

**SJR**

**3**

SENATE STATE AFFAIRS COMMITTEE

BILL NUMBER SJR 3

SPONSOR Coghill

BILL TITLE Amend Constitution - legislative repeal  
of regulations

DATE REFERRED 1/9/89

HEARING SCHEDULED 3-15-89

FISCAL NOTE PREPARED ✓

SPONSOR CONTACTED Bruce Geraghty 4797

INTERESTED PARTIES CONTACTED

✓ Linda Edgeworth, Elections 4611

Dick Bradley (Legal) 2450

yes Art Peterson, AG 3600

OTHER

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE  
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER JUDICIARY

\*\*FISCAL NOTE(S) MUST BE ATTACHED  
IN ACCORDANCE WITH AS 24.08.035

DATE TURNED INTO OFFICE 3-17-89

1/9/89

Mr. President:

STATE AFFAIRS Committee considered SJR 3

amending the Constitution of the State of Alaska relating to repeal of regulations by the legislature

and recommended:

- replace with CS SJR 3 (St Aff)  same title
- attached amendment(s) and  new title
- \_\_\_\_\_ letter of intent adopted

- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to \_\_\_\_\_

FISCAL NOTE(S) attached  zero  fiscal impact  
 appropriation no FN attached  Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

Joe Adams

Jan. [unclear]

Tim Kelly

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

OTHER RECOMMENDATIONS

[Signature]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[Signature] do pass

Chairman signature and recommendation

Committee backup attached

Teamster PRC didn't  
like Dept Revenue reg

Introduced: 1/9/89  
Referred: State Affairs and  
Judiciary

ALIVE Supreme Ct. decision - 1980 (Feb)

1980  
1984  
1986

defeated each time

320103 APA - leg. passed resolution  
annulmg reg. Ct. held was  
invalid - reg. has force of law. Const. specifies  
how change law - must be by bill/pass repeal,

BY COGHILL, KELLY,  
KERTTULA, STURGULEWSKI,  
PEARCE AND FRANK

1 IN THE SENATE

SENATE JOINT RESOLUTION NO. 3

Key - Gov can't  
veto CR -  
can veto bill

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

Proposing an amendment to the Constitu-  
tion of the State of Alaska relating to  
repeal of regulations by the legisla-  
ture.

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

\* Section 1. Article IV, Constitution of the State of Alaska, is amend-  
ed by adding a new section to read:

SECTION 22. REPEAL OF REGULATIONS. The legislature may repeal a  
regulation adopted by a state department or agency when the legisla-  
ture believes that the regulation does not reflect the legislative  
intent of the law [that the regulation is intended to implement]. The  
repeal [of the regulation] is effective thirty days after the adoption  
of a [concurrent] resolution by a majority vote of the membership of  
each house unless the [concurrent] resolution specifies a different  
effective date. [A concurrent resolution repealing a regulation adopt-  
ed by a state department or agency requires three readings in each  
house on three separate days except that it may be advanced from  
second to third reading on the same day by concurrence of three-  
fourths of the house considering it. The yeas and nays on final  
passage shall be entered in the journal.]

\* Sec. 2. LEGISLATIVE INTENT. (a) The legislature in proposing this  
constitutional amendment to the people is seeking the ability to repeal, by  
concurrent resolution, administrative regulations that do not reflect the  
intent of the legislature. Administrative regulations are adopted by the  
state administration to implement laws passed by the legislature by at

last time  
"annul" not repeal  
other way to repeal the  
same

2/3 to override  
special session

under Uniform  
Rules, concurrent  
resolutions  
generally don't  
require 3 readings - just  
a majority vote

joint  
by resolution

Kelly's  
suggestion

passage

30 days  
begins  
after  
2nd house  
acts

not effective  
until

1 least a majority vote. Under the existing provisions of the state consti-  
2 tution, if the legislature believes that the regulation does not properly  
3 implement the legislative intent, the legislature can overturn the regula-  
4 tion only by passing a bill. Each bill passed by the legislature is sub-  
5 ject to veto by the chief administrator, who is the governor. When a bill  
6 other than an appropriation bill is vetoed, the legislature may override  
7 that veto only during a joint session of both legislative houses by an  
8 affirmative vote of two-thirds of the membership. The difficulty in  
9 achieving the necessary two-thirds veto override vote in opposition to the  
10 governor and the governor's administration, the expense of special legisla-  
11 tive sessions to address vetoes that occur after the adjournment of regular  
12 legislative sessions, and the force of law that regulations enjoy, have  
13 resulted in adverse effects on the public and thus have led the legislature  
14 to propose this amendment.

15 (b) In the preparation of its neutral summary under AS 15.58.020  
16 (6)(C), the Legislative Affairs Agency shall consider the statement of  
17 legislative intent contained in (a) of this section.

18 (c) In the preparation of the true and impartial summary of the  
19 amendment under AS 15.50.020, the lieutenant governor or the director of  
20 elections shall consider the statement of legislative intent contained in  
21 (a) of this section.

22 \* Sec. 3. The amendment proposed by this resolution shall be placed  
23 before the voters of the state at the next general election in conformity  
24 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-  
25 tion laws of the state.

ADOPTED

6-0316E  
Bradley  
3/16/89

Original sponsors: Coghill, Kelly,  
Kerttula, et al.

Changes in CS noted.

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IN THE SENATE BY THE STATE AFFAIRS COMMITTEE

CS FOR SENATE JOINT RESOLUTION NO. 3 (State Affairs)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

Proposing an amendment to the Constitu-  
tion of the State of Alaska relating to  
repeal of regulations by the legisla-  
ture.

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

\* Section 1. Article II, Constitution of the State of Alaska, is amend-  
ed by adding a new section to read:

SECTION 22. REPEAL OF REGULATIONS. The legislature may repeal a  
regulation adopted by a state department or agency when the legisla-  
ture believes that the regulation does not reflect the <sup>[legislative]</sup> intent of the  
law. <sup>[the regulation is intended to implement]</sup> The repeal of the regulation is effective thirty days after the  
<sup>[adoption]</sup> <sup>[concurrent]</sup> passage of a joint resolution by a majority vote of the membership of  
each house unless the <sup>[concurrent]</sup> joint resolution specifies a different effective  
date. 3 readings in each house. Yeas & nays on final passage shall  
be entered in the journal.

\* Sec. 2. LEGISLATIVE INTENT. (a) The legislature in proposing this  
<sup>[concurrent]</sup> constitutional amendment to the people is seeking the ability to repeal, by  
joint resolution, administrative regulations that do not reflect the intent  
of the legislature. Administrative regulations are adopted by the state  
administration to implement laws passed by the legislature by at least a  
majority vote. Under the existing provisions of the state constitution, if  
the legislature believes that the regulation does not properly implement  
the legislative intent, the legislature can overturn the regulation only by  
passing a bill. Each bill passed by the legislature is subject to veto by  
the chief administrator, who is the governor. When a bill other than an  
appropriation bill is vetoed, the legislature may override that veto only

1 during a joint session of both legislative houses by an affirmative vote of  
2 two-thirds of the membership. The difficulty in achieving the necessary  
3 two-thirds veto override vote in opposition to the governor and the gover-  
4 nor's administration, the expense of special legislative sessions to  
5 address vetoes that occur after the adjournment of regular legislative  
6 sessions, and the force of law that regulations enjoy, have resulted in  
7 adverse effects on the public and thus have led the legislature to propose  
8 this amendment.

9 (b) In the preparation of its neutral summary under AS 15.58.020  
10 (6)(C), the Legislative Affairs Agency shall consider the statement of  
11 legislative intent contained in (a) of this section.

12 (c) In the preparation of the true and impartial summary of the  
13 amendment under AS 15.50.020, the lieutenant governor or the director of  
14 elections shall consider the statement of legislative intent contained in  
15 (a) of this section.

16 \* Sec. 3. The amendment proposed by this resolution shall be placed  
17 before the voters of the state at the next general election in conformity  
18 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-  
19 tion laws of the state.  
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# Uniform Rule 49

## RESOLUTIONS

RULE 49. RESOLUTIONS. (a) The only type of instrument other than a bill or citation authorized under these Uniform Rules is a resolution. The types and uses of resolutions are as follows:

(1) A simple resolution is a formalized motion passed by one house only and bearing the heading "House Resolution" or "Senate Resolution". It may be used to express the will, wish, view, opinion, sympathy, or request of the house adopting it. The simple resolution shall be used to establish a special committee. It does not require committee referral, three readings, or a roll call vote. Approval of a simple resolution requires a majority vote of the full membership of the house.

(2) A special resolution headed "House Special Resolution" or "Senate Special Resolution" is used only for the purpose of expelling a member under provisions of Sec. 12, Art. II, of the State Constitution. The special resolution requires a referral to the Rules Committee, three readings, and a two-thirds vote of the full membership of the house for approval.

(3) A concurrent resolution is similar to the simple resolution but reflects the will, wish, view or decision of both houses speaking concurrently. It is used particularly to handle the internal business of the legislature, e.g., adjournment of the legislature, suspension and amendment of the Uniform Rules, requesting action of executive agencies and interim committees, and fixing the time and place for joint assemblies. This resolution is also used for establishing joint committees. This resolution does not require committee referral, three readings, or anything other than approval of a majority vote of the full membership of each house unless otherwise required by the rules.

(4) A special concurrent resolution is employed to consider disapproval of an executive order of the governor laid before the legislature under provisions of Sec. 23, Art. III, of the State Constitution. This resolution must be considered by a joint committee and may be adopted by a majority vote of the full membership of the legislature in joint session without recourse to three readings.

(5) A joint resolution is the most formal type of resolution and is adopted by both houses and then signed by the governor as a ministerial formality. The joint resolution is treated in all respects as a bill but it is not subject to veto. It is usually reserved for addressees outside the state. This resolution is used mainly to express the view or wish of the legislature to the President, the Congress or agencies of the United States Government or the governments of other states. It is required for proposing or ratifying amendments to the U. S. Constitution, proposing amendments to the State Constitution under provisions of Sec. 1, Art. XIII, of the State Constitution, and for disapproval of local government boundary changes recommended by the Local Boundary Commission under provisions of Sec. 12, Art. X, of the State Constitution. Approval of a joint resolution requires a majority vote of the full membership of each house.

(b) All resolutions passed by one or both houses are sent to the governor as a matter of information and for permanent filing with the lieutenant governor. The lieutenant governor sends enrolled copies of joint resolutions to the federal and other state officers, agencies and jurisdictions. The transmittal of copies of all other resolutions to designated addressees is the responsibility of the Legislative Affairs Agency.

Concurrent

Joint

**FISCAL NOTE**

**REQUEST:**

Revision Date: 3/29/89  
Title: Repeal or regulations by the  
Legislature  
Sponsor: Coghill  
Requestor: Coghill

Agency Affected: Office of the Governor  
BRU: Division of Elections  
Components: II-Elections  
Primary & General Elections

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	-0-	-0-	2.2*	-0-	-0-	-0-
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	2.2*	-0-	-0-	-0-
CAPITAL						
REVENUE						

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	-0-	-0-	2.2*	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	2.2*	-0-	-0-	-0-

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary)

\* Costs included cover 2 to 3 pages in each Official Election Pamphlet for printing and typesetting, and costs estimated to cover computer programming requirements for vote (Continued)

Prepared by: Linda Edgeworth Phone: 465-4611  
Division: Elections Date: \_\_\_\_\_

Approved by Commissioner: *Linda Stout* Date: 3/29/89  
Agency: Division of Elections

**Distribution (by preparer):**

Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSJR 3 (StAff)

counting purposes. However, these costs are based on the assumption that all candidates and issues will fit on three ballot cards, which is the norm. It should be noted, however that should the inclusion of this issue require a 4th ballot to be printed, the cost increase would have to be calculated at 16 cents per ballot x approximately 320,000 voters. The total cost of printing the additional ballot card would be \$51.2.

Under these circumstances the fiscal note would be:

53.4

**FISCAL NOTE**

**REQUEST:**

Revision Date: 3-14-89  
Title: Repeal or regulations by the legislature.  
Sponsor: Cochill  
Requestor: Cochill

Agency Affected: Office of the Governor  
BRU: Division of Elections  
Components: II-Elections  
Primary & General Elections

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	-0-	-0-	2.2*	-0-	-0-	-0-
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	2.2*	-0-	-0-	-0-
CAPITAL						
REVENUE						

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	-0-	-0-	2.2*	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	2.2*	-0-	-0-	-0-

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS : (Attach a separate page if necessary)**

\* Costs included cover 2 to 3 pages in each Official Election Pamphlet for printing and typesetting, and costs estimated to cover computer programming requirements for vote (Continued)

Prepared by: Linda Edgeworth Phone: 465-4611  
Division: Elections Date: \_\_\_\_\_  
Approved by Commissioner: *Linda Edgeworth* Date: 3/14/89  
Agency: Division of Elections

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SJR 3

counting purposes. However, these costs are based on the assumption that all candidates and issues will fit on three ballot cards, which is the norm. It should be noted, however that should the inclusion of this issue require a 4th ballot to be printed, the cost increase would have to be calculated at 16 cents per ballot x approximately 320,000 voters. The total cost of printing the additional ballot card would be \$51.2.

Under these circumstances the fiscal note would be:

53.4

# Senator John B. (Jack) Coghill

Alaska State Legislature

Box V  
Juneau, Alaska 99811  
(907) 465-4797

Box 55028  
North Pole, Alaska 99705  
(907) 488-0862



## MEMORANDUM

To: Senator Pat Pourchot  
Senate State Affairs Committee, Chair; and  
Senate State Affairs Committee Members

From: Senator Jack Coghill

Re: Backup for SJR 3; Legislative Repeal of Administrative  
Regulations.

Date: March 14, 1989

Intent: The intent of this proposed amendment to the Constitution of the State of Alaska, is to provide a mechanism for the legislature, as representatives of the people from which we derive our legislative authority, to oversee the rule making power granted the executive branch as a result of enacted legislation.

Background: This proposal has been placed on the ballot on three previous occasions. Each time it failed. The following chart is provided for your consideration.

	<u>1980</u>	<u>1982</u>	<u>1984</u>	<u>1986</u>	<u>1988</u>
Yea's	58,808	N/A	91,174	65,176	N/A
Nay's	82,010	N/A	98,856	94,299	N/A
Total Proposition Votes	140,818	N/A	190,030	159,475	N/A
Total Election Vote Cast	162,653	199,358	213,173	182,526	203,433
Total Reg. Voters	258,742	266,224	305,262	292,274	292,441
Proposition Failure %	16.0%	N/A	4.0%	18.2%	N/A
% Voter Turn Out	63%	75%	70%	62%	70%

From this chart it is interesting to note the difference between the total number of votes cast on the proposition and the total number of votes cast in the election. For 1980 this number is 21,835; for 1984 it is 23,147; and for 1986 the difference is 23,143. It appears that each time this ballot measure has been brought up, between 11 percent (1984) and 13 percent (1980 and 1986) of the electorate did not know what they were voting for.

The Administration has always opposed this resolution. This is to be expected.

#### Attachments

1. Ballot Proposition No. 1, 1980.
2. Ballot Proposition No. 1, 1984.
3. Ballot Proposition No. 2, 1986.
4. Letter from the Department of Law,  
to Representative M. Mike Miller, Dated May 8, 1986.

Rational: I have resurrected this issue of legislative oversight of the policy setting ability of the executive branch, because the Constitution established the Legislature as the policy branch of government.

We have seen increasing numbers of administrative regulations promulgated to implement legislative policy, as established in the legislation we pass, that either ignores the legislative directive or goes beyond the limits of what the Legislature intended.

As an example, in 1985 the Legislature passed a bill that allowed "work commitments" on certain oil and gas leases to be extended by the Department of Natural Resources. The bill was half a page long and very direct. The intent as I recall was to retain the nearly 30% royalty rate that would result from production on these lease and to give the lease holder relief from the crashing oil market. The DNR wrote 14 pages of regulations to implement this policy. The result was that the lease holder lost his leases, the state put them up in another lease sale, and the leases were sold at 12 3/4 percent royalty.

Another example is the regulations established by the State Board of Dental Examiners regarding licensure of new dentists by credentials. It is obvious that the intent of the Statute (AS 08.36.234) was to allow the Board to establish criteria where dentists could gain access to Alaska patients based on their track record in other states. The Board simply wrote a regulation prohibiting licensure by credential. And to further exemplify the need for this resolution, the proposal to change this situation, SB 126, is a one word

change, from "may" to "shall". The bill was introduced on 1/18/89 and is still in the first committee of referral. You might think this is a simple policy change, however, in public hearings we have learned that this is substantial. The Board should promulgate regulations that address the intent of the law, and not the purview of the Board.

There are other examples from resource industries, and labor training programs to motor vehicle regulations. The broader issue however, and the complaint I receive most from my constituents, is that it is becoming increasing evident that administrative agencies are using regulations to perpetuate their bureaucratic empires. The problem is that this was never intended by the Constitution.

Recommendation: I recommend you move the SJR 3 from committee, with "do pass" recommendations.

# 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.

- SEN. COGHILL ATTACHMENT 1. -  
3/14/89

## 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 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

# BALLOT MEASURE NO. 1

## Constitutional Amendment

### LEGISLATIVE ANNULMENT OF ADMINISTRATIVE REGULATIONS

(1983 Legislative Resolve No. 15 (SCS HJR 5[Jud]))

#### SUMMARY

(As it will appear on the November 6, 1984 General Election Ballot)

This amendment of the Alaska Constitution would permit the legislature to annul executive-branch regulations by passing a resolution. The annulment would become effective 30 days after passage by the legislature, unless the resolution sets a different date. The resolution must have three readings in each house on separate days, except that it may be advanced from second to third reading on the same day by a three-fourths vote of the house considering it. The resolution must receive approval of a majority of the membership of each house. The yeas and nays on final passage must be entered in the legislative journals. The resolution is not subject to veto by the governor, and it is not subject to repeal by referendum.

#### BALLOT FORM:

A vote "FOR" adopts the amendment.

A vote "AGAINST" rejects the amendment.

FOR   
AGAINST

#### VOTES CAST BY MEMBERS OF THE 13TH STATE LEGISLATURE ON FINAL PASSAGE

Senate	(20 members):	Yeas 19	Nays 0	Absent or Not Voting 1
House	(40 members):	Yeas 34	Nays 2	Absent or Not Voting 4

#### LEGISLATIVE AFFAIRS AGENCY SUMMARY

(As required by law)

This proposal for a constitutional amendment would allow the legislature to annul a regulation adopted by a state department or agency by concurrent resolution. The annulment is effective thirty days after the date the concurrent resolution is approved by both houses unless the resolution specifies a different date. Adoption requires three readings in each house on three separate days except it may be advanced from second to third reading on the same day by concurrence of three-fourths of the membership of the house considering it. Adoption requires approval by a majority vote of the membership of each house. The vote on final passage must be entered into the journal.

#### FULL TEXT OF PROPOSED CONSTITUTIONAL AMENDMENT

(This amendment would add the following section to article II of the Alaska Constitution.)

**SECTION 22. ANNULMENT OF REGULATIONS.** The legislature by concurrent resolution 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. The concurrent resolution requires three readings in each house on three separate days, except that it may be advanced from second to third reading on the same day by concurrence of three-fourths of the house considering it, and approval by a majority vote of the membership of each house. The yeas and nays on final passage shall be entered into the journal.

- SEN. COGILL ATTACHMENT 2 -  
3/14/84

# STATEMENT IN FAVOR OF BALLOT MEASURE NO. 1

Voters who have ever experienced irritation or anger as a result of a problem they have had with state regulations should vote in favor of Ballot Measure No. 1. While many regulations do conform to and support state laws, there are occasionally regulations which are imposed that go beyond the intent of the law and cause undue hardship on our citizens. These regulations often make no sense at all, state agency people are often at a loss to explain the meaning or sense of the regulations, and yet the state agencies involved continue to enforce them, and voters are powerless to change them.

The Alaska Constitution, patterned essentially upon the Constitution of the United States and the experience of the other states, provides a system of checks and balances among the three branches of government, and further entitles the people to their own checks and balances through the voting booth, the initiative process, and final authority over amendments to the constitution. The one major area of government that is currently not directly accessible to the people's checks and balances is the very considerable volume of administrative regulations which are written by the state agencies in the executive branch of government.

These regulations deal with every aspect of government and our lives: fish and game, education, health and social services, traffic, land development, utilities, taxes; the list is endless. And once the regulations go into effect, they have all the force of law. The problem is, that unlike the situation that occurs with laws, the agency people who make and enforce regulations are not subject to voter approval at election time; they are either appointed by the governor or by his commissioners.

While the legislature is often made aware of foolish bureaucratic requirements by unhappy constituents, it is almost powerless to do anything about them. Currently, to annul a regulation, the legislature must pass a new bill which is then subject to veto by the governor. This puts the governor in the powerful position of being able to stop a bill that would overturn a regulation made by his own subordinates.

It was never intended by the framers of our State Constitution that any governmental body except the legislature have the power to make laws. Yet, bad regulations have been written, on occasion by state agencies, which go beyond the letter and intent of the law as passed by the legislature and in effect create law on their own.

This measure would provide a reasonable avenue for annulment of bad regulations. It would allow your elected representatives in the legislature, through a majority vote of both houses, to annul regulations in the same way they pass any legislative bill, except it would not be subject to veto by the governor, who clearly has a biased position in the matter.

The House Joint Resolution which created the ballot measure had bi-partisan sponsorship during the last legislative session, and was passed with near-unanimous support by both houses of the legislature.

—Mike Szymanski,  
State Representative

# STATEMENT OPPOSING BALLOT MEASURE NO. 1

This proposed amendment to the Alaska Constitution is very similar to the one proposed in 1980 and rejected by the voters 82,010 to 58,808. Although the present version includes some improvements over the 1980 version, it is another attempt by the legislature to concentrate governmental power in its own hands.

Under the current constitution and statutes, the legislature has all the power it needs to make laws and to limit or guide the adoption of administrative regulations. The regulations are adopted to implement statutes. This proposal would enable legislators to use a law-making procedure that is not subject to veto by the governor or repeal by referendum, and that could be used to ignore the prohibition against special and local legislation.

The constitution now provides for a balance of power among the legislative, executive, and judicial branches of the government. This balance requires a blending or sharing, as well as a dividing, of governmental responsibilities. If this constitutional amendment were to be approved by the voters, it would enable the legislature not only to write the laws, as has traditionally been the legislature's function, but it would also enable the legislature to act in place of the courts in deciding whether the executive has lawfully executed the laws when adopting a regulation; and it would empower the legislature to act in place of the executive by nullifying a specific executive-branch decision.

The annulment is like a repeal. In using this expedited procedure to annul a regulation, the legislature would act only in a negative way. It would not be providing the sort of policy guidance and direction that is appropriate to its law-making function. And it would not be providing the thoughtful analysis necessary to solve a problem. The legislature would be saying to the agency "your decision to adopt that regulation is wrong". But it would not be telling the agency what would be right. This is especially troublesome when dealing with a complex subject. Without any guidance beyond the statute that the executive branch agency was trying to implement in the first place, the agency is left with only the option to guess again. That is neither an efficient nor an appropriate way to run the government.

The Alaska Supreme Court has ruled that the legislature must abide by the Constitution's checks and balances on its power when it exercises that power, including when it acts to annul regulations. The present proposal is intended to overrule the court's decision. As argued four years ago, when the voters rejected the 1980 proposal, this amendment would aid legislators, not the public, and it should be rejected.

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

# BALLOT MEASURE NO. 2

## Constitutional Amendment Legislative Annulment of Administrative Regulations (1986 Legislative Resolve No. 60 HCS SJR 40 [Jud] am H)

### BALLOT LANGUAGE

(As it will appear on the November 4, 1986, General Election Ballot)

This amendment of the Alaska Constitution would permit the legislature to annul executive branch regulations by passing a resolution that is not subject to veto by the governor or repeal by referendum. The annulment would become effective 30 days after passage by the legislature, unless the resolution sets a different date. The resolution must have three readings in each house on separate days, except that it may be advanced from second to third reading on the same day by a three-fourths vote of the house considering it. The resolution must receive approval of a majority of the membership of each house. The yeas and nays on final passage must be entered in the legislative journals.

A vote "FOR" adopts the amendment.  FOR

A vote "AGAINST" rejects the amendment.  AGAINST

### VOTES CAST BY MEMBERS OF THE 14TH ALASKA LEGISLATURE ON FINAL PASSAGE

House:	Yeas	31
	Nays	4
	Absent or Not Voting	5
Senate:	Yeas	17
	Nays	0
	Absent or Not Voting	3

### LEGISLATIVE AFFAIRS AGENCY SUMMARY

(HCS SJR 40 (Jud) am H)

This proposal for a constitutional amendment would allow the legislature to annul a regulation adopted by a state department or agency by its adoption of a concurrent resolution. Under the present provisions of the constitution, the legislature may annul a regulation only by the enactment of a bill that is subject to the veto of the governor; if the governor vetoes the bill, the constitution now requires a two-thirds affirmative vote of the legislature assembled in joint session to override the veto.

If the legislature adopts a concurrent resolution to annul a regulation under the authority proposed here, the annulment would be effective thirty days after the date the concurrent resolution is approved by both houses unless the resolution specified a different date. The concurrent resolution would not be subject to the veto of the governor. Adoption would require three readings in each house on three separate days except that it may be advanced from second to third reading on the same day by the concurrence of three-fourths of the membership of the house considering it. Adoption would require approval by a majority vote of each membership of each house. The vote on final passage must be entered into the journal.

### FULL TEXT OF PROPOSED CONSTITUTIONAL AMENDMENT

(This amendment would add the following section to article II of the Alaska Constitution.)

**SECTION 22. ANNULMENT OF REGULATIONS.** The legislature by concurrent resolution 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. The concurrent resolution requires three readings in each house on three separate days, except that it may be advanced from second to third reading on the same day by concurrence of three-fourths of the house considering it, and approval by a majority vote of the membership of each house. The yeas and nays on final passage shall be entered into the journal.

1986 election

- SEN. COGHILL ATTACHMENT 3 -  
3/14/87

# BALLOT MEASURE NO. 2

## STATEMENT IN SUPPORT OF BALLOT MEASURE NO. 2

The issue is basically simple: should bureaucrats or the Legislature be the ultimate lawmaking authority?

All 60 members of the Legislature (40 House and 20 Senate) are elected by the people. They are all voted into, and out of, office by individual voters. The Alaska Constitution says, "The legislative (i.e., lawmaking) power of the State is vested in a Legislature consisting of a Senate... and a House of Representatives..." The Legislature proposes, considers, and enacts laws, known collectively as the Alaska Statutes (if general and permanent) or as the Session Laws of Alaska (if specific and temporary).

All bureaucrats who promulgate (i.e., enact and enforce) regulations (theoretically, to put laws into effect) are in the Executive Branch, headed by the Governor. Bureaucrats are not voted into office and thus cannot be removed by the people. Instead, bureaucrats are hired by the Governor or by his/her appointees, and thus can only be removed from office by the Governor or by somebody answerable to him/her. However, the regulations promulgated by the bureaucrats, known collectively as the Alaska Administrative Code, have the force of law and affect all of us, sometimes adversely.

What can be done about a law that's bad? It can be repealed by the Legislature or, in some cases, by the people directly via an initiative petition.

What about a regulation that's bad? It can only be repealed by the bureaucrats who promulgated it, up to and including the Governor. If the Legislature tries to repeal a regulation by passing a bill, the Governor will almost certainly (and always has, in the past) veto the bill so that the bad regulation stays in full force and effect.

Now, if the Legislature had the power to repeal regulations by passing a concurrent resolution (instead of a bill), then the resolution could not be vetoed by the Governor. Thus, the Legislature would be able to get rid of bad regulations, which in effect it cannot do now.

Would this give the Legislature too much power? Not hardly. Since the Legislature already has full power to enact laws, why shouldn't it have full power to repeal all laws, including regulations?

Why do Governors and bureaucrats oppose giving the Legislature such regulatory repeal power? Because Governors and their handpicked bureaucrats, which are answerable only to the Governor (and cannot be removed by the people, which can remove Legislators), don't want to lose the power they now have to promulgate and enforce any regulation they want. It's that simple.

If you feel that the Legislature should have the power to repeal regulations via concurrent resolution (not vetoable by the Governor), vote FOR the ballot measure. If you feel that bureaucrats should be the ultimate lawmaking authority, vote otherwise.

I recommend that you vote FOR. Only in this way will we realistically be able to get rid of bad regulations.

Andre Marrou  
State Representative

## STATEMENT OPPOSING BALLOT MEASURE NO. 2

For the third time in six years, the legislature insists on confronting the voters with a proposed constitutional amendment giving the legislature a short-cut to law-making—another attempt by the legislature to concentrate governmental power in its own hands. The voters rejected a similar proposal in 1980 and the identical proposal in 1984. It should be rejected again.

Under the current constitution and statutes, the legislature has all the power it needs to make laws and to limit or guide the adoption of administrative regulations. Regulations are adopted to implement statutes. They have the force of law. Annulling them changes the law. This proposal would enable legislators to use a law-making procedure that is not subject to veto by the governor or repeal by referendum, and that would be used to ignore the prohibition against special and local legislation.

The constitution now provides for a balance of power between the legislative, executive, and judicial branches of the government. This balance requires a blending or sharing, as well as a dividing, of governmental responsibilities. If this constitutional amendment were to be approved by the voters, it would enable the legislature not only to write the laws, as has traditionally been the legislature's function, but it would also enable the legislature to act in place of the courts in deciding whether the executive has lawfully executed the laws when adopting a regulation, and it would empower the legislature to act in place of the executive by reversing a specific executive-branch decision.

In its intent statement accompanying this proposal, the legislature admitted that the "difficulty in achieving [the two-thirds] majority [to override a veto] in opposition to the governor and the governor's administration has led the legislature to propose this amendment." In other words, the fear that the governor might veto a bill and that not enough legislators would agree to override that veto prompted this short-cut approach to law-making. That fear overlooks the governor's accountability to the voters throughout the state.

The annulment is like a repeal. The legislature would act only in a negative way. It would not be providing the sort of policy guidance and direction that is appropriate to its law-making function. The legislature would be saying to the agency "your decision to adopt that regulation is wrong." But it would not be telling the agency what would be right. This is especially troublesome when dealing with a complex subject. Without any guidance beyond the statute that the executive-branch agency was trying to implement in the first place, the agency is left with only the option to guess again. That is neither an efficient nor appropriate way to run the government.

The Alaska Supreme Court has ruled that the legislature must abide by the constitution's checks and balances or its power, including when it acts to annul regulations. The present proposal is intended to overrule the court's decision. As mentioned when the voters rejected the 1980 and 1984 proposals, this amendment would aid legislators, not the public, and it should be rejected.

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

**DEPARTMENT OF LAW**

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

OFFICE OF THE ATTORNEY GENERAL

May 8, 1986

Honorable M. Mike Miller  
Chairman  
House Judiciary Committee  
Alaska State Legislature  
P. O. Box V  
Juneau, Alaska 99811

Re: SJR 40 (constitutional  
amendment on annulment of  
regulations)  
Our file: 66-3-86-0493

Dear Representative Miller:

I understand that Senate Joint Resolution No. 40, proposing an amendment to the Alaska Constitution, is on your committee's agenda for tomorrow. This letter is to express the Department of Law's opposition to that resolution. If the resolution is passed, that proposed amendment would hit the voters for the third time in six years.

BRIEF STATEMENT

Essentially, the Department of Law's position is that:

1. In 1980, the voters rejected a virtually identical constitutional amendment by a substantial margin -- 82,010 to 58,808. In 1984, they even rejected an improved version (improved in terms of accountability to the public). We should assume that the voters knew what they were doing.
2. The legislature does not need this shortcut method to perform its proper oversight function.
  - (A) The Alaska Administrative Procedure Act includes provisions giving multiple notice to the legislature and enabling legislators to participate in the regulations-adoption process.
  - (B) If an executive-branch agency, in adopting a regulation, goes in a direction that is not supported by the current legislature, the legislature may legislate further -- enact guidelines,

limitations, prohibitions.

3. A concurrent resolution, the vehicle proposed by this resolution to annul administrative regulations, is not covered by the constitutional and other provisions applicable to bills, which provisions tend to assure protection of and accountability to the public.

4. An annulment resolution's bare negative statement does not afford the executive-branch agency responsible for executing the law any guidance in performing its constitutionally mandated duties.

#### DISCUSSION

The amendment proposed by SJR 40 is virtually identical to the Eleventh Legislature's CSHJR 82 am (1980 Legislative Resolve No. 5). 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 again rejected the amendment in 1984 -- in the form of the Thirteenth Legislature's SCS HJR 5(Jud) (1983 Legislative Resolve No. 15) -- even though it contained provisions for a deferred effective date, three readings on separate days, and recording in the journal the yeas and nays on final passage. The voters 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 did 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 legislating 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 descriptive title 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;
- the provisions on gubernatorial veto, under art. II, secs. 15 and 16; and
- the deferred effective date, under art. II, sec. 18.

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 take effect only after the required public notice, opportunity for public comment, legal review by the Department of Law, and a deferred effective date. Curiously, the current version of this proposed constitutional amendment omits the improvements contained in 1983 LR 15. Neither the constitutional protections nor the corresponding Administrative Procedure Act protections would be applicable to a concurrent resolution's 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 of a concurrent resolution, provides for the legislature to make what can 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 the 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 statutes. 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.

In Immigration and Naturalization Service v. Chadha, 462 U.S. 919, 77 L.Ed.2d 317, 103 S.Ct. 2764 (1983), affirming Chadha v. Immigration and Naturalization Service, 634 F.2d 408 (9th Cir. 1980), the United States Supreme Court held invalid what has become known as the "legislative veto." The U.S. Supreme Court's decision is consistent with our state supreme court's decision in A.L.I.V.E. Voluntary. 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

Hon. M. Mike Miller  
House Judiciary Committee

May 8, 1986  
Page 5

which discuss the legislative/executive/public interrelationship regarding administrative regulations.

In a nutshell, the problem is that once the legislature passes a statute creating a program or function it is then up to the executive to execute that statute and up to the court system to determine whether the executive has exceeded its authority or otherwise violated the law. This proposed amendment would alter that balance by injecting the legislature into the execution stage of the system.


As the voters have done twice before, your committee should reject this proposed constitutional amendment.

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

Yours truly,

HAROLD M. BROWN  
ATTORNEY GENERAL

By:

  
Arthur H. Peterson  
Assistant Attorney General

AHP:md

cc: Hon. Paul Fischer  
Alaska State Senate

Jim Ayers, Director  
Legislative Relations  
Governor's Office

# State Constitution

## Art. II

### Passage of Bills

SECTION 14. The legislature shall establish the procedure for enactment of bills into law. No bill may become law unless it has passed three readings in each house on three separate days, except that any bill may be advanced from second to third reading on the same day by concurrence of three-fourths of the house considering it. No bill may become law without an affirmative vote of a majority of the membership of each house. The yeas and nays on final passage shall be entered in the journal.

### Veto

SECTION 15. The governor may veto bills passed by the legislature. He may, by veto, strike or reduce items in appropriation bills. He shall return any vetoed bill, with a statement of his objections, to the house of origin.

### Action Upon Veto

SECTION 16. Upon receipt of a veto message during a regular session of the legislature, the legislature shall meet immediately in joint session and reconsider passage of the vetoed bill or item. Bills to raise revenue and appropriation bills or items, although vetoed, become law by affirmative vote of three-fourths of the membership of the legislature. Other vetoed bills become law by affirmative vote of two-thirds of the membership of the legislature. Bills vetoed after adjournment of the first regular session of the legislature shall be reconsidered by the legislature sitting as one body no later than the fifth day of the next regular or special session of that legislature. Bills vetoed after adjournment of the second regular session shall be reconsidered by the legislature sitting as one body no later than the fifth day of a special session of that legislature, if one is called. The vote on reconsideration of a vetoed bill shall be entered on the journals of both houses.

# Uniform Rule 49

## RESOLUTIONS

RULE 49. RESOLUTIONS. (a) The only type of instrument other than a bill or citation authorized under these Uniform Rules is a resolution. The types and uses of resolutions are as follows:

(1) A simple resolution is a formalized motion passed by one house only and bearing the heading "House Resolution" or "Senate Resolution". It may be used to express the will, wish, view, opinion, sympathy, or request of the house adopting it. The simple resolution shall be used to establish a special committee. It does not require committee referral, three readings, or a roll call vote. Approval of a simple resolution requires a majority vote of the full membership of the house.

(2) A special resolution headed "House Special Resolution" or "Senate Special Resolution" is used only for the purpose of expelling a member under provisions of Sec. 12, Art. II, of the State Constitution. The special resolution requires a referral to the Rules Committee, three readings, and a two-thirds vote of the full membership of the house for approval.

(3) A concurrent resolution is similar to the simple resolution but reflects the will, wish, view or decision of both houses speaking concurrently. It is used particularly to handle the internal business of the legislature, e.g., adjournment of the legislature, suspension and amendment of the Uniform Rules, requesting action of executive agencies and interim committees, and fixing the time and place for joint assemblies. This resolution is also used for establishing joint committees. This resolution does not require committee referral, three readings, or anything other than approval of a majority vote of the full membership of each house unless otherwise required by the rules.

(4) A special concurrent resolution is employed to consider disapproval of an executive order of the governor laid before the legislature under provisions of Sec. 23, Art. III, of the State Constitution. This resolution must be considered by a joint committee and may be adopted by a majority vote of the full membership of the legislature in joint session without recourse to three readings.

(5) A joint resolution is the most formal type of resolution and is adopted by both houses and then signed by the governor as a ministerial formality. The joint resolution is treated in all respects as a bill but it is not subject to veto. It is usually reserved for addressees outside the state. This resolution is used mainly to express the view or wish of the legislature to the President, the Congress or agencies of the United States Government or the governments of other states. It is required for proposing or ratifying amendments to the U. S. Constitution, proposing amendments to the State Constitution under provisions of Sec. 1, Art. XIII, of the State Constitution, and for disapproval of local government boundary changes recommended by the Local Boundary Commission under provisions of Sec. 12, Art. X, of the State Constitution. Approval of a joint resolution requires a majority vote of the full membership of each house.

(b) All resolutions passed by one or both houses are sent to the governor as a matter of information and for permanent filing with the lieutenant governor. The lieutenant governor sends enrolled copies of joint resolutions to the federal and other state officers, agencies and jurisdictions. The transmittal of copies of all other resolutions to designated addressees is the responsibility of the Legislative Affairs Agency.

Concurrent

Joint

# Senator John B. (Jack) Coghill

Alaska State Legislature

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(907) 465-4797

Box 55028  
North Pole, Alaska 99705  
(907) 488-0862



## MEMORANDUM

To: Senator Pat Pourchot  
Senate State Affairs Committee, Chair

From: Senator Jack Coghill

Re: SJR 3; Legislative Repeal of Administrative Regulations

Date: February 6, 1989

---

I am requesting that you schedule SJR 3 for public hearing at the earliest possible time, in State Affairs Committee.

The resolution is very straight forward and I am interested in seeing if there is as much support for this amendment to our constitution state wide, as I found in my district.

The intent of this amendment is to add a legislative check on the executive branches rule making authority.

For instance, if the interim committee on Administrative Regulation Review were to have a case brought before them by the public, which exemplified regulations promulgated by an administrative department that did not reflect the intent of the law, this amendment would give the legislature the ability to repeal the regulations. Presently, the legislature is powerless to change regulations without repealing the law.

This is not a new concept, and I have attached pages from the 1986 Official Election Pamphlet in this regard.

The prompt consideration of this measure by the committee would be appreciated.

# Alaska State Legislature

Sen. Pat Pourchot, Chairman

Sen. Jan Faiks, Vice Chairman  
Sen. Al Adams  
Sen. Tim Kelly  
Sen. Rick Uehling



P.O. Box V  
State Capitol  
Juneau, Alaska 99811

907-465-3712

## Senate State Affairs Committee

### MEMORANDUM

TO: Senate State Affairs Committee Members  
FROM: Senator Pat Pourchot, Chairman  
RE: March 15 Committee Hearing  
DATE: March 14, 1989

On Wednesday, March 15 at 1:30 p.m. in the Beltz Room the Senate State Affairs Committee will hear the following bills:

SJR 3, Proposing an amendment to the Constitution of the State of Alaska relating to repeal of regulations by the legislature

SJR 3 would place before the voters at the next general election a Constitutional amendment allowing legislative repeal of regulations by concurrent resolution. Adoption of the concurrent resolution would require three readings on three different days and approval by a majority vote of the membership of each house, as do bills. However, concurrent resolutions are not subject to the governor's veto.

In 1980 the supreme court found unconstitutional a statutory provision that allowed legislative annulment of regulations by resolution. The court ruled that annulling a regulation has the effect of changing law and that laws can be changed only by enactment of a bill that is subject to the governor's veto, as prescribed in Article II, Sections 14-16 of the Constitution.

A proposal similar to SJR 3 was defeated by the voters in 1980, 1984, and 1986.

SB 108, An Act relating to public finance, including lease financing

SB 108 would require that all lease-financings for public buildings be handled by the Alaska State Building Authority. This would remove the ability of municipalities and private developers to undertake the lease-purchase of state projects. Projects authorized by law before July 1, 1984 would be specifically exempt from this requirement, providing a type of "grandfather clause" for the Anchorage court facility.

Committee Memo  
March 15, 1989

SB 108 would also require legislative approval of lease-purchase agreements entered into by the legislature and the court system if the costs exceed \$1 million annually (this provision currently applies to the executive branch and the university).

The Department of Revenue has proposed an amendment (attached) that would authorize ASBA to dispose of land, equipment, or public buildings to other government entities for less than fair market value. This would allow ASHA-funded projects for which the bonds have been paid off to be transferred into state ownership.

SB 154, An Act relating to equipment lease-financing and authorizing a master equipment lease-financing project.

SB 154 would authorize the Alaska State Building Authority to finance and acquire equipment for lease to the state. The bill would serve as the legislative approval required under AS 18.55.100 for ASBA to finance and acquire up to \$40 million worth of equipment, and the legislative approval required under AS 36.30.080 for the Department of Administration to enter into a lease-financing agreement with ASBA for the equipment. (AS 18.55.100 requires legislative approval before ASBA can proceed with any project; AS 36.30.080 requires legislative approval of leases whose rent exceeds \$1 million annually).

Individual lease-purchases from all state agencies would be consolidated into one or more "master leases". The advantage would be a reduction in interest cost. According to DOA, the average interest rate on state equipment leases as of July 1, 1987 was 13.86%. Interest on a master lease is expected to be 6-7%.

The refinancing of outstanding state equipment leases is estimated to require issuance of \$10 million in financing obligations with annual rent of \$2.85 million. The financing of new equipment purchases in FY 90 would require issuance of up to \$30 million in financing obligations with annual rent of \$8.75 million.

SJR 3        LEGISLATIVE REPEAL OF REGULATIONS

TO TESTIFY

SENATOR COGHILL, SPONSOR    (BRUCE GERAGHTY)

ART PETERSON, A.G.'S OFFICE

F.Y.I.

UNIFORM RULE 49(A)(C) SAYS CONCURRENT RESOLUTION DOES NOT NEED:  
  COMMITTEE REFERRAL  
  THREE READINGS  
  OR ANYTHING OTHER THAN MAJORITY VOTE  
SJR 3 SPECIFICALLY REQUIRES 3 READINGS; NO MENTION OF COMMITTEE  
REFERRAL.

THE FIRST PROPOSED AMENDMENT (1980) REQUIRED ONLY A MAJORITY  
VOTE, AND BECAME EFFECTIVE ON DATE OF PASSAGE.    SJR 3 CALLS FOR  
30-DAY DELAYED EFFECTIVE DATE.

THE SUPREME COURT CASE WAS STATE OF ALASKA v A.L.I.V.E. VOLUNTARY  
DEPT. LAW WILL TESTIFY AGAINST, AS ALWAYS.

SR3POOP2.TXT  
3/17/89

SJR 3 REPEAL OF REGULATIONS BY THE LEGISLATURE

TO TESTIFY

SENATOR COGHILL, SPONSOR (BRUCE GERAGHTY)

ART PETERSON, A.G. WILL NOT ATTEND

F.Y.I.

PAGE 1, LINE 16 WE CHANGED FROM "ADOPTION" TO "PASSAGE" -- ART PETERSON PROPOSED AND DICK BRADLEY AGREED.

BILL SAYS REPEAL EFFECTIVE 30 DAYS AFTER PASSAGE OF RESOLUTION. PASSAGE ONLY OCCURS ONCE BOTH HOUSES HAVE ACTED, SO NO NEED TO STATE SUCH IN THE BILL.

# Alaska State Legislature



Sen. Pat Pourchot, Chairman

Sen. Jan Falks, Vice Chairman

Sen. Al Adams

Sen. Tim Kelly

Sen. Rick Uehling

P.O. Box V  
State Capitol  
Juneau, Alaska 99811

907-465-3712

## Senate State Affairs Committee

### MEMORANDUM

TO: Senate State Affairs Committee Members

FROM: Senator Pat Pourchot, Chairman

RE: March 17 Committee Meeting

DATE: March 17, 1989

Today at 1:30 p.m. in the Beltz Room the following bills will be back before the State Affairs Committee:

SJR 3, Proposing an amendment to the Constitution of the State of Alaska relating to repeal of regulations by the legislature

A draft committee substitute providing for repeal of regulations by joint resolution rather than concurrent resolution is attached. Because Uniform Rule 49 requires that a joint resolution receive three readings and that its vote be recorded in the journal, these requirements have been deleted from SJR 3.

SJR 5, Proposing amendments to the Constitution of the State of Alaska amending provisions relating to the Alaska permanent fund; establishing temporary provisions relating to dedicated funds, the Alaska permanent fund, the expenditure limit, and the budget stabilization fund

SJR 5 would constitutionally dedicate permanent fund earnings (50% dividends, 30% inflation proofing, 20% budget stabilization fund), establish an appropriation limit, provide for deposit of revenues in excess of the appropriation limit (50% permanent fund, 50% budget stabilization fund), and allow for expenditure of up to 25% of the budget stabilization fund in years in which revenues are less than the appropriation limit.

A draft committee substitute which deletes the \$1.4 billion appropriation limit specified in the original bill is attached. Instead, annual appropriations would be limited to the level of appropriations made in the preceding year with an adjustment for inflation. Revenues within the spending limit that were not appropriated would be deposited in the Permanent Fund.

Committee Memo  
March 17, 1989

SJR 30, Relating to location of a job corps center within the  
Matanuska-Susitna Borough

When SJR 30 was before the committee, questions arose regarding the state's financial obligation if Alaska should be chosen as the site for a job corps center. The state's application to the federal government indicated that we would contribute \$1 million to capital costs of the center. The funding question will be addressed by the bill sponsor at today's meeting.

SB 170, An Act relating to state procurement

A draft committee substitute, which incorporates the following two provisions discussed by the committee, is attached:

- 1 Authorization of the Alaska Railroad Corporation to adopt procurement procedures based on the competitive principles of the state procurement code but adapted to the special needs of the corporation
- 2 Exemption from the procurement code for guest speakers or performers for an educational or cultural activity

Six additional amendments are also attached:

- 1 Application of the Alaska business license
- 2 Abuse of the Alaska bidders' preference by firms that carry on limited business enterprises exclusively for the purpose of taking advantage of the preference
- 3 Increase of the dollar threshold for open competitive bidding
- 4 Exemption for purchases made outside the U.S. for use outside the U.S., and for contracts for hearing officers
- 5 Penalty for frivolous protest of a contract award
- 6 Definition of "state money"

It is my hope that we could move all of these bills out of committee today.

SJR 3

# ALASKA STATE LEGISLATURE

SENATE STATE AFFAIRS,  
CHAIR

ETHICS COMMITTEE,  
CHAIR



ANCHORAGE  
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P.O. BOX V  
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JUNEAU, AK 99811  
(907) 465-3712

## Senator Pat Pourchot

March 14, 1989

Mr. H. Blanas  
P.O. Box 92397  
Anchorage, Alaska 99509

Dear Mr. Blanas:

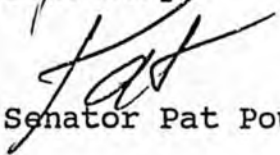
Thank you for your letter of March 7 expressing your support for legislation by Representative Boucher involving the elimination of administrative rules and regulations.

Apparently, you have been working with Representative Boucher on this idea for legislation. When I contacted his office, I was informed that this legislation was not yet introduced. He is awaiting to hear from you regarding your comments on the draft bill which was sent to you for review.

I will keep your comments in mind and look forward to reviewing the bill once it is introduced in the House.

There is a measure in the Senate, SJR 3, which relates to repealing regulations. A hearing is scheduled in the Senate State Affairs Committee, which I chair, on Wednesday. For your review, I have enclosed a copy of the resolution.

Sincerely,

  
Senator Pat Pourchot

Enclosure

RECEIVED MAR 9 1989

P.O. Box 92397  
Anchorage, Alaska 99505  
March 7, 1989.

Dear Senator Pouchot,

Rep. Boucher has introduced a bill which I believe needs to be passed. The necessity to cut the State budget, due to the uncertainty of revenue from unstable oil prices, cannot be achieved without first eliminating a good number of administrative rules and regulations now in effect, which have caused bureaucracy to mushroom.

While there may be others, the Administrative rules and regulations with which I have experience are AS 44.77 et. seq. and 2 AAC 25.010 et. seq. These particular rules originated for a.) non-competitive purchase of materials, and b.) extension of services beyond contract requirements of sole source (non-competitive) contracts, which were very common in early Statehood, but are seldom used today.

Through the years legislation has created other procedures which have made the Administrative process obsolete, for example settlement by Judicial decision or by binding, impartial arbitration.

Despite the laws vesting constitutional powers to the courts and/or arbitration; laws such as AS 44.77 et. seq. and 2 AAC 25.010 et. seq. remain on the books and take precedence in construction disputes (claims for materials furnished and/or services rendered to the State as directed.)

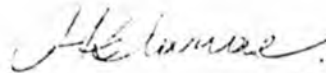
Expedient solutions by arbitration or court action must not be bogged down through bureaucratic manipulation of the administrative process.

In reality, to reduce the State budget it is necessary to expunge archaic and inefficient statutes such as those listed above, which cost the State more in personnel and endless procedures than a decision of the court or that of an impartial arbitrator. The elimination of administrative process would surely be met with strong opposition from the Attorney General's Office and other State bureaucracy, those who profit most from the process.

Page 2.

Your taking the time to consider these facts and act upon them, may be one way of helping to save the State money and at the same time serve your fellow Alaskans by assuring faster and more objective settlement of grievances in their dealings with the State.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "H. Elanes".

H. Elanes

# ALASKA STATE LEGISLATURE

Sen. Pat Pourchot, Chairman

Sen. Jan Faiks, Vice Chairman

Sen. Al Adams

Sen. Tim Kelly

Sen. Rick Uehling



P.O. Box V  
Juneau, AK 99811

907-465-3712

## Senate State Affairs Committee

March 20, 1989

Jason M. Rampton, D.M.D.  
9711 Takli Circle  
Eagle River, Alaska 99577

Dear Jason:

Thank you for contacting me to express your support for SJR 3, which would amend the state constitution to allow legislative repeal of regulations.

I am happy to report that the Senate State Affairs Committee, which I chair, approved SJR 3 on March 17. The resolution now goes to the Judiciary Committee for their consideration. I supported the bill in State Affairs Committee and intend to vote for it when it reaches the Senate floor. With 15 of the 20 senators as co-sponsors, I am confident SJR 3 will receive Senate approval. If approved by the House as well, the constitutional amendment would appear before the voters at the 1990 general election.

Jason, my experience is that regulations are not always consistent with the intent of the law. I absolutely agree that the addition of this provision to the constitution is essential to ensure that policy continues to be set by the legislative branch and properly implemented by the executive branch. Thanks for your support.

Sincerely,

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

Senator Pat Pourchot  
Chairman

PP/ss

RECEIVED MAR 13 1989

9711 Takli Circle  
Eagle River, AK 99577  
March 7, 1989

Senator Pat Pourchot  
Box V  
Juneau, AK 99811

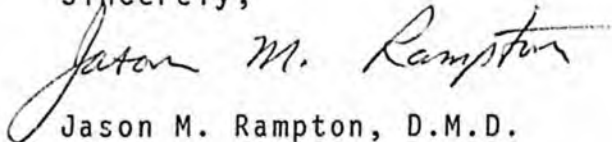
Dear Senator Pourchot:

I am writing this letter in support of a proposed amendment to our State Constitution (see attachment). It would give the legislature the ability to repeal administrative regulation.

My concern is over the issue of licensure by credentials for dentists. Several years ago legislation was passed allowing qualified dentists to be licensed thru the credentials process. But the State Board of Dental Examiners almost immediately adopted an emergency regulation which short-circuited this legislation. As a result many extremely highly qualified dentists have been denied dental licenses in the state. This is protectionism in the highest degree. The State Board of Dental Examiners has adopted a regulation which clearly violates the intent of the law.

I feel it is extremely important that this amendment be added to our Constitution as soon as possible.

Sincerely,



Jason M. Rampton, D.M.D.