopt regulations to carry out the
26 provisions of a title or chapter.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3600


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

Original sponsors: Metcalfe, Abocd,
Barnes, et al

Offered: 5/10/82
Referred: State
Affairs

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 339 (Judiciary)

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 adoption of administrative regula-
7 tions."

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

9 * Section 1. AS 24.30 is amended by adding a new section to read:

10 Sec. 24.30.032. REGULATIONS STATEMENT ON BILLS. Each bill ^{MM4} shall
11 contain a statement ~~regarding~~ the adoption of regulations by the agency
12 affected by the bill. The statement shall ^{PROHIBIT} ~~grant~~ the express authority
13 to adopt regulations to implement ^{the provisions} of the bill. If a bill
14 ~~does not contain~~ this statement of ^{PROHIBITION} authority, an agency may ^{NOT} ~~adopt~~
15 regulations to implement the statute or statutes enacted by or otherwise
16 affected by the bill.

17 * Sec. 2. APPLICABILITY. AS 24.30.032 added by sec. 1 of this Act applies
18 to bills introduced into the Alaska legislature after the adjournment of the
19 Second Session of the Twelfth Legislature. The authority granted by a state-
20 ment required by AS 24.30.032 applies to statutory provisions added or amended
21 by the Thirteenth Legislature or subsequent legislatures, and does not affect
22 regulations adopted under statutory provisions added or amended before the
23 Thirteenth Legislature, regardless of whether these regulations were adopted
24 by express authority, implied authority, or under the general authority
25 granted to a department or agency to adopt regulations to carry out the
26 provisions of a title or chapter.

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Ray - Bureau should be on legislature - indicate portions which regulations cannot ~~be~~ be adopted under.



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Touch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

May 7, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

- SB 210 - "An Act relating to child custody."
- HB 47 - "An Act relating to the prohibition against waste of the meat of wild food animals."
- HB 74 - "An Act relating to the rights of debtors and creditors."
- HB 339 - "An Act relating to the judicial review of administrative regulations."
- HB 591 - "An Act making corrective amendments in the Alaska Statutes as recommended by the revisor of statutes; and providing for an effective date."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:30 P.M. Committee members present were: Senators Rodey, Anderson, Parr, and Ray. Senator Bennett was absent.

- 001 - Call to order.
- 005 - HB 210 was brought before the committee.
- 008 - Mr. Bruce goes over the changes in the committee substitute.
- 531 - After discussion, Chairman Rodey laid HB 210 on the table.
- 535 - Chairman Rodey next brought HB 47 before the committee.
- 537 - Mr. Bruce goes over the committee substitute.
- 556 - Ed Hein, Legal Services, testified, explaining the committee substitute.

705 - Senator Anderson moved the following: On Page 3, Line 25, delete [WALRUS] and delete [EXCEPTED]. Also on Page 3, Line 25, invert EXEMPTION and ANIMALS, so that it would read ANIMAL EXEMPTION. On Line 26, Page 3, delete [walrus if] and insert animals which. On Line 27, Page 3, delete [them]. There was no objection.

721 - Senator Ray moved to adopt the Senate committee substitute. There was no objection.

724 - Senator Rodey moved to pass SCSHB 47 from committee. There was no objection and the bill was passed.

733 - The next item on the agenda was HB 339.

740 - Diane Colvin, Department of Law, testified explaining the new draft.

870 - Senator Parr stated that his intent was not being met by this bill. He wanted statutes listed by specific sections, not titles and chapters which was not being set out by this legislation.

149 - Senator Parr moved to pass HB 339 with language in Diane Colvin's memo + sec. 2 of the draft committee substitute with individual recommendations. See attached.

221 - Next, Chairman Rodey brought HB 74 before the committee.

223 - Dickerson Regan, Code Revision Commission, testified, suggesting that the committee pass the bill as is because changes can be made by the revisor of statutes next year.

327 - Senator Anderson moved to pass the bill with individual recommendations.

336 - The last item on the agenda was HB 591.

340 - Mr. Walker testified in favor of this bill.

440 - Senator Anderson moved to pass HB 591 with individual recommendations. There was no objection.

444 - The meeting adjourned at 3:00 P.M.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

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 99611
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

FOURTH FLOOR - STATE CAPITOL
JULIA A. 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
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

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:ljh

Enclosure

Original sponsors: Metcalfe, Abood,
Barnes, et al

THE HOUSE

BY THE JUDICIARY COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 339 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the validity and judicial review of
administrative regulations."

IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 44.62.030 is amended to read:

Sec. 44.62.030. CONSISTENCY BETWEEN REGULATION AND STATUTE. If,
by express or implied terms of a statute, a state agency has authority
to adopt regulations to implement, interpret, make specific or otherwise
carry out the provisions of the statute, no regulation adopted is valid
or effective unless consistent with the statute and unless the burdens
imposed on the public by the regulation are outweighed by the benefits
accruing to the public from the regulation [REASONABLY NECESSARY TO
CARRY OUT THE PURPOSE OF THE STATUTE].

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

(b) In an action under (a) of this section brought on the ground
that the burdens imposed on the public by the regulation are not out-
weighed by the benefits accruing to the public from the regulation as
required by AS 44.62.030, the state has the burden of proving that the
burdens imposed on the public by the regulation are outweighed by the
benefits accruing to the public from the regulation unless the governor
has adopted an administrative order objecting to the burden of persuasion
on that regulation, in which case the burden is on the person bringing
the action under (a) of this section to prove that the burdens imposed
on the public by the regulation are not outweighed by the benefits
accruing to the public from the regulation.

STATE OF ALASKA THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

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 A. 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



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

APRIL 29, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

- HB 184 - "An Act authorizing convening special sessions of the legislature at any location in the state."
- HB 621 - "An Act providing for the issuance of certificates of birth for persons born outside the United States and adopted by Alaska residents."
- HB 678 - "An Act relating to membership in electric and telephone cooperatives."
- HB 339 - "An Act relating to the judicial review of administrative regulations."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 5:10 P.M. Committee members present were: Senators Anderson, Parr, and Rodey. Senators Bennett and Ray were absent.

003 - Call to order.

010 - Mr. Bruce distributed HB 184, Rep. Martin's bill.

019 - Senator Anderson moved to pass HB 184. There was no objection.

053 - Chairman Rodey brought HB 621 before the committee.

060 - Joan Brooks, Vital Statistics, testified in favor of HB 621.

192 - Jan Ivey, Juneau Adoptive Parents Group, testified in favor of this legislation also.

267 - Chairman Rodey laid HB 621 on the table.

276 - The next item on the agenda was HB 678.

290 - After brief discussion, Chairman Rodey laid HB 678 on the table.

293 - The last item of business was HB 339.

297 - Mr. Art Peterson, Department of Law, testified, stating that if the burden of proof agreement were taken out of , then the Department of Law would be in agreement with this bill.

348 - Diane Colvin, Department of Law, testified, explaining the committee substitute.

709 - After brief discussion, Chairman Rodey laid HB 339 on the table.

712 - Chairman Rodey adjourned the meeting at 5:50 P.M.



Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

APRIL 26, 1981

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

- SJR 68 - Proposing an amendment to the Constitution of the State of Alaska providing that a legislator who is convicted of a felony forfeits legislative office.
- HB 678 - "An Act relating to membership in electric and telephone cooperatives."
- HB 849 - "An Act relating to electric and telephone cooperatives."
- HB 339 - "An Act relating to the judicial review of administrative regulations."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:05 P.M. Committee members present were: Senators Rodey, Parr, and Anderson. Senators Bennett and Ray were absent.

003 - Call to order.

010 - Chairman Rodey brought HB 678 before the committee.

025 - Mr. Hutchins testified in support of the bill.

147 - After brief discussion, Chairman Rodey laid HB 678 on the table.

157 - Chairman Rodey next brought HB 849 before the committee.

160 - Mr. Hutchins again testified in support of this legislation and offered the following amendments: On page 2, Line 5, add "or special" between "regular" and "meeting". On Page 2, Line 24, add "and for a valid corporate purpose" between "time" and ". ". Mr. Hutchins also suggested adding a new subparagraph (3) under . 10.25.175., Paragraph (c), to protect the attorney, client privilege.

166 - Senator Ray offered the following amendments: On Page 2, Line 10 add "formal" between the words "No" and "action". On Page 2, Line 11,

169 - Senator Parr offered the following amendment: On Page 2, Line 25 delete [except the names, addresses and accounts of the members].

771 - After discussion of the amendments, Chairman Rodey laid HB 849 on the table and directed staff to prepare a committee substitute.

779 - The next item on the calendar was HB 339.

780 - Representative Metcalfe testifies, giving the intent of his bill.

SIDE TWO

989 - Mr. Art Peterson, Assistant Attorney General, testified against HB 339, stating that this legislation would only give more power to the court system instead of the Legislature. Mr. Peterson offered a committee substitute for committee consideration.

244 - Chairman directed Senator Anderson to work as a subcommittee with Mr. Bruce to draft a committee substitute.

340 - Phil Holsforth, testified in favor of HB 339.

410 - Chairman Rodey put HB 339 in subcommittee.

412 - Next Chairman Rodey brought SJR 68 before committee.

518 - After brief discussion, Chairman Rodey laid SJR 68 on the table.

520 - The committee directed Chairman Rodey to return SB 861 and SB 175 to the State Affairs Committee for further work.

525 - Chairman Rodey adjourned the meeting at 2:45 P.M.



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

APRIL 27, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

HB 210 - "An Act relating relating to child custody."

HB 184 - "An Act authorizing convening special sessions of the legislature at any location in the state."

HB 339 - "An Act relating to the judicial review of administrative regulations."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 5:10 P.M. Committee members present were: Senators Parr, Anderson, and Rodey. Senators Bennett and Ray were absent.

003 - Call to order.

007 - Chairman Rodey brought HB 210 before the committee.

024 - Ninna Kinney, representing Department of HESS, testified in support of HB 210.

348 - Mr. Bruce relayed concerns expressed by telephone calls.

406 - Senator Parr suggested the following amendment: Page 3, Line 12, delete [After the first conference either party may withdraw, or], and on Page 3, Line 14, delete [Upon withdrawal by either party or]. There was no objection.

510 - Senator Parr moved to pass CSHB 210 from committee with individual recommendations. There was no objection.

528 - Chairman Rodey brought HB 339 before the committee.

535 - Mr. Bruce explains the changes made by the committee substitute.

561 - Diane Colvin, Legal Services, testified giving explanation of committee substitute.

766 - Senator Rodey asks Mr. Bruce to work with Diane Colvin to prepare better language which would require regulations to derive from specific sections of statutes rather than general chapter provisions.

827 - Chairman Rodey laid HB 339 on the table.

831 - Chairman Rodey brought HB 184 before the committee.

SIDE TWO

967 - Chairman Rodey requested Mr. Bruce to get information on special sessions being convened in other areas of the state if the majority so wishes.

985 - The meeting was adjourned at 6:10 P.M.

April 27, 1992

The Honorable Nels Anderson
Alaska State Senate
Pouch "V", State Capitol Building
Juneau, AK 99811

Re: CSHB 339 (State Affairs) am

Dear Mr. Anderson:

As Chairman of the Subcommittee for this bill we request your consideration of our position on this bill. Please consider the following remarks as testimony related to the bill. We would also appreciate being a part of any discussions related to the bill.

We support the House Version of 339. Similarly, we support any legislation that requires a more thorough justification or review prior to adopting the regulation. We feel this bill does that. Specific comments are included below related to each Section of the bill.

In Section 1 we propose to delete the words "or implied" in line eleven since a law passed by the legislature should not leave interpretation up to the Executive Branch. If clarity is required other than can be expressed in a wording of a statute then we propose a "letter of intent" accompany the law.

In Section 2 we question the need to exclude the Boards of Fisheries & Game from subsection 030. We feel it would be very easy for the Department of Fish & Game or the Board to site a demonstrated need for the regulations and should not be provided special treatment. In fact, existing policies, I am sure, require a management plan or similar document explaining the purpose of the regulation which in our opinion would reflect the demonstrated need for the regulation.

In Section three we are opposed to including subsection three as a burden of proof since all regulations adversely affect the economic viability of private businesses.

In our opinion this legislation would put the Executive Branch on notice that proposed regulations must be better justified and the Department of Law would expand its role in reviewing proposed regulations by requiring the agency to demonstrate a need for the regulation. If such should be the case, litigation costs could be avoided as well as the time consumed in court.

Should you desire further discussion regarding our concerns we would be happy to meet with you at any time.

Sincerely,

Frank Seymour

Frank Seymour
Executive Vice President
Cape Fox Corporation

cc: Robert Ziegler
Terry Gardiner
Oral Freeman
Robert Loescher

Karen Sawell

Govt. Affairs Rep.

CFC

781-9977

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 27, 1982

SUBJECT: Validity of Administrative Rules
 (SCS CSHB 339)

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

FROM: Diane T. Colvin *DTC*
 Legislative Counsel

You have asked us to prepare a draft Senate Committee Substitute for CSHB 339, relating to administrative regulations. That draft is attached, and incorporates the changes you submitted to us. However, we have the following comments on deletion of the words "or implied" from AS 44.62.030.

What this proposed change accomplishes is to apply different standards for testing the validity of a regulation for regulations adopted by express terms of a statute and for regulations adopted by implied terms of a statute. That is, under AS 44.62.030, as amended by the SCS, a regulation adopted by express terms of a statute would, in order to be valid, have to be consistent with the statute and the burdens imposed would have to outweigh the benefits accrued, while a regulation adopted by implied terms would arguably not have to meet these statutory standards. This is not, in our opinion, advisable, since it is difficult to argue that one type of regulation should be treated differently than another.

This may have been your intent in adopting these amendments. However, it appears that the intent of this amendment may have been to modify the power of an administrative agency to adopt a regulation by implication. This is not accomplished, we believe, by the amendment suggested. The deletion of the words "or implied" does not affect an agency's authority in any substantive way, but simply, as indicated above, applies different standards to regulations adopted by express terms or by implied terms.

If you wish further information on this matter, please contact us.

DTC:j'n

Enclosure

Colvin ✓
4/27/82

Original sponsors: Metcalfe, Abood,
Barnes, et al

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 339 (Judiciary)

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 validity of administrative
7 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 unless the burdens
15 imposed on the public by the regulation are outweighed by the benefits
16 accruing to the public from the regulation [REASONABLY NECESSARY TO
17 CARRY OUT THE PURPOSE OF THE STATUTE].

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19 44 62.0

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25 Smallest Citation POSSIBLE IN ADOPTION OF
26 REGULATIONS BY ADMINISTRATIVE AGENCIES.
27
28
29

PHIL R. HOLDSWORTH, P.E.
CONSULTING ENGINEER & LEGISLATIVE COUNSEL
MINING — GEOLOGY — LANDS

PHONE 907-586-1383

326 FOURTH STREET, No. 1009
JUNEAU, ALASKA 99801

April 26, 1982

Senator Nels Anderson
Pouch "V"
Juneau, Alaska 99811

Dear Sen. Anderson:

Following are my comments on CSHB 339(SA) am.

1. Page 1, Line 11 - I agree with Senator Parr that the removal of the words "or implied" would eliminate the discretionary powers now allowed a state agency to "imply" legislative intent.
2. Sec. 2. of the bill speaks to several sections of the Fish & Game Code. AS 16.05.251 has to do with the Board of Fisheries. AS 16.05.255 covers the Board of Game. AS 16.05.260 provides for the creation of Advisory Committees. All three of these sections require that regulations shall be adopted under AS 44.62. AS 16.05.257 has to do with Subsistence Hunting Regulations and only portions of this section require AS 44.62 procedure. The purpose of this section is unclear to me and I see no reason for its adoption.
3. The purpose of Sec. 3. of the bill is quite clear. It provides that if the validity of a regulation is questioned through court action, the burden of proof as to validity lies with the agency adopting the regulation. This would appear to be proper as the guidelines spelled out in AS 44.62.010 are quite clear. If these guidelines are not followed, the burden of proof should lie with the regulator - not the regulated. The "(a)" on Line 24 of this section refers to the present AS 44.62.300 which reads as follows:

Sec. 44.62.300. Court review. An interested person may get a judicial declaration on the validity of a regulation by bringing an action for declaratory relief in the superior court. In addition to any other ground the court may declare the regulation invalid (1) for a substantial failure to comply with AS 44.62.010 - 44.62.320, or (2) in the case of an emergency regulation or order of repeal, upon the ground that the facts recited in the statement do not constitute an emergency under Sec. 250 of this chapter.

April 26, 1982

I agree that subparagraphs (b)(1) and (b)(2) on Page 1, Lines 27-29 and Page 2, Lines 1 and 2 be combined, and (b)(3) be eliminated - as suggested by Senator Ray.

Respectfully submitted,

A handwritten signature in cursive script that reads "Phil R. Holdsworth". The signature is written in dark ink and is centered on the page.

Phil R. Holdsworth

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)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND						
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)

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)

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

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)

	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. Ryal
 AGENCY 65-2277

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

alaska
state
hospital
association

319 Seward St., Juneau, Alaska 99801 • (907) 586-1790
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Fairbanks Memorial
Hospital
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Medical Center
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Alternate Trustee Delegate
to American Hospital
Association
Robert Jensen
Central Peninsula Hospital
Soldotna

President
Dennis L. DeWitt
Juneau

January 26, 1982

The Honorable Ramona L. Barnes
State Capitol
Pouch V
Juneau, AK 99811

Dear Representative Barnes:

SUBJECT: CSHB 339

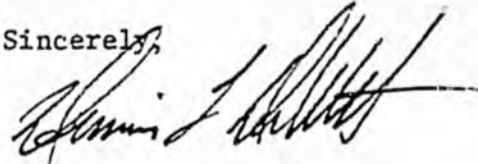
The Alaska State Hospital Association wishes to indicate its support for CSHB 339 which is before the Judiciary Committee for consideration.

We believe that regulations are an important and justifiable activity and do in most cases protect the public. As an industry which as institutions must abide by licensure regulations developed by the Department of Health and Social Services, as employers must respond to the Department of Labor, as employers of nurses must abide by regulations promulgated by the Department of Commerce and Economic Development, and so forth, we believe we have some feeling for interaction with the regulatory process. We are finding, however, that regulators are beginning to regulate, not because of a public need, but because the regulator believes the regulation is a nice idea. One supported by the regulator and not precluded by law.

This Association believes that CSHB 339 will return regulation to its proper role, that of protecting the public by responding to demonstrated need. It will preclude the use of regulation to foster the ideology of the regulator.

In this time of concern about health care costs it is important that government not unnecessarily increase costs through unnecessary regulation. We believe CSHB 339 will help achieve that goal.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis L. DeWitt", written in a cursive style.

Dennis L. DeWitt
President

DLD:jp

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.

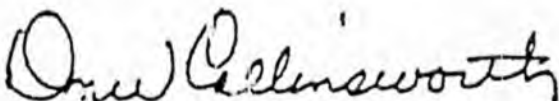
HJR 28

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.

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, regulations which it recommended to be sustained, and regulations which it found to be too controversial and felt should be reviewed by the legislature.

Following the completion of the committee's work and the dissolving of the committee, 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. A recent Supreme Court decision now has given regulations the full authority and weight of statutes acted upon by the Legislature. As a result of the court decision, 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.

Prior to the Supreme Court decision, the Legislature made some use of it's assumed authority to annul regulations via the resolution. But without the incentive of the required regulation review, compound with the disincentive that stems from the requirement that the entirety of each body act in unison to review and overrule a regulation has resulted in very little annulment of regulation.

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 charges 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 Transportation Committee and the Senate Transportation Committee 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 that you feel would improve upon their intent.

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

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)

GENERAL FUND		212.7	208.2	224.9	242.9	262.3
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

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 (24A) (Anchorage)	\$ 64,241
1 Attorney IV (24A) (Anchorage)	64,241
1 Legal Secretary I (10B) (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 x 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.