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HOUSE COMMITTEE REPORT

(7) Date Referred: April 29, 1991 FURTHER REFERRALS: Judiciary

Date of Committee Action: 5-17-91

The STATE AFFAIRS Committee considered: HB 308

HOUSE BILL NO. 308 ADOPTION OF EMERGENCY REGULATIONS

"An Act relating to notice of adoption of emergency regulations; and providing for an effective date."

- RECOMMENDATIONS: the same title
 be replaced with _____ a new title
- have attached amendments(s)
 do pass
 do not pass
 no recommendations
 individual recommendations
 additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dep't) APPROVES PREVIOUS: (Dep't/Date)

fiscal impact _____ fiscal note(s) _____
 zero fiscal note _____ zero fiscal note(s) Fish and Game 4-29-91
Dept of Law 4-29-91

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>		<input checked="" type="checkbox"/>	
<i>[Signature]</i>		<i>[Signature]</i>		<input checked="" type="checkbox"/>	
		<i>[Signature]</i>			<input checked="" type="checkbox"/>

[Signature]
 CHAIRMAN'S SIGNATURE

FISCAL NOTE

No. 1

Version: HB 308

(H) Publish Date: 4/29/91

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Revision Date: 4/17/91 Department Affected: Fish and Game

Title: Timely notice for emergency regulations BRU: All divisions
Component: All divisions

Sponsor: _____

Requestor: Governor

COMPONENT SERIAL NO.

4	7	7
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

Estimate of current year impact: No current year impact

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: McKie Campbell Phone: 465-4100

Division: Commissioner's Office Date: 4/17/91

Approved by Commissioner: RON SOMETWILLIE (Signature) Date: 4/17/91

Agency: Fish and Game

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

No. 2
 Bill Version: HB 308
 (H) Publish Date: 4/29/91

STATE OF ALASKA
 1991 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Department of Law
 Title: "An Act relating to notice of
adoption of emergency regulations..." BRU: Legal Services
 Component: Operations
 Sponsor: By request of the Governor
 Requestor: Governor's Office COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
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						
TOTAL						

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared By: Richard L. Parker, Director Phone: 465-3672
 Division: Administrative Services Date: April 18, 1991
 Approved by Commissioner: Charles E. Cole, Attorney General
 Agency: Department of Law Date: April 18, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. _____

This bill amends AS 42.62.250 by changing the notice requirements for the adoption of emergency regulation to require that notice of adoption shall be made within five days after filing by the lieutenant governor, instead of within five days after adoption of emergency regulations. This change validates longstanding practice, and it is needed to conform to a recent court decision in Shepard v. State. Approval of the bill will not have a fiscal impact on the Department of Law.



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

MEMORANDUM

TO: All Commissioners
FROM: Walter J. Hickel *Walter J. Hickel*
Governor
DATE: April 1, 1991
SUBJECT: Procedure after adopting regulations

Currently, after your agencies adopt regulations, the regulations are sent to the Department of Law for a legal review. I would now like adopted regulations to be submitted to the Lieutenant Governor, who will submit the regulation project to the Department of Law for the legal review.

A control file will be set up in the Lieutenant Governor's office and during the time that the Department of Law is preparing their opinion, the Lieutenant Governor will be reviewing the regulations to make sure they meet the following requirements that our administration wishes to implement:

1. Are the regulations procedural. Policy belongs in statutes not regulations.
2. Are they positive not negative. A "can-do" attitude.
3. Are they readable. Regulations should be clear, concise and crafted in lay language so people can understand them.
4. Was the public input taken into account in the final adopted version of the regulations.
5. Was the legislative intent followed through to the regulatory process.
6. Are they necessary. Can government operate just as well without them.
7. Are they consistent with statutes and other regulations.

This change in procedure will allow us to carry out our agenda to be a responsive Administration and to implement our regulatory review program.

Please consider this procedural change effective immediately.

MEMORANDUM

State of Alaska
Department of Law

TO: All Civil Attorneys
Juneau, Anchorage, Fairbanks;
and Chief Prosecutor's Office

DATE: April 11, 1991

FILE NO:

TEL NO:

465-3600

SUBJECT:

New procedure for
adoption of regulations

FROM:


Jeffrey W. Bush
Assistant Attorney General
and Regulations Attorney

RECEIVED

APR 12 1991

Effective immediately, there is a new procedure for the adoption, amendment or repeal of administrative regulations, to provide for the review and approval of all regulations projects by the Lieutenant Governor's Office prior to their taking effect. Sara Fisher, an assistant to Mr. Coghill, will be in charge of reviewing all regulations for the Lieutenant Governor. Governor Hickel has directed Mr. Coghill to review all proposed regulations to ensure that they meet the following requirements:

1. Are the regulations procedural. Policy belongs in statutes not regulations.
- * 2. Are they positive not negative. A "can-do" attitude.
3. Are they readable. Regulations should be clear, concise and drafted in lay language so people can understand them.
4. Was the public input taken into account in the final adopted version of the regulations.
5. Was the legislative intent followed through to the regulatory process.
- * 6. Are they necessary. Can government operate just as well without them.
7. Are they consistent with statutes and other regulations.

Memorandum from Governor Hickel to all commissioners, dated April 1, 1991.

To implement the Governor's directive, the following procedure will be used:

1. At the time a regulations project is first opened in our office, a copy of the file opening memorandum will be sent to the Lieutenant Governor's Office, and they will maintain a separate file on each project.

2. Final regulations packages, including public notices and adoption orders, should be sent by the adopting agency directly to the Lieutenant Governor's Office. That office will then make a copy of each package before forwarding the original documents on to us. If you receive a final package directly from an agency, please immediately send it to me; I will then deliver it to the Lieutenant Governor's Office, they will copy it and send it back, and I will then get it back to you.

3. When the final package comes to the Lieutenant Governor's Office, they will begin their review, in conjunction with our legal review. Sara Fisher will contact the assigned attorney and work closely with the attorney in their review. If at any time the Lieutenant Governor's Office determines that a particular regulation or set of regulations should not be adopted, Sara will immediately contact the assigned attorney so that he or she can stop working on the file. Please feel free to contact Sara at any time with questions or comments.

4. Before any regulations project is forwarded to me for final technical review and filing with the Lieutenant Governor, the assigned attorney must get approval for the project from the Lieutenant Governor's Office. The cover memo to me forwarding the file must clearly state that the project has been approved for adoption by Sara Fisher. Absent this statement, the file will be immediately returned to the assigned attorney.

Please contact me if you have any questions.

JWB:cl

cc: Lt. Gov. John B. (Jack) Coghill



JOHN B. COGHILL
LIEUTENANT GOVERNOR

STATE OF ALASKA
P. O. BOX 44
JUNEAU 99811-0111
(907) 465-3880

MEMORANDUM

TO: All Commissioners
FROM: John B. Coghill
Lieutenant Governor
DATE: April 11, 1991
SUBJECT: Procedure after adopting regulations

Since the Governor has given his directive to have all agencies submit adopted regulations to my office, I would like to inform you how this will happen.

When adopted regulations are received by my office, we will set up a control file. A copy the regulation project will be kept in my office and the original project will be sent to the Department of Law for legal review. After we receive the project we will notify you of the date it was transmitted to Law. The Department of Law will carry out their normal legal review, while my office will conduct the review as outlined in Governor Hickel's directive (see attached).

The Department of Law has advised me that adopted regulations were sent to them either by mail or courier. I would like to request a department courier deliver all regulation projects to my office. The courier should hand the project directly to Sara Fisher, my special assistant in charge of the regulatory review. If Sara is not available the project should be left with Dennis Burns, the Administrative Code Coordinator. This will ensure the regulation project was properly received by my office.

Your cooperation to start implementing these changes by Monday April 15, 1991 is appreciated. Please contact Sara Fisher if you have any questions.

Coghill receives new regulatory powers

THE ASSOCIATED PRESS

ANCHORAGE - Gov. Walter J. Hickel has given Lt. Gov. Jack Coghill sweeping new powers to block proposed state regulations or order them rewritten.

Lawmakers said the action probably is unconstitutional and will allow special interests to influence Coghill to block laws written by the Legislature.

But Hickel wrote: "This change will allow us to carry out our agenda to be a responsive administration and to implement our regulatory review program."

Hickel made the move unannounced in an April 1 memo sent to his cabinet officers, according to his press secretary, Eric Rehmann.

The memo laid out rules requiring regulations to be positive and to exhibit a "can-do attitude."

It elevates Coghill over commis-

sioners, who previously oversaw regulation-writing.

A regulatory review team will be formed in Coghill's office, Rehmann said.

"I guess Coghill's a regulatory czar now," said Rep. Cliff Davidson, D-Kodiak. "I think the special interests gain and the public process loses."

Coghill will be able to reject or revamp state regulations dealing with oil and gas taxes and royalties, environmental safeguards, and fish and game management, said Davidson, co-chair of the House Resources Committee.

"Only the commissioner of an agency has statutory authority to implement regulations, not the lieutenant governor," said Rep. Fran Ulmer, a Juneau Democrat and attorney. "There isn't a lieutenant gover-

Please turn to Coghill Page 8

Coghill...

Continued from Page 1

nor in the Lower 48 who has this kind of power."

But Hickel maintains he holds executive authority to designate the final arbiter of state regulations, Rehmann said.

"Jack's a statewide elected official and the governor sees this as adding greater democracy to the process," Rehmann said.

Coghill made expansion of the lieutenant governor's power a key plank in his 1990 election campaign.

Some regulations have been mired in the review process for up to three years by commissioners who delegate rule-writing to underlings, Coghill said. Industry and interest groups frequently complain about regulations that unfairly implement new laws, he said.

"It's kind of crazy that you have middle management bureaucracy dictating regulations," Coghill said. "That's why it's important the lieutenant governor be the conscience of the regulatory process."

Coghill said he already has rejected rules written by the Department of Transportation and Public Facilities that would have further restricted travel of long double-trailer

trucks on the Kenai Peninsula. Transportation Commissioner Frank Turpin said the rule would have limited travel of the 110-foot-long trucks to between 7 p.m. and 7 a.m. on weekdays on the Sterling and Seward Highways.

Although the trailer trucks occasionally slow traffic, they did not prompt widespread criticism from Kenai Peninsula legislators and residents, confirming Coghill's action, Turpin said.

"He was right," Turpin said. "We just didn't get a lot of support for the tighter regulations."

Administration sources said Coghill gained his newfound authority after a showdown with Hickel's chief of staff, Max Hodel, in a meeting with Hickel.

Hodel reportedly defended commissioners' rule-writing authority. He could not be reached for comment. Coghill declined to comment but made it clear he now holds the power.

"That's the signature of the governor," Coghill said pointing to the April 1 Hickel memo. "I'll let you be the judge of that."

A regulation is a rule or order springing from one of 13 executive agencies in state government. Regulations are adopted under authority

of statutes, or laws, passed by the Legislature.

Commissioners typically write or oversee the rule-writing process. The rules are then sent to the Department of Law for technical review and then to the lieutenant governor for signature, typically a formality.

The Administrative Procedures Act, which lays out the rules for regulation writing, makes no express provision for the lieutenant governor to assume the authority, said Tam Cook, an attorney for the Legislature.

However, it appears the governor may shift responsibility within the executive branch from the Department of Law to the governor by executive order, which is subject to legislative approval, she said.

Attorney General Charles Cole did not return several phone calls for comment on Hickel's action. Legislators said there has been no executive order from Hickel shifting rule-making responsibility.

In 1989, an attorney general's opinion described the lieutenant governor's regulatory role as largely ceremonial and confined to rule-signing. Then-Lt. Gov. Stephen McAlpine blocked regulations restricting a lottery organization by refusing to sign the rules.

Czar

Continued from page A1

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"Only the commissioner of an agency has statutory authority to implement regulations, not the lieutenant governor," said Rep. Fran Ulmer, a Juneau Democrat and attorney. "There isn't a lieutenant governor in the Lower 48 who has this kind of power."

But Hickel maintains he holds executive authority to designate the final arbiter of state regulations, Rehmann said.

"The governor has full authority to delegate to Jack the oversight on this," Rehmann said. "Jack's a statewide elected official and the governor sees this as adding greater democracy to the process."

Coghill made expansion of the lieutenant governor's power a key plank in his 1990 election campaign.

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— Rep. Cliff Davidson,
D-Kodiak

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Coghill wins regulatory 'czar' powers

Hickel decision fires up lawmakers

By DAVE PATRICK

TIMES CAPITAL BUREAU

JUNEAU — Gov. Walter J. Hickel has given Lt. Gov. Jack Coghill sweeping new powers to block proposed state regulations or order them rewritten, Eric Rehmann, Hickel's press secretary, confirmed Friday.

Hickel's action elevates Coghill over commissioners who previously oversaw regulation-writing and occurred unannounced in an April 1 memo signed by the governor and sent to his Cabinet officers.

"This change will allow us to carry out our agenda to be a responsive administration and to implement our regulatory review program," Hickel wrote. The memo laid out rules requiring regulations to be positive and to exhibit a "can-do attitude."

A regulatory review team will be formed in Coghill's office.

■ Gov. Hickel opposes state funding of abortions A14

Rehmann said.

Lawmakers said the action is likely unconstitutional and will allow special interests to influence Coghill to blunt laws written by the Legislature.

"I guess Coghill's a regulatory czar now," said Rep. Cliff Davidson,

D-Kodiak. "I Coghill think the special interests gain and the public process loses."

Coghill will now be able to reject or revamp an array of state regulations that deal with oil and gas taxes and royalties, environmental safeguards, and fish and

See Czar, back page

Times 4-13-91

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

April 19, 1991

SUBJECT: Gubernatorial delegation of regulatory review power to the lieutenant governor (Work Order No. 7-LS1225)

TO: Senator Arliss Sturgulewski

FROM: Theresa L. Bannister *TB*
Legislative Counsel

You have asked whether the governor can delegate to the lieutenant governor the power to review regulations^{1/} as he has done in his April 1, 1991 memo.^{2/}

SHORT ANSWER. In my opinion the governor cannot delegate the power to review regulations to the lieutenant governor as he has done in his April 1, 1991 memo, unless he uses an executive order.

DISCUSSION. This delegation inserts additional steps into the regulation adoption process. At the present time, proposed regulations that have gone through the basic procedures for adoption are sent to the Department of Law ("department") for final legal approval before being submitted to the lieutenant governor for filing under AS 44.62.040. AS 44.62.060. The filing of the lieutenant governor is basically a technical act.^{3/}

However, under the delegation the agencies must submit the regulations they have adopted to the lieutenant governor for his review before sending them to the department for its final review. The lieutenant governor then transmits the regulations to the department. Under the delegation, the approval of the lieutenant governor must be obtained before the department issues its final legal approval.

^{1/}In this memo a reference to "regulations" includes orders of repeal.

^{2/} The scope of the delegation can be more completely understood by reviewing the April 11, 1991, Department of Law memo on this subject.

^{3/}The statutes do not give the lieutenant governor any review power over the regulations that are submitted to him.

Under art. III, sec. 23, of the state constitution the governor is authorized to make changes in the organization of the executive branch or in the assignment of functions among its units that he considers necessary for efficient administration.^{4/} However, if the change requires the force of law, he must use an executive order.

At first glance, the extra steps could be characterized as merely an internal reassignment of executive branch regulation review functions inherent in the regulatory process, a reassignment that does not require more than the memo that was used.

However, the delegation actually conflicts with the statutes governing the adoption of regulations, and the delegation appears to significantly alter the present statutory plan for adopting regulations by adding these particular steps.

The delegation conflicts with AS 44.62.250, which establishes the procedures for adopting emergency regulations. Under that section, the adopting agency is directed to immediately submit a copy of an emergency regulation to the lieutenant governor for filing. Under the delegation, adopted regulations are required to be submitted to the lieutenant governor for his review, not for filing by him.

The delegation also contradicts the responsibilities given to the Department of Law under AS 44.62.125. The lieutenant governor essentially controls when the regulations are transmitted to the department. He also controls whether or not the department can perform its final review of the regulations. Because the lieutenant governor controls when and if the department reviews regulations, it contradicts the affirmative requirement in AS 44.62.125 that the department review regulations.

The scope of the lieutenant governor's review both enlarges and conflicts with the statutory plan. Under the delegation, the lieutenant governor is to review the regulations for such items as being positive, not negative, and for a "can-do" attitude. These criteria are not usually required for the adoption of regulations. If the lieutenant governor bases his disapproval on these items, the disapproval may be

^{4/} This section reads as follows:

Section 23. Reorganization. The governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders. The legislature shall have sixty days of a regular session, or a full session if of shorter duration, to disapprove these executive orders. Unless disapproved by resolution concurred in by a majority of the members in joint session, these orders become effective at a date thereafter to be designated by the governor.

Senator Arliss Sturgulewski

April 19, 1991

Page 3

considered to conflict with the present statutory plan because it imposes new requirements on regulations beyond those already required.

During the review, the lieutenant governor also must consider whether "public input" has been taken into account in the final adopted version of the regulations. The present statutory plan addresses public review by establishing certain notice and hearing requirements (e.g. AS 44.62.190 and 44.62.210). Once these are satisfied under the present statutory plan, the regulation should be considered to have satisfied any "public input" requirements. Disapproval based on this point may conflict with the statutory plan because it requires more than is required by the statutory plan governing the adoption of regulations.

The timing and potential of the review appear to be significant. Under the present statutory process, by the time the regulation is ready for the final Department of Law approval, the regulation has gone through all of the requirements for the regulation under the statutory system, except for the final department review and submission to the lieutenant governor for technical filing. At that point the regulations have essentially been "adopted" by the agency, but have not become "effective". The addition of the lieutenant governor's general review with the potential for disapproving the regulation at that point appears to alter the established statutory plan for adopting regulations.

Because of these conflicts and alterations force of law is required to make these changes and the governor must use an executive order. Since the adoption of regulations is basically a legislative function delegated to the executive branch, a court is more likely (than when examining traditional executive functions) to hold that the governor cannot make these changes without an executive order. The delegation from the legislature would be more narrowly construed, and the court could more easily find that the changes require the force of law.

In conclusion, although the outcome of a court review cannot be predicted in this situation, it is my opinion that the governor cannot delegate the power to review regulations to the lieutenant governor as he has done in his April 1, 1991 memo, unless he uses an executive order.

If I may be of further assistance, please advise.

TLB:pl

91-279.plm

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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(907) 465-3867 or 465-2450
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Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

April 22, 1991

SUBJECT: Executive orders

TO: Representative Max Gruenberg, Jr.

FROM: Tamara Brandt Cook
Director *TBC*

You have informed me that you have a copy of the memorandum written by Terry Bannister on April 19 addressing the issue of whether the Governor may transfer to the Lieutenant Governor the broad regulation review function that the Lieutenant Governor has indicated he intends to exercise. In that memorandum, Terry Bannister concluded that such a transfer would require changes in statute and, therefore, could probably be accomplished only through a executive order. You have questioned whether, even by utilizing an executive order, the transfer could be accomplished. Article III, Sec. 23 of the state constitution provides:

The governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders. The legislature shall have sixty days of a regular session, or a full session if of shorter duration, to disapprove these executive orders. Unless disapproved by resolution concurred in by a majority of the members in joint session, these orders become effective at a date thereafter to be designated by the governor.

I have found only one case discussing this section of the constitution and it is not particularly on point. (Suber v. Alaska State Bond Committee, 414 P.2d 546 (Alaska 1966) holding the section not implicated where the Commissioner of Commerce created an executive agency to carry out the provisions of legislation when the legislation gave him specific authority to hire staff) However, the section is discussed in the Alaska Constitutional Convention Proceedings (pages 2226-2229) and it appears clear that the delegates viewed this section as providing the Governor the power, as an administrative matter, to reorganize the functions of the executive branch, but not particularly, to enlarge, diminish, or otherwise alter those functions.

Representative Max Gruenberg, Jr.

April 22, 1991

Page 2

NORDALE: I just perhaps could amplify the Committee's thinking a bit on this. We were thinking primarily of laws setting up boards and sort of sloppy administration, as we have at the present time. Now then, when the governor sees there are too many departments set up functioning by themselves or functioning under boards and there isn't any coordination, he has the right to suggest a reorganization and a different assignment of functions. . . .

LONDBORG: Mr. President, just another word along that line, and I think Mrs. Nordale brought it out quite clear, now the other way would be if the governor wanted some reorganization he would have to go to the legislature and have a bill introduced by somebody or on his own request and that bill would be acted upon to make this necessary change. For instance, deleting a certain board or ceasing its functions and putting it under the single department head or something of that nature, whatever major change he would want he would have to depend upon the legislature to pass that bill and get it into operation. Doing it this way, he sets forth an executive order but it does not become effective until it slips through the next session of the legislature without being voted out by the legislature. I suppose you could call it reverse legislation. The governor makes a new law and if the legislature does not want it done away with, well, then they can let it go through, but I think it runs in line with the strong executive we have where he can set forth his changes and the legislature by being silent on it, in that way they approve of the order. (Constitutional Convention Proceedings, Part III, Page 2229)

So, it appears quite clear that the Governor could move responsibilities regarding the review of regulations from the Department of Law to the Lieutenant Governor through an executive order that would be subject to legislative disapproval. However, what has been proposed in the current situation, involving extensive review of existing regulations as well as a two-tiered review of new regulations involving both the Lieutenant Governor's office the Department of Law, appears to go beyond what may be accomplished through an executive order. Legislation may well be required to accomplish all that is proposed.

TBC:mi

91-074.mai

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: CSSB 131 (FINANCE) am

Page 3, following line 20:

Insert a new bill section to read:

** Sec. 7. AS 44.62.190 is amended by adding a new subsection to read:

(d) In addition to other information required to be included, each published notice must contain a statement that the lieutenant governor

(1) does not have authority to address the content of regulations submitted under AS 44.62.040;

(2) may only refuse to file a regulation or order of repeal required to be submitted under AS 44.62.040 if

(A) a certified original and one duplicate copy are not provided; or

(B) the regulation or order of repeal is not accompanied by the written statement of approval by the Department of Law required under AS 44.62.060(c)."

Renumber the following bill section accordingly.

WALTER J. HICKEL
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 29, 1991

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Speaker Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the notice required for adoption of emergency regulations. This legislation is necessary as a result of a recent court decision, Shepherd v. State, 4FA-90-1514 Civil (March 19, 1991), which held that the process the state has utilized for the adoption of emergency regulations for several years is invalid. The purpose of this legislation is to validate longstanding practice, thereby permitting the state to continue using present practice.

Under AS 44.62.180, an emergency regulation adopted by an agency is submitted to the lieutenant governor, and takes effect upon filing by the lieutenant governor. AS 44.62.250 currently requires notice of the adoption of an emergency regulation to be published within 10 days after "adoption" of the regulation. If notice is not published within that time, the regulation is automatically repealed. The Department of Law has always taken the position that the term "adoption" in this section really refers to the regulation's "effective date," since there would be no point in publishing notice of an emergency regulation that was not in effect and might never take effect. Furthermore, the practical realities of the situation are that it is often impossible to finalize and file an emergency regulation, and ensure that notice of that action is published, within 10 days of a board's action on it.

Nevertheless, the superior court held that irrespective of longstanding state practice, the time limits in AS 44.62.250

The Honorable Ben Grussendorf - 2 -

begin running immediately upon a board's taking a vote approving the adoption of an emergency regulation. This decision will cause serious problems for several boards, such as the Boards of Fish and Game, that frequently adopt emergency regulations.

This bill will validate existing practice and longstanding interpretations of the Department of Law with respect to the notice requirement for emergency regulations. I urge your support of this measure.

Sincerely,

A handwritten signature in cursive script, reading "Walter J. Hickel".

Walter J. Hickel
Governor



House State Affairs Committee

Representative Gene Kubina, Chair

DATE: May 13, 1991

PLACE: Capitol, Room 102

SUBJECT OF MEETING:
 *HB 42 - Relating to Health Benefits for Part-Time St. Employees
 *HB 273 - Relating to Payment for Medicare Premium Charges
 *HB 308 - Relating to Adoption of Emergency Regulations

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
BOB STALNAKER	RETIREMENT	P.O. Box 6 R			4470	Y (N)	IF NEEDED HB 273
JEFF BUSH	A.G.'s Off.	P.O. Box K, Juneau	99811		465-3600	(Y) N	HB 308
DAVID OTTO	Admin Personnel	PO C-0201	99811		4430	(Y) N	HB 42
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	



House State Affairs Committee

Representative Gene Kubina, Chair

SUBJECT OF MEETING:
 HB 198
 HB 308
 HB 155

DATE: May 10, 1991

PLACE: Capitol Room 02

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
✓ David Katzack	Self	6590 Glacier Hwy #124	99801	780-6698	462-4844	<input checked="" type="radio"/> N	198
JEFF BUSH	Dipl. of Law	Box K, Juneau	99811		465-3100	<input checked="" type="radio"/> N	HB 308
Bob Loescher	Sealaska Corporation	One Sealaska Plaza Juneau	99801	586-1512		<input checked="" type="radio"/> N	HB 198
✓ Tom Garrett	Juneau City	360 S. FRANKLIN #201	99807		586-1732	<input checked="" type="radio"/> N	HB 198
						<input type="radio"/> N	
						<input type="radio"/> N	
						<input type="radio"/> N	
						<input type="radio"/> N	
						<input type="radio"/> N	
						<input type="radio"/> N	
						<input type="radio"/> N	



House State Affairs Committee

Representative Gene Kubina, Chair

DATE: May 15, 1991

PLACE: Capitol, Room 102

SUBJECT OF MEETING:

- HB 155 - Relating to Barrier-Free Remodeling Fund
- HB 157 - Relating to Approp: Barrier Free Facility Fund
- *HB 289 - Relating to Change of Interexchange Carrier

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Jeff Bush	Dept. of Law	P.O. Box K, Juneau	99811		465-3600	<input checked="" type="radio"/>	N	HB 308
Virginia Kasper	Dept. of Labor	Box 3-7000 Juneau	99803		465-4531	<input checked="" type="radio"/>	N	HB 155
✓ Rod Wilson	DOT/SPF	P.O. Box 2 Juneau	99811		465-2960	<input checked="" type="radio"/>	N	HB 155
CHRISTIE HARMER	self	7364 LAKEVIEW CT Juneau	99801	789-5492		<input checked="" type="radio"/>	N	HB 155
Judy Knight	DOL	P.O. Box 3-7000	99803		465-2711	<input checked="" type="radio"/>	N	HB 155
						<input type="radio"/>	N	
						<input type="radio"/>	N	
						<input type="radio"/>	N	
						<input type="radio"/>	N	
						<input type="radio"/>	N	
						<input type="radio"/>	N	



House State Affairs Committee

Representative Gene Kubina, Chair

DATE: May 17, 1991

PLACE: Capitol, Room 102

SUBJECT OF MEETING:
 HB 251 - Relating to Debt Retirement Fund
 HB 252 - Relating to Approp: Debt Retirement Fund
 SB 44 - Relating to Construction and Operation of State House

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Jeff Morrison	DMVA	P.O. Box L Juneau 99811			465-4600	Y (N)	SB 44
Paula Scavera	Leg Research	P.O. Box 1			465-3991	Y (N)	SB 44
Harlan Knudson	Hospital Nursing	House 319 Juneau			5-1790	(Y) N	SB 44
SHELBY STASTNY	OMB	Box A			5-3568	(Y) N	AB 251/252
JACK KREINBERGER	OMB	" "			"	(Y) N	HB 251/252
MILTON KOLLE	DoAd.	Box C				(Y) N	HB 251
T.C. CARROLL	DMVA	P.O. Box L Juneau 99811			465-4600	(Y) N	SB 44 / SJR 1
JEFF BUSH	Dept of Law	P.O. Box K, Juneau	99811		465-3600	(Y) N	HB 308
						Y N	
						Y N	
						Y N	