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5

COMMITTEE REPORT
SENATE

FURTHER: None

4/14/81

Date: May 8, 1981

Mr. President:

The Committee on JUDICIARY has had SSSB 5

limiting the effective period 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 SSSB 5 same title
 new title
- and recommends IT PASSED WITH INDIVIDUAL RECOMMENDATION
- 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

Members serve for the duration of the legislature during which they are appointed. If they are reelected or their term of office extends into the next succeeding legislature, they continue to serve until reappointed or the appointment of their successor. (§ 1 ch 27 SLA 1975)

Sec. 24.20.430. Vacancies. When a vacancy occurs in the membership of the committee, the presiding officer of the house incurring the vacancy shall choose a successor. If the office of the president of the senate or speaker of the house of representatives becomes vacant and a vacancy from the affected house occurs among the membership of the committee, the remaining committee members from the house incurring the vacancy shall appoint a new member. (§ 1 ch 27 SLA 1975)

Sec. 24.20.440. Meetings. The Administrative Regulation Review Committee may meet during sessions of the legislature and during the interim between sessions at such times and places in the state as the chairman may determine. Members may receive, for the minimum time required to get to and from meetings and for the period while attending meetings, the same travel and per diem allowances provided by law for members of the legislature when attending sessions, except that members of the committee receive no per diem during legislative sessions other than the per diem allowance paid to other members of the legislature. (§ 1 ch 27 SLA 1975)

Sec. 24.20.445. Power of suspension. (a) When the legislature is not in session, the Administrative Regulation Review Committee may by an affirmative vote of not less than two-thirds of the members of the committee suspend the effectiveness of the adoption of or amendment to a regulation adopted after adjournment of the previous regular session of the legislature, until 30 days after the legislature reconvenes.

(b) The effectiveness of an adoption or amendment of a regulation is suspended on the date a committee report passing in favor of suspension is filed with the lieutenant governor. If an adoption of or amendment to a regulation is not effective on the date a report is filed with the lieutenant governor, the effectiveness of the adoption or amendment which is the subject of the committee's report is suspended from the date the adoption or amendment would otherwise become effective under AS 44.62.180.

(c) No action under (a) of this section may be undertaken unless all interested parties are afforded an opportunity to be heard at a hearing held upon 15 days' notice to those parties.

(d) The provisions of this section do not apply to emergency regulations. (§§ 1, 2 ch 3 SLA 1978)

Revisor's note (1978). — The language of AS 24.20.445(d) was drawn from sec. 2, ch. 3, SLA 1978 and codified as part of AS 24.20.445.

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180 SLA 1!

Title 24
Legislature

Legis



Alaska State Legislature

Senate

Judiciary Committee

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

May 6, 1981

Arthur H. Peterson
Assistant Attorney General
and Regulations Attorney
State of Alaska
Department of Law
Pouch K - State Capitol
Juneau, Alaska 99811

Dear Art:

Thank you for your additional comments on SB 5 and SSSB 5.

I do intend to have the committee work with the Regulation Review Committee on this proposal to see if some mutually acceptable solution can be adopted.

I appreciate your concerns in this area.

Sincerely,

A handwritten signature in cursive script that reads "Pat".

Senator Patrick M. Rodey
Chairman

PMR/ods

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

May 5, 1981

RECEIVED

MAY 05 1981

Honorable Pat Rodey
Chairman
Senate Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: SB 5 and SSSB 5
(administrative regulations)

Dear Pat:

Since the prime sponsor of this bill, Senator Fahrenkamp, testified after I had completed my opposition testimony yesterday at your committee hearing, I did not get a chance to comment on her reasons for introducing and promoting the bill. She gave three basic reasons: (1) she believes that not all regulations accurately implement the intent of the legislature; (2) she believes that there are too many regulations; and (3) she believes that some regulations exceed the authority granted the adopting agency.

As to intent: first of all, it is usually difficult to determine legislative intent. There are few committee reports, and committee files and tapes have been difficult to use. Secondly, under current provisions in the Administrative Procedure Act, the legislature has plenty of opportunity to participate in the regulation-adopting process, in order to assure that legislative intent is in fact being implemented. Thirdly, if the legislature does not agree with a decision of an executive agency as to what the probable intent of the legislature was when enacting the enabling legislation, the legislature certainly may enact amendatory legislation, establishing guidelines, stating prohibitions, or setting out some limits on the exercise of the agency's authority.

Through all the discussions and hearings on this and related bills over the past few years, I have not been able to determine exactly why any legislator feels that the current system is not adequate to assure the implementation of the legislative intent behind a statute. The legislature controls the language of the enabling legislation. It also controls the content of the legislative journals. It has access to executive agency personnel. AS 44.62.190(a)(6) assures that all individual legislators and the Legislative Affairs Agency are sent advance notice of proposed regulations. And AS 44.-62.220 sets out the right to petition for a change in the regulations. It must also be remembered that not all legislators will agree among themselves as to the intent of a particular statute.

As to quantity: there may well be legislative and public concern that there are too many administrative regulations. But the public is also concerned that there are too many statutes. Most people do not make the technical, legal distinction between statutes and administrative regulations when objecting to the degree of governmental control over their activities. Regulations are a crucial element in helping an agency avoid being arbitrary. Any effort to cut down on the number of administrative regulations should be done on a discriminating basis, not by means of a shotgun approach. Decisions must be made as to which ones are unnecessary. Neither Senate Bill 5 nor the sponsor substitute for Senate Bill 5 makes that sort of necessary discrimination. They both just let Time do the work.

As to authority: any question of the authority given an agency to adopt an administrative regulation is a matter for the courts. The legislature passes the laws, the executive branch executes them, and the judicial branch decides disputes concerning them. Among the disputes involving the laws are those that challenge the validity of an administrative regulation as one exceeding the authority of the adopting agency. A system which usurps the judicial function in this regard is probably invalid. See Chadha v. Immigration and Naturalization Service, 634 F.2d 408 (9th CCA, 1980).

Perhaps your committee would like to recommend that Senate President Kerttula refer SB 5 or its sponsor substitute to the Administrative Regulation Review Committee for analysis in conjunction with other, related proposals.

Honorable Pat Rodey

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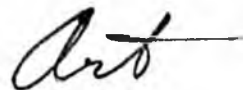
May 5, 1981

Thank you for the opportunity to testify yesterday and for your consideration of these additional comments.

Yours truly,

WILSON L. CONDON
ATTORNEY GENERAL

By:



Arthur H. Peterson
Assistant Attorney General and
Regulations Attorney

AHP:bjl

cc: Keith Specking
Legislative Assistant
Governor's Office

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Sec. 24.20.450. Committee has
(1) to organize
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properly implemented
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administrative
(6) to prepare
(§ 1 ch 27 SLA 1975)

Article

Section
500. Legislative Benefits
510. Membership
520. Selection of

Sec. 24.20.450. established. as a permanent establishes the analyses of to change the

Sec. 24.20.450. Board of Retirement
(1) the commission
(2) the director
(3) an employee
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under the terms
(5) a public
background
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and
(7) a retirement
130 SLA 1978

SENATE JUDICIARY COMMITTEE

Bill Number SB 5 Original Sponser(s) FARRERKAMP + BENNETT
Title AN ACT RELATIVE TO THE EFFECTIVENESS OF ADMINISTRATIVE REGULATIONS
Originally Recieved From KEPTULA
Contact _____ Date _____

Committee Recommendation (MAJORITY) _____

Report Attached yes no) Supporters _____

MINORITY _____

Report Attached yes no) Supporters _____

Object of Bill _____

Committee Amendments _____

Fiscal Impact _____

LAA Legal/Research Contact _____ Research/Information _____

Concerned Parties:

Supporting

Opposing

Administrative
Regulations

SENATE BILL NO. 5, by Senators Fahrenkamp and Bennett. Amends procedure for adoption of regulations by stating that a regulation or order of repeal filed by the Lieutenant Governor becomes effective on the "60th legislative day after the date the regulations were submitted to the Administrative Regulation Review Committee. . .", rather than on the 30th day after the date of filing. Repeals committee's power to suspend the "effectiveness of the adoption of or amendment to a regulation adopted after adjournment of the previous regular session of the legislature, until 30 days after the legislature reconvenes. . . ." (statute quoted: AS 24.20.445). Provides emergency regulations adopted under the authority of a law enacted by the First Session of the Twelfth Legislature remain in effect until March 11, 1982, notwithstanding provisions of AS 44.62.260(a), which limits effectiveness to 120 days unless adopting agency complies with publication requirements before or during 120-day period. Does not provide for an effective date.

Introduced: 4/14/81
Referred: Judiciary

1 IN THE SENATE

BY FAHRENKAMP, BENNETT, DANKWORTH,
KERTTULA AND KELLY

2 SPONSOR SUBSTITUTE SENATE BILL NO. 5
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 TWELFTH LEGISLATURE - FIRST SESSION
5 A BILL

6 For an Act entitled: "An Act limiting the effective period of administra-
7 tive regulations; and providing for an effective date."
8

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

10 * Section 1. AS 44.62 is amended by adding a new section to article 4
11 to read:

12 Sec. 44.62.295. LIMITATIONS ON EFFECTIVE PERIOD OF REGULATIONS.

13 No regulation adopted by an agency remains in effect beyond the
14 legislative session following adoption of the regulation unless the
15 regulation has been approved by law by that day. An expired regu-
16 lation is not effective for any purpose, but all rights, penalties,
17 forfeitures, or liability which accrued under the regulation before
18 that day continue and the regulation shall be treated as remaining
19 in force for the purpose of sustaining any proper action or prosecu-
20 tion for the enforcement of a right, penalty, forfeiture, or liability
21 which accrued.

22 * Sec. 2. Regulations adopted prior to July 1, 1981, are not subject
23 to the provisions of this Act.

24 * Sec. 3. This Act takes effect July 1, 1981.

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Handwritten notes:
- ASSET
- BUT DOESN'T LIKE EITHER
- DW. INSURANCE - PROBLEM W/ FED GOV REGS.
- PROTECTION OF FISHERIES
- EMERGENCY ORDERS
- DON COOK
- BOB CUNNINGHAM
- PETERSON
- ACCEPTS
- 1-
- 2) FURTHER BY STATE
- 3) PUNISH