

HUTR

5

COMMITTEE REPORT

HOUSE

FURTHER:

(7)
1/17/83

Date: 4-13-83

Mr. Speaker:

The Committee on JUDICIARY has had HJR 5

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

under consideration and reports it back as follows:

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

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

STATE OF ALASKA

Bill Sheffield, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

April 13, 1983

The Hon. Charlie Bussell
Chairman
House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: HJR 5 (constitutional
amendment on annulment of
regulations)

Dear Representative Bussell:

I understand that House Joint Resolution No. 5 is on your committee's agenda for today. This letter is to briefly express the Department of Law's opposition to that resolution.

The amendment proposed by HJR 5 is virtually identical to the Eleventh Legislature's CS HJR 82 am. (The only difference between the two amendments is that HJR 5 provides for the annulment to take effect 30 days after approval of the resolution, whereas the earlier version provided that it would take effect on the date the current resolution is approved.) That amendment was rejected by the voters on November 4, 1980 by a vote of 82,010 to 58,808. That is a substantial margin, and we should assume that the voters knew what they were doing. They should not be repeatedly subjected to the same ballot issue.

As you know, these proposals for constitutional amendments are intended to reverse the effect of the Alaska Supreme Court's decision in State of Alaska v. A.L.I.V.E. Voluntary, 606 P.2d 769 (1980). The essence of that court decision, which held invalid the statute (AS 44.62.320(a)) that provided for legislative annulment of administrative regulations by concurrent resolution, is that (1) procedurally and substantively valid regulations have the force of law, (2) an "annulment" of a regulation has the effect of changing the law, and (3) when the legislature changes the law, it must do so by following the constitutional procedures for law-making. Since AS 44.62.320(a)'s concurrent resolutions do not follow the procedures for law-making, the court held that that statute was invalid.

As the court pointed out in Plumley v. Hale, 594 P.2d 497, 500 (Alaska 1979), the various constitutional provisions specifying the mechanics of legislation are "designed to engender

a responsible legislative process worthy of the public trust." Those provisions are "to ensure deliberation prior to passage, to ensure that the requisite majority of each house affirmatively votes to enact a bill into law, and to provide a public record of the vote cast by each legislator." Id. Those procedures include, for example, the single subject rule of art. II, sec. 13; the requirement of separate readings on separate days, under art. II, sec. 14; the requirement that the ayes and nays on final passage be recorded in the legislative journal, under art. II, sec. 14; and, of course, the provisions on gubernatorial veto, under art. II, secs. 15 and 16.

Those provisions provide for public accountability, public notice, and an opportunity for the public to prepare for the application of new law. Regulations adopted under the Alaska Administrative Procedure Act require public notice, opportunity for public comment, legal review by the Department of Law, and a deferred effective date. The current version of this proposed constitutional amendment has improved upon some earlier versions by the provision for a thirty-day deferral of the effective date, but neither the other constitutional protections nor the corresponding Administrative Procedure Act protections would be applicable to the annulment of an administrative regulation.

The proposed constitutional amendment before you is not a "mere adjustment" or technical correction of the constitution. It proposes a substantial realignment of the constitutionally specified powers. Although the adoption of administrative regulations by an administrative agency is considered a "quasi-legislative function," it is an essential part of the executive branch's execution or implementation of a statute. The proposed amendment, by providing for legislative annulment, by means a concurrent resolution, provides for the legislature to make what could be considered executive-branch decisions -- executing a program created by statute. This concentration of power in the legislative branch -- both enacting the program statute and then participating in executing it -- does not reflect a sound policy in the face of the separation-of-powers doctrine as expressed in the Federalist Papers and other writings. That doctrine, of course, involves a blending or sharing of powers. The purpose is to avoid an inappropriate concentration of power.

In addition, when the legislature makes a simple negative statement by merely annulling a regulation, it interferes with the executive-branch's execution of the statute and offers nothing in its place. For example, the regulation involved in the A.L.I.V.E. Voluntary case was a Department of Revenue regulation dealing with permits for such things as lotteries. It contained several elements: a dollar limitation, a time limitation, and a provision for the cumulative effect of the value of individual prizes in reaching the dollar limitation. When the legislature annuls a provision such as that, is the agency to

interpret that annulment as meaning that the dollar limitation is not appropriate, or that the time period is not appropriate, or that the cumulative effect is not appropriate? If the agency concluded that the legislature must have been primarily concerned about the dollar limitation, and adopted a new regulation specifying a different dollar amount, would it be guessing right?

I do not believe that anyone questions the legislature's right to review the executive-branch's execution of the statute. Nor does anyone question the legislature's right to enact statutes setting guidelines and imposing limitations or prohibitions. We may disagree as to the merit of a particular guideline or prohibition, but not as to the right of the legislature to enact it (subject, in some circumstances, to the applicability of other constitutional provisions).

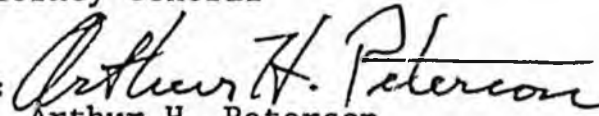
The Alaska Administrative Procedure Act (AS 44.62) provides a carefully structured system with many opportunities for legislator-involvement in the adoption of administrative regulations. If one of those opportunities was missed, or proved otherwise unavailing in some circumstance, further legislation might be appropriate. Such legislation would, of course, supersede the offending regulation.

Chadha v. Immigration and Naturalization Service, 634 F.2d 408 (9th Cir. 1980), is currently on appeal to the United States Supreme Court. That case presents to the court the question of the validity of what has become known as the "legislative veto." A decision is expected by June of this year. Your committee might also find helpful the discussion in the official commentary to the 1981 Revised Model State Administrative Procedure Act, promulgated by the National Conference of Commissioners on Uniform State Laws; see, especially, the art. III introductory comments which discuss the legislative/executive/public inter-relationship regarding administrative regulations.

Thank you for this opportunity to comment. I would be happy to discuss the matter further with you at your convenience.

Yours truly,

Norman C. Gorsuch
Attorney General

By: 
Arthur H. Peterson
Assistant Attorney General

The Hon. Charlie Busseil
HJR 5

Apri 13, 1983
Page 4

cc: Emil Notti
Legislative Assistant
Governor's Office

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, *ever 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 ayes 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 D. Nordale
Delegate to the Alaska
Constitutional Convention,
1955-1956

Arguments printed on this page are the opinions of the authors and have not been checked for accuracy by any official agency.

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.



Official Business

Alaska State Legislature

House of Representatives

Representative Mike Szymanski

SR-A-Box 1304B
Anchorage, Alaska 99502
Phone (907) 349-3373

While in Session:
Pouch V
State Capitol
Juneau, Alaska 99811




MEMORANDUM

DATE: March 26, 1983

TO: HOUSE JUDICIARY COMMITTEE

Rep. Charlie Bussell
Rep. Ramona Barnes
Rep. Don Clocksin
Rep. Joe Hayes
Rep. John Liska
Rep. Ron Wendte

FROM:  Rep. Mike Szymanski

SUBJECT: Proposed HJR Amendment

Attached is additional information which should be included in the packet previously forwarded to you regarding the proposed HJR amendment relating to Amendment of Regulations.

Attachment:



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y. State Capitol
Juneau, Alaska 99811
(907) 465-3991

March 24, 1983

MEMORANDUM

TO: Representative Mik Szymanski
FROM: Susan Brody, Director *SB*
RE: Regulation Review by the Legislature
Research Request 83-87 (additional information)

As a follow-up to our memorandum of February 25, we have compiled additional information on the attempts by the legislature to annul executive branch regulations by concurrent resolution.

The attached chart lists concurrent resolutions pertaining to regulations which were introduced in both the House and Senate prior to the 1980 Alaska Supreme Court A.L.I.V.E. decision. As shown, we have identified 22 legislative attempts to annul regulations during the period from 1959 to 1980. Of these 22 attempts, only four passed both the House and Senate and were read by the governor.

The two most recent successful attempts to annul regulations by concurrent resolution were made during the Tenth Alaska Legislature (1977-78); copies of these two resolutions are attached (SCR 12 and SC^d 32).

I hope the information provided here and in our earlier memorandum is of use to you. Please let us know if you would like us to perform additional research on this topic.

SB/dp

Attachments

LEGISLATIVE ATTEMPTS TO ANNUL REGULATIONS
BY CONCURRENT RESOLUTION

Legislature	Res. #	Subject	Status
1959-1960	SCR 18	Annulling certain Dept. of Fish & Game regs.	read
	HCR 26	Annulling certain Dept. of Fish & Game regs.	expired
1965-1966	SCR 1	Annulling certain Dept. of Revenue regs.	expired
	HCR 53	Annulling certain Dept. of Fish & Game regs.	expired
1969-1970	SCR 27	Annulling certain Dept. of Public Safety regs.	expired
1971-1972	SCR 8	Annulling certain Dept. of Revenue regs.	expired
	HCR 3	Annulling certain Dept. of Revenue regs.	expired
	HCR 48	Annulling certain Dept. of Public Safety regs.	expired
1973-1974	HCR 54	Annulling certain Dept. of Env. Conservation regs.	read
	HCR 30	Annulling certain Dept. of Env. Conservation regs.	expired
	SCR 19	Annulling certain Dept. of Public Safety regs.	expired
	HCR 15	Annulling certain Dept. of Env. Conservation regs.	expired
1975-1976	HCR 47	Annulling certain Dept. of Natural Res. regs.	expired
	HCR 133	Annulling certain DHSS regs.	expired
1977-1978	HCR 136	Annulling certain DHSS regs.	expired
	SCR 8	Annulling certain DCED regs.	expired
	SCR 12	Annulling certain DCRA regs.	read
	SCR 32	Annulling certain Postsecondary Education Comm. regs.	read
	SCR 70	Annulling Guide Licencing & Contal Board regs.	expired
1979-1980	HCR 24	Annulling certain DNR regs.	expired
	HCR 31	Annulling Certain DF&G regs.	expired
	SCR 31	Annulling certain DNR regs.	expired

Source: House Research Agency, March 1983.

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: HJR 5
 Title: "...annulment of regulations..."
 Sponsor: Repr. Szymanski
 Requestor: House Judiciary Committee

II. FISCAL DETAIL

Agency Affected: Department of Law
 Program Category Affected: General Gov
 BRU, Program of Subprogram(s) Affected: Legal Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues Director
 Division: Administrative Services Division

Phone: 465-3672
 Date: April 13, 1983

Approved by Richard I. Pegues / For Commissioner: Norman C. Gorsuch, Attorney General
 Department: Department of Law

Date: April 13, 1983

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

HJR 5
Fiscal Note
Analysis

While the Department of Law opposes this resolution, we will limit our comments here to fiscal matters. This proposed amendment to the state's constitution, if adopted in the 1984 general election, will probably not have a direct fiscal impact on the department's operations. The department is statutorily responsible for reviewing all regulations for legality and form to insure consistency with the appropriate enabling legislation. The department also drafts regulations on behalf of other departments and assists other departments in drafting regulations that deal with highly complex matters requiring the attention of an attorney. Obviously, some of the time spent in these efforts will have been lost whenever a regulation has been annulled. Larger departments, which have the responsibility for carrying out major state programs, and who routinely draft numerous program operating regulations inhouse, will probably experience an even greater loss of staff time. The absence of statutorily mandated regulations, which would occur after annulment, could result in litigation from an adversely impacted industry or public interest group. The impact of such litigation cannot, in this case, be estimated in advance and therefore no cost impact can be shown.

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. House Joint Resolution No. 5
Title Proposing an amendment to the Constitution of the State of Alaska relating to annulment of regulations by the legislature.

Requested by: House Judiciary Committee Date 4/13/83

II. FISCAL DETAIL

Agency Affected General Government
Program Category Affected Legislative Affairs Agency
BRU, Program, Or Subprogram(s) Affected Session

(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 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES	-0-	-0-				
200 TRAVEL	-0-	-0-				
300 CONTRACTUAL	-0-	-0-				
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-				

FUNDING (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND	-0-	-0-				
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS None

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL TIME						
PART TIME						
TEMPORARY						

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

Assuming that no special session is called for the express purpose of annulling regulations, it is estimated that this resolution will have no additional fiscal impact.

There is no additional cost to the Division of Elections to place an issue before the voters as that is the division's function.

IV. DATE 04-13-83 PREPARED BY Wally Harrison, Dir. of Admin. Svcs
AGENCY Legislative Affairs Agency
Original: Legislative Finance PHONE 465-3850
cc: Budget and Management
Prime Sponsor (First Legislator Named)

411B 800 1450 ^(3 DOC) - admin ref review comm (M^r Conkey & Uno)
= v. 1

CM13 HJ12 adj 5 ^(4 DOC) - House Judiciary - 13 April 83 - 1:40 (12pp)
Senate " 29 April 83 - 1:34 (11pp)
Senate " 13 May 83 - 1:36 (10pp)
Senate Rules 31 May 83 - 12:30 (43pp)

March 23, 1983

Judiciary Referral

Mr. Harry D. Treager - Director
State of Alaska
Division of Occupational Licensing
Pouch "D" - LIC
Juneau, Alaska 99811

Re: Board of Veterinary Examiners

Dear Mr. Treager:

At the request of our Board Chairman, Dr. Valerie Shepard, I am enclosing a copy of the exact wording, as previously voted upon by our Board, for the proposed Good Samaritan Statute. As you are aware, our Board has attempted to have this legislation introduced for over two years. As indicated in your recent telephone conversation with our Board Chairman, we very much appreciate your willingness to move this matter along by carrying the legislation directly to the Governor's Office.

Also, in regard to Darrell Miller's January 24, 1983 letter to the Board relative to new 1983 Legislation, the Board took the following action at our March 14, 1983 meeting:

1. Re: Senate Bill 25 concerning the Decompression Chamber for animal euthanasia, Our Board did not take a stand on this matter but will be willing to do so with a specific request for same. Kindly advise if this is the case.
2. Re: House Joint Resolution No. 5 concerning the annulment of regulations, our Board voted not to support this matter.
3. Re: House Bill 20 relating to public officials. The Board took no official stand though agrees in principle.
4. Re: House Bill 54 relating to regulations adopted under the Administrative Procedure Act. Our Board voted not to support this matter.

In regard to your February 22, 1983 Memo to our Board pertaining to the reduction of residency requirements on the Board of Veterinary Examiners (Sec. 08.98.010), our Board voted not to support this matter and feels that the State is best served by the current five-year requirement.

We appreciate having the above matters brought to our attention.

Sincerely,

Dody Froehlich

Dody Froehlich
Member - Board of Veterinary Examiners

enc:

cc: Dr. Valerie Shepard

Wording for "Good Samaritan Statute" as voted unanimously upon by the Board of Veterinary Examiners at the December 8, 1980 Meeting:

"A Veterinarian who, on his own initiative or other than at the request of the owner, gives emergency treatment for an injured animal either at the scene of an accident or when such animal is brought to him, shall not be liable in damages to the owner of such animal in the absence of gross negligence."



Official Business

Alaska State Legislature

House of Representatives

Representative Mike Szymanski

Referral
SR-A-Box 1304B
Anchorage, Alaska 99502
Phone (907) 349-3373

While in Session:
Pouch V
State Capitol
Juneau, Alaska 99811



April 22, 1983

MEMORANDUM

FROM: Representative Szymanski

SUBJECT: HJR 5

It is my understanding that HJR 5, relating to the annulment of regulations by the legislature, will be on the House floor on Monday, April 25, 1983.

I would appreciate your continued support of this legislation.

SELECT - QUERY
00002 1 SECTION EQ 24.30.035

2nd Referral

AS24.30.035 DOCUMENT= 1 OF 1
CITATION Sec. 24.30.035.
CATCH LINE

FISCAL NOTES ON BILLS.

TEXT Before a bill is reported from the committee of first referral, there shall be attached to the bill a fiscal note containing an estimate of the amount of the appropriation increase or decrease which would result from enactment of the bill for the ensuing fiscal year and at least two succeeding fiscal years or, if the bill has no fiscal impact, a statement to that effect shall be attached. The fiscal note or statement shall be prepared by the department or departments affected. If the bill is presented by the governor for introduction in accordance with AS 24.30.060(b) and the uniform rules of the legislature, the fiscal note or statement shall be attached to the bill before the bill is introduced. An amendment or a substitute bill proposed by a committee of referral that changes the fiscal impact of a bill shall be explained in a revised fiscal note or statement attached to the bill.

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

Charlie,
Concerning our conversation yesterday at Council.
I thought the revised fiscal note language was this.

Bill Burris