

HJR

77

COMMITTEE REPORT

SENATE

4/13/82

FURTHER: None

Date: May 10, 1982

Mr. President:

The Committee on JUDICIARY has had HJR 77

Proposing an amendment to the Constitution of the State of Alaska relating to annulment of regulations by the legislature

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 HJR 77 same title
 new title
- and recommends HJR 77
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]
[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature]
CHAIRMAN

18 H-155

Introduced: 1/25/82
Referred: Judiciary

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

1 IN THE HOUSE

2 HOUSE JOINT RESOLUTION NO. 77

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 Proposing an amendment to the Consti-
6 tution of the State of Alaska re-
7 lating to annulment of regulations
8 by the legislature.

9 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. Article II, Constitution of the State of Alaska, is amended
11 by adding a new section to read:

12 SECTION 22. ANNULMENT OF REGULATIONS. The legislature by a
13 concurrent resolution approved by a majority vote of the membership of
14 each house may annul a regulation adopted by a state department or
15 agency. The annulment of the regulation is effective ^{30 days after} on the date the
16 concurrent resolution is approved by ^{A 2/3 vote of each} both houses unless the concurrent
17 resolution specifies a different date.

18 * Sec. 2. The amendment proposed by this resolution shall be placed
19 before the voters of the state at the next general election in conformity
20 with art. XIII, sec. 1, Constitution of the State of Alaska, and the election
21 laws of the state.

22
23
24 3.) Every such resolution must be restricted to a single subject
25
26 4.) The vote on such resolutions shall be recorded
27
28
29

City moves

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 19, 1982

SBUEJCT Annulment of regulations
 (HJR 77)

TO: Senator Patrick M. Rodey

FROM: Billy G. Berrier *BGB*
 Director
 Division of Legal Services

HJR 77 proposes a constitutional amendment which would allow annulment of regulations by concurrent resolution. Both versions allow the legislature in the resolution to set the effective dates of the annulment.

You have asked whether specifying a date on which the annulment is effective other than the constitutionally prescribed date would require an extraordinary majority.

In my opinion it would not.

The requirement for a two-thirds vote for adoption of an effective date is contained in Sec. 18, Article II, Constitution of the State of Alaska which provides:

SECTION 18. Laws passed by the legislature become effective ninety days after enactment. The legislature may, by concurrence of two-thirds of the membership of each house, provide for another effective date.

By its specific terms the section is applicable only to "laws passed by the legislature".

In State v. A.L.I.V.E. Voluntary, 606 P.2d 769 (1980) our Supreme Court held the statute allowing annulment of regulations by concurrent resolution unconstitutional. The basis on which the Court held the statute unconstitutional was essentially that a concurrent resolution is not subject

to the constitutional requirements for enactment of law. In that case the Court considered the enactment procedure and stated:

"Finally, there is the clause that laws do not become effective, unless a two-thirds vote of the membership of each house provides otherwise, until ninety days after they are enacted. Art. II, § 18. This is designed to provide a fair opportunity to those people affected by legislation to learn of the laws they must live by.

"The question presented by this case is whether the legislature can exercise its legislative power without following these enactment provisions. In our view the answer must be in the negative, for otherwise they would serve no purpose. In Plumley v. Hale, 594 P.2d 497, 502 (Alaska 1979) we held that the requirements of Art. II § 14 are mandatory, not permissive. The minutes of the proceedings of our constitutional convention indicate that the delegates were fully aware that only by following the enactment procedures could the legislature make law. Thus, Delegate Sundborg stated:

"Now, a majority vote in each house of the legislature is not equivalent to passing a law, because it does not require the signature of the governor, and it does not require conformance with the provisions of this constitution and the provisions of such laws as will be passed under it with respect to the procedure in enacting a law. So, when we say in the second sentence, 'The state may by law,' we are saying that that law must be passed by the legislature in the manner that is required by the constitution and the statutes, and either signed by the governor or passed over his veto or become law without his signature in the manner provided in the constitution, which we felt was the real intention of the body rather than merely requiring that the legislature by a majority in each house and without adhering to any of those other restrictions and without any reference to the governor could contract debt on behalf of the state.

"5 Proceedings of the Alaska Constitutional Convention at 3405 (January 28, 1956)."

Senator Patrick M. Rodey
Page 3
May 19, 1982

and later stated:

Appellee finds it significant that the Alaska Constitution contains no provision like that in section 7, clause 3 of article I of the United States Constitution which authorizes the executive to veto legislative resolutions, and that executive involvement in the enactment of resolutions was not deemed necessary by the framers of the state constitution. This point, however, does not advance Appellee's case. Under the United States Constitution joint resolutions are one means by which laws are enacted; they are therefore naturally included among those legislative acts subject to Presidential veto. However, under the state constitution resolutions are not an alternative law enactment process, and therefore there is no need to make them subject to an executive veto. (Emphasis added)

In this case the Court explicitly held the enactment procedures, including the effective date provision cited, not applicable to concurrent resolutions.

BGB:ljb



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

MAY 10, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

- HB 678 - "An Act relating to membership in electric and telephone cooperatives."
- HB 668 - "An Act relating to the release of records by the Department of Fish and Game to the Department of Public Safety; and providing for an effective date."
- HJR 77 - Proposing an amendment to the Constitution of the State of Alaska relating to annulment of regulations by the legislature.
- HB 210 - "An Act relating to child custody."
- HB 577 - "An Act repealing provisions relating to justification of the use of force in resisting or interfering with arrest."
- HB 575 - "An Act relating to culpable mental states prescribed as elements of criminal assaults."
- HB 2 - "An Act relating to land; and providing for an effective date."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:10 P.M. Committee members present were: Senators Rodey, Parr, and Anderson. Senators Bennett and Ray were absent.

010 - Call to order.

023 - Chairman Rodey brought HB 678 before the committee.

043 - *Anderson* moved to pass from committee with individual recommendations. There was no objection.

057 - HB 668 was brought before the committee.

077 - Senator Anderson moved to adopt the Senate committee substitute. There was no objection.

088 - Senator Parr moved to pass out of committee with individual recommendations. There was no objection.

109 - HJR 77 was brought before the committee.

131 - Senator Parr moved to adopt the committee substitute. There was no objection.

138 - Senator Anderson moved to pass out of committee with individual recommendations. There was no objection.

208 - Chairman Rodey announced that the committee will be hearing HB 2 in specific sections, dividing the bill up between University lands, homesteading, and seismographic material.

212 - Teresa Hebert, Exxon attorney, testified giving a language suggestion. She asked that the committee not adopt Sec. 11 & 12 of HB 2 which deal with seismographic material.

445 - Chairman Rodey returned HB 2 to the file.

453 - Chairman Rodey brought HB 210 before the committee.

465 - Representative Rogers testified, stating he would rather have mandatory mediation, but he also wished to avoid a fiscal note on the bill.

679 - Senator Parr moved to adopt the committee substitute. There was no objection.

685 - Senator Anderson moved to pass the bill from committee with individual recommendations. There was no objection.

689 - The next item of business was HB 577.

691 - Representative Anderson testified in favor of this bill.

786 - For the record, Senator Ray entered the meeting.

097 - Senator Parr asked the committee to hold the bill over until the next meeting. There was no objection and the bill was laid on the table.

140 - The last item of business was HB 575.

277 - After discussion, Senator Ray moved to pass HB 575 with individual recommendations.

285 - After a brief discussion, Senator Ray withdrew his motion.

298 - Senator Ray moved to add the provisions in SB 535 on to HB 575 as a committee substitute. There was no objection, and the committee substitute was adopted.

306 - Senator Ray moved to pass the committee substitute with individual recommendations. There was no objection.

314 - The meeting was adjourned at 2:20 P.M.

Final sponsor: Rules/Administrative
Regulation Review
Committee

THE HOUSE

BY THE JUDICIARY COMMITTEE

SENATE CS FOR HOUSE JOINT RESOLUTION NO. 77 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - SECOND SESSION

Proposing an amendment to the Constitution of the State of Alaska relating to annulment of regulations by the legislature.

RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

Section 1. Article II, Constitution of the State of Alaska, is amended adding a new section to read:

SECTION 22. ANNULMENT OF REGULATIONS. The legislature by a concurrent resolution approved by a majority vote of the membership of each house may annul a regulation adopted by a state department or agency. The annulment of the regulation is effective (thirty days after) the date the concurrent resolution is approved by both houses unless the concurrent resolution specifies a different date.

Sec. 2. The amendment proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election of the state.



Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

APRIL 28, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

- HJR 77 - Proposing an amendment to the Constitution of the State of Alaska relating to annulment of regulations by the legislature.
- HB 848 - "An Act reenacting the law relating to the marital deduction in testamentary transfers; and providing for an effective date."
- SJR 61 - Proposing amendments to the Constitution of the State of Alaska relating to appropriations and the retention, investment and expenditure of certain state revenues; and superseding the amendments proposed by Legislative Resolve No. 1, First Special Session of the Twelfth Legislature (FSS FCCS SJR 4).

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:40 P.M. Committee members present were: Senators Rodey, Ray, Parr, and Anderson. Senator Bennett was absent.

003 - Call to order.

008 - Chairman Rodey brought HJR 77 before the committee.

019 - Phil Holdsworth, representing Miners Assoc., & Coal Operators, testified in favor of HJR 77.

045 - Art Peterson, Assistant Attorney General, testified in opposition of HJR 77.

415 - Mr. Peterson proposed the following amendments: On Page 1, Line 15 delete "on" and insert "30 days after:". On Page 1, Line 16, after the word "by" insert "a 2/3 vote of each house". On Page 1, Line 17 after "." add the following sentences: Every such resolution must be restricted to a single subject. The vote on such resolutions shall be recorded.

565 - Representative Malone testified in favor of HJR 77.

600 - Senator Ray moved to adopt 30 day clause offered by Mr. Peterson. There was no objection.

649 - HJR 77 laid on the table.

654 - HB 848 was brought before the committee.

665 - Steve Levi, of Speaker Hayes office, testified in favor of HB 848.

754 - HB 848 was laid on the table.

805 - Senator Ray distributed an amendment to SJR 61 for committee member's consideration. There was no objection to the amendment and it was adopted.

991 - Ron Lorenson, Deputy Attorney General, offered an amendment to Page 1, Line 9, after ";" insert "providing for effective date for those amendments". There was no objection to the amendment.

048 - Senator Rodey offered an amendment to Page 2, Line 10, to insert a "." after the word "investment".

085 - After discussion, Senator Rodey reconsidered his amendment.

243 - The meeting was adjourned at 2:50 P.M.

BALLOT PROPOSITION NO. 1

LEGISLATIVE ANNULMENT OF REGULATIONS Constitutional Amendment

(Committee Substitute for House Joint Resolution No. 82 Amended)

SUMMARY

(As it will appear on the November 4, 1980 General Election Ballot)

This proposal would permit the legislature to annul, by adopting a resolution, regulations adopted by state agencies. Annulment of regulations by resolution was authorized by the First State Legislature in 1959; however, in 1980 the Alaska Supreme Court held that the constitution permits the legislature to annul a regulation only by passing a bill, which requires three readings of the bill and a roll call vote which is recorded. The procedures for adopting resolutions are governed by legislative rules and require only the approval of the resolution by voice vote of a majority of both houses. A bill passed by the legislature annulling a regulation could be vetoed by the governor or repealed by referendum. A resolution annulling a regulation could not.

BALLOT FORM:

A vote "FOR" adopts the amendment.

A vote "AGAINST" rejects the amendment.

FOR
AGAINST

VOTE CAST BY MEMBERS OF 11TH STATE LEGISLATURE ON FINAL PASSAGE

Senate	(20 members):	Yeas <u>18</u>	Nays <u>0</u>	Absent or Not Voting <u>2</u>
House	(40 members):	Yeas <u>36</u>	Nays <u>0</u>	Absent or Not Voting <u>4</u>

LEGISLATIVE AFFAIRS AGENCY SUMMARY

(As required by law)

This proposal would add a new section, section 22, to Article II of the state constitution. If adopted, the proposal would authorize the legislature to annul or set aside a regulation which has been adopted by a state department or agency. In order to annul a regulation, the legislature could adopt a concurrent resolution by approval of the resolution by majority vote of the membership of each house of the legislature. The resolution specifies the date on which the annulment of a regulation would take effect.

FULL TEXT OF PROPOSED CONSTITUTIONAL AMENDMENT

SECTION 22. ANNULMENT OF REGULATIONS. The legislature by a concurrent resolution approved by a majority vote of the membership of each house may annul a regulation adopted by a state department or agency. The annulment of the regulation is effective on the date the concurrent resolution is approved by both houses unless the concurrent resolution specifies a different date.

STATEMENT IN FAVOR OF BALLOT PROPOSITION NO. 1

The legislature, when it writes a law, cannot foresee all of the possible details involved in carrying it out. The appropriate administrative agency is therefore allowed to write regulations which spell out who does what, when, where, and how. If the agency does no more than this no problem is created.

Unfortunately agency regulations are not always consistent with the intent the legislature had in passing the law. Sometimes an agency will get carried away and put out regulations that cause an unnecessary burden for the citizens. The First State Legislature realized this and provided a simple solution. The legislature could, by a concurrent resolution passed by a majority of each house, annul an administrative regulation. Such a resolution is not subject to the governor's veto.

The Alaska Supreme Court recently held, in a 3-2 decision, that the legislature must use a bill rather than a resolution to annul administrative regulations. But a bill is subject to

the governor's veto. The governor can hardly be expected to approve a bill overruling his subordinates, who put out the regulation in the first place. The present governor has already vetoed one such bill.

The court ruling gives agency regulations equal standing with laws, *even though no single person elected by the voters has approved them.*

Our government is wisely based on dividing power among the three branches: legislative, executive and judicial. The current situation gives entirely too much power to the executive branch. Your approval of this constitutional amendment will restore the better balance under which the state operated from 1961 to 1980.

— Charles H. Parr
Chairman, House Judiciary Committee
Alaska State Legislature

STATEMENT AGAINST BALLOT PROPOSITION NO. 1

This is still another proposal by the legislature to free itself from the checks and balances of our constitution. Under the constitution, the legislature has all the power it needs to make laws and annul administrative regulations. This proposal does not aid the public in any way. What it does is allow the legislature to exercise its power to annul regulations in disregard of the constitutional requirements that each bill have a single subject, that each bill have three readings in each house, and that there be a recorded vote of the yeas and nays on final passage. It would also free the legislature from the executive veto and it would allow it to ignore the prohibition against special and local legislation.

The Alaska Supreme Court has recently ruled that the legislature must abide by the constitution's checks and balances on its power whenever it exercises that power, including when it acts to annul regulations. This amendment is intended to overrule the court's decision and erode the constitution's safeguards. It aids legislators, not the public, and it should be rejected.

— Katherine O. Nordale
Delegate to the Alaska
Constitutional Convention,
1955-1956

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