

HJR

1

TONY KNOWLES, GOVERNOR

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DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 6, 1995

Hon. Brian Porter, Chair
House Judiciary Committee
Alaska House of Representatives
State Capitol, Room 118
Juneau, AK 99801-1182

RECEIVED

MAR - 6 1995

Re: HJR 1

Rep. Brian Porter

Dear Representative Porter:

HJR 1 has been scheduled for review by the House Judiciary Committee. This letter is to express the Department of Law's opposition to HJR 1.

HJR 1 is a resolution to place before the voters for the fourth time in 15 years an amendment to the Constitution of the State of Alaska to allow repeal 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 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. The voters of Alaska have voted down this type of constitutional amendment three times in the last 15 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.

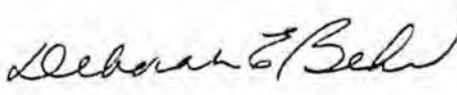
Hon. Brian Porter, Chair
House Judiciary Committee

March 6, 1995
Page 3

If you have additional questions, please let me know.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
Deborah E. Behr
Assistant Attorney General

DEB:cl

cc: Representative Gail Phillips
Speaker of the House
State Capitol, Room 208

Representative Tom Brice
Alaska House of Representatives
State Capitol, Room 426

Bruce M. Botelho, Attorney General
Barbara J. Ritchie, Deputy Attorney General

Pat Pourchot, Legislative Administrator
Office of the Governor

FISCAL NOTE

J. 2

Bill Version: HJR 1

(H) Publish Date: 3/1/95

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Revision Date: _____	Dept. Affected: <u>Department of Law</u>
Title: <u>"...relating to repeal of regulations by the legislature..."</u>	BRU: <u>Legal Services</u>
Sponsor: <u>Representative Phillips</u>	Component: <u>Operations</u>
Requester: <u>House State Affairs</u>	COMPONENT SERIAL NO. <u>0093</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

POSITIONS	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

House Joint Resolution No. 1 proposes an amendment to the Constitution of the State of Alaska that would give the legislature the power to repeal a regulation adopted by a state department or agency by joint resolution of the legislature. If the amendment is adopted in the 1996 general election, it will probably not have a direct immediate fiscal impact on the department's operations. The department is statutorily responsible for reviewing all regulations for legality and form to insure consistency with the appropriate enabling legislation. The department also drafts regulations on behalf of some departments and assists other departments in drafting regulations that deal with highly complex matters requiring the attention of an attorney. Obviously, some of the time spent in these efforts will have been lost whenever a regulation has been annulled. Larger departments which have the responsibility for carrying out major state programs, and who routinely draft numerous program operating regulations inhouse, will probably experience an even greater loss of staff time. More importantly, the absence of statutorily mandated regulations, which would occur after annulment, could result in litigation from an adversely impacted industry, public interest group, or a member of the public claiming damages due to the

Prepared by: <u>Richard I. Peques, Director</u>	Phone: <u>465-3672</u>
Division: <u>Administrative Services Division</u>	Date: <u>2/13/95</u>
Approved by Commissioner: <u>Bruce M. Botelho, Attorney General</u>	Date: <u>2/13/95</u>
Agency: <u>Department of Law</u>	

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HJR 1

ANALYSIS CONTINUATION:

absence of required regulations. The impact of such litigation cannot, in this case, be estimated in advance and therefore no cost impact can be shown.

FISCAL NOTE

STATE OF ALASKA
 1995 LEGISLATIVE SESSION

Revision Date: _____
 Title: Amendment to the Constitution RE:
Repeal of regulations by legislators.
 Sponsor: Senator Phillips
 Requestor: _____

Department Affected: Office of the Governor
 BRU: Division of Elections
 Component: General and Primary Elections
 COMPONENT SERIAL NO. 22

EXPENDITURES/REVENUES:

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	2.2*	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND &	0	0	0	0	0	0
GRANTS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL	0	2.2*	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE						
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FUNDING:

1002 Federal	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1008 GF/Program	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	2.2*	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 (FY95) 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 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 \$3.4.

Prepared by: David Koivumaki, Acting Director Phone: 463-4611
 Division: Division of Elections Date: 2-22-95

Approved by Commissioner: Lt. Governor Fran Ulmer Date: _____
 Agency: Office of the Lt. Governor

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 Rev 12/93 Page 1 of 1

3/1/95

HOUSE COMMITTEE REPORT

(7)
Date Referred: January 16, 1995

FURTHER REFERRALS:

Judiciary

Date of Committee Action: Feb 28, 1995

The STATE AFFAIRS Committee considered:

HJR 1

HOUSE JOINT RESOLUTION NO. 1

REPEAL OF REGULATIONS BY LEGISLATURE

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

recommends it be replaced with the following committee substitute _____ [] the same title [] a new title

[] additional referral to _____ Committee
[] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date)
[x] fiscal note(s) Div of Elections [] fiscal note(s) _____

[x] zero fiscal note(s) Dept of Law [] zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Jeanette James</i>	JAMES	✓			
<i>James Porter</i>	PORTER	✓			
<i>Joseph Green</i>	GREEN	✓			
<i>Green Robinson</i>	ROBINSON			✓	
<i>Ed Willis</i>	WILLIS			✓	
		(3)		(2)	

CHAIR'S SIGNATURE *Jeanette James*
JAMES