

HJR

11

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred: February 17, 1993

FURTHER REFERRALS:

Date of Committee Action: 2/24/93

The FINANCE Committee considered:

HJR 11

HOUSE JOINT RESOLUTION NO. 11

REPEAL OF REGULATIONS BY LEGISLATURE

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

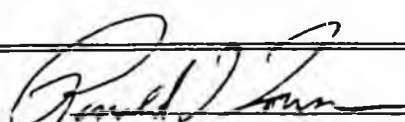
- RECOMMENDATIONS: the same title
 be replaced with _____ a new title
 have attached amendments(s)
 do pass
 do not pass
 no recommendations
 individual recommendations
 additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

- ATTACHES NEW FISCAL NOTE(S): (Dept)
 fiscal impact _____
 zero fiscal note _____

- APPROVES PREVIOUS: (Dept/Date)
 fiscal note(s) Office of Lt Gov. 2/1/93
 zero fiscal note(s) _____

SIGNING <u>DO PASS</u>	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Eileen Mather</i> ^{Mather}	✓				
<i>Ronald J. Larson</i>	X				
<i>Ben Grussendorf</i> ^{Grussendorf}	X	<i>Mark Hanley</i> Hanley			X
<i>Mike Parnell</i> ^{Parnell}	✓	<i>Sean Parnell</i> Parnell			X
<i>Kay Brown</i> Brown	✓	<i>Lynn Hoffman</i> Hoffman			X
<i>Richard Theriault</i> Theriault	✓				
<i>Richard Foster</i> Foster	✓				


 CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

No. 1
Bill Version: HJR 11
(H) Publish Date: 2/1/93

Revision Date: _____
Title: Amendment to the Constitution RE: repeal of regulations by the legislature
Sponsor: Representatives Phillips and Brice
Requestor: _____

Department Affected: Office of the Governor
BRU: Division of Elections
Component: General and Primary Elections

COMPONENT SERIAL NO. 22

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	2.2*	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	2.2*	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	2.2*	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	2.2*	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 (FY93) impact: 0

ANALYSIS: (Attach a separate page if necessary.) *This figure covers cost of inclusion of information about this issue in the Official Elections Pamphlet as required by AS 15.58, and programming for DataVote counting of votes cast on the measure. However, only 4 measures can be printed on a single ballot card. Should this measure require printing an additional ballot card, the fiscal impact would be 53.4.

Prepared by: Charlot E. Thickstun, Director *Charlot E. Thickstun* Phone: 465-4611
Division: Division of Elections Date: 1/15/93
Approved by Commissioner: Lt. Governor John B. Coghill *John B. Coghill*
Agency: Office of the Lt. Governor Date: 1/15/93

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Alaska State Legislature

House of Representatives

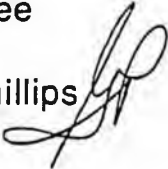


Official Business

State Capitol
Juneau, Alaska 99801-1182
(907) 465-3718

House Majority Leader

TO: Representatives Eileen MacLean and Ron Larson, 2/17/93
Co-Chairpersons,
Mark Hanley, Vice-Chair,
House Finance Committee

FROM: Representative Gail Phillips 

RE: Scheduling of HJR 11.
(Constitutional Amendment, Legislative Repeal of Regulations)

I would appreciate your scheduling the above Resolution for a hearing before the House Finance Committee at your earliest possible convenience.

This Resolution is important to the system of checks and balances inherent in our State's system of government in that it would restore the former ability of the Legislature to overturn by resolution regulations promulgated by the Department of Law.

Please note the relatively small fiscal cost necessary to place the amendment on the ballot. I have attached back-up material for the Committee files and my statement will be provided at the conclusion of my testimony. Your prompt attention to this request will be appreciated.

Alaska State Legislature

House of Representatives

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House Majority Leader

TO: Representatives Ron Larson and Eileen MacLean,
Co-Chairmen and Representative Mark Hanley,
Vice Chairman
House Finance Committee
House Finance Committee Members

FROM: Representative Gail Phillips *Gail*

SUBJECT: House Joint Resolution 11
(repeal of regulations by the legislature)

DATE: February 17, 1993

Background

This proposal for an amendment to the Constitution of the State of Alaska to repeal regulations by the Legislature has been placed on the ballot on three previous occasions. Each time it failed to be approved by the voters. The following chart and past proposition materials are attached for your files.

<u>1980</u>	<u>1984</u>	<u>1986</u>	
58,808	91,174	65,176	Yea's
82,010	98,856	94,299	Nay's
140,818	190,030	159,475	Total Proposition Votes
16%	4%	18%	Failure Percentage
162,653	213,173	182,526	Total Votes Cast
258,742	305,262	292,274	Total Registered Voters
63%	70%	62%	Voter Turnout

GP/sgn
Attachments

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.

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 in to, 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 on 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

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.

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 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.

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

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 19, 1993

Hon. Ron Larson
Alaska House of Representatives
State Capitol, Room 502
Juneau, AK 99801-1182

Dear Representative Larson:

HJR 11 appears on this week's schedule for a hearing before your committee on Wednesday, February 24, 1993. This letter is to express the Department of Law's opposition to that resolution.

HJR 11 is a resolution to place before the voters for the fourth time in 13 years an amendment to the Constitution of the State of Alaska to allow repeal or annulment of regulations by resolution of the legislature. If passed by the voters, the amendment would create a new section 22 in Article II of our state constitution to allow the legislature, by joint resolution, to repeal a regulation adopted by a state department or agency. The resolution would not be subject to the review, and possible veto, of the governor.

The Department of Law opposes the resolution for the following reasons:

1. Under existing law, the legislature has substantial power to guide or limit the adoption of regulations. Initially, the legislature can pass tight statutes that clearly define the executive branch's rule-making authority. The Administrative Procedure Act requires that a regulation must be consistent with the statute. See AS 44.62.030. The Department of Law makes a legal review for consistency before a regulation is filed by the Office of the Lieutenant Governor. After an executive-branch regulation is adopted, if the legislature believes that the regulation is not consistent with the enabling statute, the legislature can amend the statute to clarify its intent. The current system provides the legislature with the power to guide regulation formation.

2. Allowing the legislature to repeal a regulation by resolution would mean a major change in the way law is developed in this state. Regulations have the force of law. Repealing regulations changes law. Our constitution presently grants the power to the legislature to change law by passing a bill, which is then subject to the governor's review and

WALTER J. HICKEL, GOVERNOR

REPLY TO:

1031 W 4th AVENUE SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550
FAX: (907) 276-3697

KEY BANK BUILDING
100 CUSHMAN ST. SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 452-1568
FAX: (907) 456-1317

P.O. BOX K— STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-5295 465-6755

possible veto. Because the governor cannot veto a resolution, allowing repeal of regulations by resolution would allow the legislature to change law without that action being subject to the governor's review. This is an important change in our constitution's system of checks and balances between the legislative and executive branches.

3. By repealing a regulation by resolution, the legislature would not be providing policy guidance or direction that is appropriate to the legislature's law-making function. In other words, the resolution would tell the executive branch that the regulation was unacceptable, but not what is acceptable. The state agency would have to guess again and spend state money to develop a new regulation, which might not be on the "right track." By using a bill, the legislature could change statutes to give clearer policy direction to the executive branch.

4. The Administrative Procedure Act allows legislators, as well as the general public, to comment on any new regulation proposed. The executive branch considers comments in the development of regulations. In this way, the legislature and the public have input into the regulation-adoption process.

5. Finally, the voters of Alaska have voted down this type of constitutional amendment three times in the last 13 years. We assume that the public means what its votes have indicated, and that the public prefers the status quo on checks and balances in the development and enforcement of regulations.

If you have additional questions, please let me know.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By: *Deborah E. Behr*
Deborah E. Behr
Assistant Attorney General

DEB:cl

cc: Charles Cole
Bruce Botelho

Kris Lethin