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DIVISION OF LEGAL SERVICES

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MEMORANDUM

January 14, 1992

SUBJECT: Procedure for Disapproving an Executive Order

TO: Senator Arliss Sturgulewski

FROM: Tamara Brandt Cook
Director *TBC*

You have asked what the procedure is for the disapproval of an executive order. The state constitution contains the requirement that disapproval of an executive order is accomplished ". . . by resolution concurred in by a majority of the members in joint session . . ." (Article III, Section 23) This must be complied with or any attempt by the legislature to disapprove an executive order with probably be held invalid by the court.

In addition to the procedure set out in the constitution, Uniform Rule 49(a)(4) provides

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.

Prior to 1981 that same rule in identical language was contained in Uniform Rule 48(d). So, the uniform rule adds the requirement that a joint committee consider each special concurrent resolution before it is adopted in joint session.

Clearly, a joint committee could be established under Uniform Rule 21 for the purpose of considering a resolution disapproving an executive order. However, it has been the position of this office since at least 1981 that, because Uniform Rule 49(a)(4) does not specifically require the establishment of a joint committee under Rule 21, two standing committees meeting jointly would fulfill the requirement of consideration by a joint committee.

Senator Arliss Stulgulewski

January 14, 1992

Page 2

The legislature has not considered a special concurrent resolution very often, and I cannot find a recent example of the legislature appointing a joint committee to do so. In the Twelfth Legislature SSCR1 was only referred to standing committees and never adopted. (Senate Journal, 1/26/81, page 120) In the Thirteenth Legislature HSCR1, HSCR2, and SSCR1 were referred to standing committees. Ultimately, the Rules Committees met jointly on SSCR1 (disapproving Executive Order No. 53, establishing an office of management and budget) and on HSCR1 (disapproving Executive Order 54, establishing the Department of Corrections). That same day both these resolutions were adopted in joint session. (Senate Journal, 3/16/83, pages 407-410) In the Sixteenth Legislature HSCR1 was referred to standing committees and never adopted.

TBC:gc

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Section 19 - Military Authority.

The governor is commander-in-chief of the armed forces of the State. He may call out these forces to execute the laws, suppress or prevent insurrection or lawless violence, or repel invasion. The governor, as provided by law, shall appoint all general and flag officers of the armed forces of the State, subject to confirmation by a majority of the members of the legislature in joint session. He shall appoint and commission all other officers.

Section 20 - Martial Law.

The governor may proclaim martial law when the public safety requires it in case of rebellion or actual or imminent invasion. Martial law shall not continue for longer than twenty days without the approval of a majority of the members of the legislature in joint session.

Section 21 - Executive Clemency.

Subject to procedure prescribed by law, the governor may grant pardons, commutations, and reprieves, and may suspend and remit fines and forfeitures. This power shall not extend to impeachment. A parole system shall be provided by law.

Section 22 - Executive Branch.

All executive and administrative offices, departments, and agencies of the state government and their respective functions, powers, and duties shall be allocated by law among and within not more than twenty principal departments, so as to group them as far as practicable according to major purposes. Regulatory, quasi-judicial, and temporary agencies may be established by law and need not be allocated within a principal department.

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.

Section 24 - Supervision.

Each principal department shall be under the supervision of the governor.

Section 25 - Department Heads.

The head of each principal department shall be a single executive unless otherwise provided by law. He shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and shall serve at the pleasure of the governor, except as otherwise provided in this article with respect to the secretary of state. The heads of all principal departments shall be citizens of the United States.

Revisor's note - Senate Joint Resolution No. 2, "changing the name of the secretary of state to lieutenant governor" in 16 sections of the Alaska Constitution, approved by the voters August 25, 1970, inadvertently omitted express amendment of this section.

Section 26 - Boards and Commissions.

When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law. They shall be citizens of the United States. The board or commission may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the governor.

Section 27 - Recess Appointments.

The governor may make appointments to fill vacancies occurring during a recess of the legislature, in offices requiring confirmation by the legislature. The duration of such appointments shall be prescribed by law.

Art. III, Sec. 23

Sec. 24.08.110. Bills carry over. A bill introduced but not receiving final action in the first regular session of a legislature carries over in the same reading or status into the second regular session of the same legislature. (§ 40 ch 157 SLA 1959)

Revisor's notes. — Formerly AS
24.30.120. Renumbered in 1985.

Article 2. Constitutional Amendments and Executive Orders.

Section

200. Constitutional amendments

210. Executive orders

Sec. 24.08.200. Constitutional amendments. The legislature may propose amendments to the state constitution through the adoption of a joint resolution by an affirmative vote of two-thirds of the membership of each house. Resolutions proposing constitutional amendments shall be treated as bills. (§ 41 ch 157 SLA 1959)

Revisor's notes. — Formerly AS
24.30.130(a). Renumbered in 1985.

Sec. 24.08.210. Executive orders. An executive order proposing a change in the executive branch and requiring the force of law under art. III, sec. 23, Constitution of the State of Alaska shall be submitted to the presiding officer of each house on the day the house organizes. The legislature has 60 days of a regular session, or a full session if of shorter duration to disapprove the order. Unless disapproved by a special concurrent resolution introduced in either house, concurred in by a majority of the members in joint session, the order becomes effective at a date thereafter to be designated by the governor. An order submitted to but not disapproved by the legislature shall be published in the bound session laws and any codification of state law. (§ 12 ch 47 SLA 1961)

Revisor's notes. — Formerly AS
24.30.130(b). Renumbered in 1985.

University of Alaska)

Judiciary (the programs and activities of the Alaska Court System and the Department of Law, and the legal and substantive review of bills referred to it for that purpose)

Labor and Commerce (the programs and activities of the Department of Labor relating to labor-management relations, industrial safety, unemployment compensation, and workers' compensation and the programs and activities of the Department of Commerce and Economic Development)

Community and Regional Affairs (the programs and activities of the Department of Community and Regional Affairs and other matters relating to political subdivisions)

Resources (the programs and activities of the Departments of Fish and Game, Natural Resources, and Environmental Conservation)

Rules (interpretation of the Uniform Rules, calendar, the internal administration of the house and matters pertaining to the management of the legislature as a whole)

State Affairs (programs and activities of the Office of the Governor and the Departments of Administration, Military Affairs and Public Safety, and programs and activities of the Department of Transportation and Public Facilities relating to public facilities)

Transportation (programs and activities of the Department of Transportation and Public Facilities relating to transportation and other legislative matters relating to transportation).

(b) The committee chairmen are authorized to form such subcommittees as they determine to be necessary.

SPECIAL AND JOINT COMMITTEES

RULE 21. SPECIAL AND JOINT COMMITTEES. (a) A special committee is a committee of one house. A special committee may be established only by the adoption of a simple resolution. The presiding officer of each house appoints the members of a special committee and designates a member to chair the special committee unless otherwise ordered by the house. The persons who chair like committees of each house may arrange for the committees to meet jointly to receive testimony and deal with other matters which may be expedited by joint committee action.

(b) A joint committee is a committee of both houses. A joint committee may be established only by the adoption of a concurrent resolution. The presiding officer of each house appoints one-half of the members of a joint committee. The persons who co-chair a joint committee shall be chosen in the manner provided by the presiding officers.

(c) A resolution establishing a special or joint

committee shall specify the date or conditions of termination of the committee. A standing committee may meet between sessions. A special or joint committee may meet during the session or between sessions, or both, as authorized by the resolution which establishes the committee. A standing, special, or joint committee which acts between legislative sessions may consider any legislative matter which is consistent with the jurisdiction of the committee. A standing, special, or joint committee which acts between legislative sessions constitutes a subcommittee of the Legislative Council for administrative purposes. A special or joint committee may expend money only in accordance with an appropriation made for the work of the committee.

(d) A committee may not be established unless authorized by law or by the Uniform Rules.

OPEN AND EXECUTIVE SESSIONS

RULE 22. OPEN AND EXECUTIVE SESSIONS. (a) All meetings of a legislative body are open to all legislators, whether or not they are members of the particular legislative body that is meeting, and to the general public except as provided in (b) of this rule.

(b) A legislative body may call an executive session at which members of the general public may be excluded for the following reasons:

(1) discussion of matters, the immediate knowledge of which would adversely affect the finances of a government unit;

(2) discussion of subjects that tend to prejudice the reputation and character of a person;

(3) discussion of a matter that may, by law, be required to be confidential.

(c) When a legislative body desires to call an executive session in accordance with (b) of this rule, the body shall first convene as a public meeting and the question of holding an executive session shall be determined by a majority vote of the members present.

(d) The provisions of this rule may not be interpreted as permitting the exclusion of a legislator from an executive session, whether or not the legislator is a member of the body that is meeting. A legislator not a member of the body holding an executive session shall, however, be subject to the same rules of confidentiality and decorum as pertain to regular members of the body.

COMMITTEE MEETINGS

RULE 23. COMMITTEE MEETINGS. (a) Written notice of the time, place and subject matter of all meetings of standing, special, and joint committees during a week shall be provided by the person who chairs the committee to the chief clerk or secretary by 4:00 p.m. on the preceding Thursday. The person who chairs the committee to which a bill or resolution is first referred shall provide to the chief clerk or secretary written notice of the time and place of the first

to be scheduled shall automatically be referred to the next committee of reference on the fourth day following the transmittal of the request to the chair.

(c) Bills in the Rules Committee of each house shall be placed on the daily calendar in second reading within three days after receipt of a request signed by a majority of the full membership of the committee and the presiding officer following the procedure provided in (a) of this rule to place a particular item of legislation on the calendar.

(d) Nothing in this rule prevents an oral motion to discharge a bill from committee by any member of the body at any time.

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.

Rule 49.