

HJR

2

Date Referred to Committee: January 13, 1997

FURTHER REFERRALS:

Judiciary  
Finance

Date of Committee Action: 3/6/97

By STATE AFFAIRS Committee considered:

HJR 2

HOUSE JOINT RESOLUTION NO. 2

REPEAL OF REGULATIONS BY LEGISLATURE

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

Committee 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)

fiscal note(s) Gov.

fiscal note(s) \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

SIGNING WITH RECOMMENDATIONS

DP DNP NR AM

<u>SIGNING WITH RECOMMENDATIONS</u>	DP	DNP	NR	AM
<i>Janette James</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>			✓	

CHAIR'S SIGNATURE Janette James

(7)  
Date Referred to Committee: March 7, 1997

FURTHER REFERRALS:

Finance

Date of Committee Action: 4/30/97

The JUDICIARY Committee considered:

HJR 2

HOUSE JOINT RESOLUTION NO. 2

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

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 attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_ APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_  
 fiscal note(s) 60V./ELECTIONS  fiscal note(s) \_\_\_\_\_  
 zero fiscal note(s) \_\_\_\_\_  zero fiscal note(s) \_\_\_\_\_

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Chris W. Croft</i> CROFT		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
<i>Alan Rokeberg</i> ROKEBERG	<input checked="" type="checkbox"/>			
<i>Brian Porter</i> PORTER	<input checked="" type="checkbox"/>			
<i>Monnette James</i> JAMES	<input checked="" type="checkbox"/>			
<i>Car Blend</i> BUNDE	<input checked="" type="checkbox"/>			
<i>Bill Berkowitz</i> BERKOWITZ			<input checked="" type="checkbox"/>	
<i>Bob Green</i> GREEN	<input checked="" type="checkbox"/>			

CHAIR'S SIGNATURE *[Signature]*

# FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. HJR2

Revision Date _____	Dept. Affected <u>Office of the Governor</u>
Title <u>Const amendment re: repeal of regulations</u>	BRU <u>Elective Operations</u>
by the legislature. _____	Component <u>General and Primary Elections</u>
Sponsor <u>Representative Rokeberg</u>	
Requester <u>House State Affairs</u>	Component Serial No. <u>#22</u>

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
Personal Services						
Travel						
Contractual		3.0				
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>3.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
CHANGE IN REVENUES [    ]						

**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		3.0				
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>3.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY97) cost:                     none                    

**POSITIONS**

Full-time	0				
Part-time	0				
Temporary	0				

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

This figure includes the cost of providing information about this issue in the Official Election Pamphlet as required by AS 15.58, and the programming costs for counting votes cast on the measure. However, only four measures can be printed on a single ballot card. If this measure requires printing an additional ballot card, the costs will increase by \$56.0.

Prepared by <u>Dana LaTour</u> <i>D LaTour</i>	Phone <u>465-5347</u>
Division <u>Division of Elections</u>	Date <u>3/3/97</u>
Approved by Co <u>Lt. Governor Fran Ulmer</u> <i>Fran Ulmer</i>	Date <u>3/3/97</u>
Agency <u>Office of the Lieutenant Governor</u>	

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CS FOR HOUSE JOINT RESOLUTION NO. 2(JUD)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES ROKEBERG AND JAMES, Kohring

A RESOLUTION

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

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

4 \* Section 1. Article II, Constitution of the State of Alaska, is amended by adding a new  
5 section to read:

6 Section 22. Repeal of Regulations. The legislature may, after finding that a  
7 regulation is inconsistent with its enabling statute, by joint resolution repeal a  
8 regulation adopted by a State department or agency. The repeal of the regulation is  
9 effective thirty days after the passage of the resolution by the legislature unless a  
10 different prospective effective date is specified in the resolution.

11 \* Sec. 2. The amendment proposed by this resolution shall be placed before the voters of  
12 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the  
13 State of Alaska, and the election laws of the state.

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 11, 1997

Hon. Joe Green  
House of Representatives  
State Capitol  
Juneau, Alaska 99801

RE: HJR 2

Dear Representative Green:

HJR 2 has been referred to the House Judiciary Committee. This letter is to express the Department of Law's opposition to HJR 2.

HJR 2 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. 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.

2. 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

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

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ANCHORAGE, ALASKA 99501-1594  
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FAX: (907) 276-3697

KEY BANK BUILDING  
100 CUSHMAN ST., SUITE 400  
FAIRBANKS, ALASKA 99701-4679  
PHONE: (907) 451-2811  
FAX: (907) 451-2846

P.O. BOX 110300-DIMOND COURT HOUSE  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600  
FAX: (907) 465-6735

RECEIVED

MAR 10 1997

believes that the regulation is not consistent with the 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 regulations formation.

3. 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 the 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.

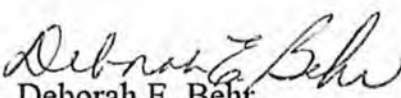
4. By repealing a regulation by resolution, the legislature would not be providing policy guidance or direction that is appropriate to the legislature's law-making function. In other words, the resolution would tell the executive branch that the regulation was unacceptable, but not what is acceptable. 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.

5. 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.

If you have additional questions, please let me know.

Sincerely,

BRUCE M. BOTELHO  
ATTORNEY GENERAL

By:   
Deborah E. Behr  
Assistant Attorney General

Hon. Joe Green  
HJR 2

March 11, 1997  
Page 3

cc: Hon. Norman Rokeberg  
Alaska House of Representatives

Pat Pourchot, Legislative Director  
Office of the Governor

Bruce M. Botelho, Attorney General  
Barbara Ritchie, Deputy Attorney General  
Chrystal Smith, Legal Administrator  
Dept. of Law  
Juneau

# ALASKA STATE LEGISLATURE

## House of Representatives

### COMMITTEE ASSIGNMENTS:

LABOR & COMMERCE COMMITTEE, CHAIRMAN  
SPECIAL COMMITTEE ON OIL & GAS, MEMBER  
JUDICIARY COMMITTEE, MEMBER  
CORRECTIONS BUDGET SUBCOMMITTEE, MEMBER  
ADMINISTRATION BUDGET SUBCOMMITTEE, MEMBER  
HESS BUDGET SUBCOMMITTEE, MEMBER



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ANCHORAGE, AK 99501  
PHONE: (907) 258-8191  
FAX: (907) 258-2916

SESSION:  
STATE CAPITOL  
JUNEAU, AK 99801-1182  
PHONE: (907) 465-4968  
FAX: (907) 465-2040

## Representative Norman Rokeberg

### SPONSOR STATEMENT

### HOUSE JOINT RESOLUTION 2 - REPEAL OF REGULATIONS

### REPRESENTATIVE NORMAN ROKEBERG

House Joint Resolution 2 proposes an amendment to Alaska's Constitution which would allow the legislature to repeal a regulation adopted by a state department or agency. The question of whether or not to adopt this proposal would be placed before Alaskan voters at the next general election (1998).

In many cases, legislative directives are ignored or regulations are created that go far beyond the scope of what the legislature intended. Once regulations go into effect, they have all the force and effect of law. The bureaucracy may, and has, subverted the will of the legislature by creating regulations with different effects and consequences than that intended under the actual law adopted by Alaska's elected representatives.

Currently, the only recourse the legislature has to rogue regulations is to rewrite the entire law which is expensive and time consuming. Under the current system, if a constituent calls with a concern about a particular regulation, a legislator can only respond by rewriting the law instead of reviewing the regulation in question and repealing it if it does not accomplish what the legislature intended.

Over 9,500 pages of regulations are in the Alaska Administrative Code. No elected official voted on these regulations and the public has no one to hold responsible for the bad regulations. It is the legislature's responsibility to make laws -- not the bureaucracy. HJR 2 opens the process to public scrutiny.

This resolution would allow the public to express its view on this matter. The last consideration of this matter by voters was in 1986. While the voters have turned down repeal of regulations three times since 1980, the regulations adopted since that time have become so onerous that it is time to again ask the voters about this process. The repeal of onerous regulations is needed to ensure a healthy environment for resource and other economic development in Alaska.

I urge your support of this resolution.

Ed1:3/6/97

# ALASKA STATE LEGISLATURE

## House of Representatives

### COMMITTEE ASSIGNMENTS:

LABOR & COMMERCE COMMITTEE, CHAIRMAN  
SPECIAL COMMITTEE ON OIL & GAS, MEMBER  
JUDICIARY COMMITTEE, MEMBER  
CORRECTIONS BUDGET SUBCOMMITTEE, MEMBER  
ADMINISTRATION BUDGET SUBCOMMITTEE, MEMBER  
HESS BUDGET SUBCOMMITTEE, MEMBER



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## Representative Norman Rokeberg

### SECTIONAL ANALYSIS HJR 2 - REPEAL OF REGULATIONS By Representative Norman Rokeberg

This resolution proposes an amendment to the Constitution of the State of Alaska relating to repeal of regulations by the legislature.

Section 1: Would amend the Constitution to provide that the Legislature could, by joint resolution, appeal a regulation adopted by a State department or agency. The repeal would be effective 30 days after the passage of the resolution unless otherwise stated in the resolution.

Section 2: Provides that the proposed constitutional amendment would be placed before the Alaskan voters at the next general election, November 1998.

MAR 04 1997



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FEBRUARY 10, 1997

REP NORMAN ROKEBERG  
ALASKA STATE LEGISLATURE  
STATE CAPITAL  
JUNEAU ALASKA 99801-1182

REF: HJR 2- REPEAL OF REGULATIONS

REPRESENTATIVE ROKEBERG:

I enclose a resolution by the Alaska Airmen's Association supporting HJR 2.

The Alaska Airmen's Association Inc. in concert with the Alaska Air Carriers Association Inc. and the Fairbanks Airmen's Coalition have been fighting the bureaucracy of the Department of Transportation (aviation division) since 1994 on a proposed set of regulations (17 ACC 40 & 45) that are clearly detrimental to the aviation industry and circumvent the intent of the Legislature.

If these regulations become law the losses contemplated for the aviation industry will be crippling and the cost of litigation prohibitive.

The outcry over these regulations was completely ignored by the DOT until our constituency took its case to the Legislature. In 1996 the Alaska Legislature passed HB 543 with only one dissenting vote. HB 543 was an attempt to clarify the intent of the law.

It has been seven months since that legislation passed. The same onerous regulations have been resubmitted with the caveat that they now include new regulations specifically designed to circumvent (not implement) HB543. In the interim the DOT bureaucracy has written new leases based on their proposed regulations while refusing to extend or approve leases based on the existing regulations.

The only recourse of the people of the State of Alaska in the face of a determined bureaucracy like the Department of Transportation is the Legislature. HJR 2 is the only recourse available to the people to maintain for them the checks and balances intended by the State Constitution and prevent professional bureaucrats from subverting the law in their own self interest with self serving regulations.

Page 2.

You can find examples of bad regulations in every venue of Alaska State Government. The proposed regulations 17 ACC 40 & 45 happen to be the aviation community's most obvious and current example. My file alone has filled a dozen storage boxes since 1994 and the most recent outcry during the "public comment period" staged during the 1996 Christmas holidays runs to volumes.

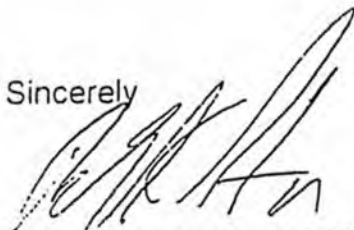
I will only cite one example of issue from 17 ACC 45. Our members file letters are available upon request:

17 ACC 45.210 (a) " a person may not construct, reconstruct ... a private air facility within two miles of a proposed ... highway ... without the written approval of the commissioner".

What law has given the Department of Transportation the right to control private property not on or related to a State Airport?

Without the control provided by HJR- 2 which provides for the intercession of The Legislature to balance the over reaching of a willful bureaucracy, the people of the State of Alaska are at the mercy of these tenured appointees. The further irony of this situation is that we (the people) are forced to pay the salaries of our antagonists.

Sincerely

A handwritten signature in black ink, appearing to read 'P. K. Livingston', written over a light blue horizontal line.

Philip K. Livingston, CCIM

Legislative Chair  
Alaska Airmen's Association



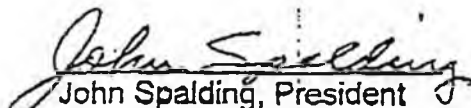
ALASKA AIRMEN'S ASSOCIATION., INC.

## RESOLUTION

The Alaska Airmen's Association Inc. hereby resolves it's support for HJR-2, a bill proposed for passage by the 1997 Alaska State Legislature by Representative Norman Rokeberg and Representative Jeannette James to wit:

1. The State bureaucracy is empowered to write regulations to implement bills passed by the State Legislature and signed into law by the Governor.
2. The State bureaucracy frequently writes regulations, with or without the active participation of the Governor, that clearly circumvent the intent of the Legislature.
3. In order to maintain the checks and balances required by the Constitution of the State of Alaska, the Legislature must have the right to reject regulations that violate their original intent.
4. Passage of a series of bills to clarify or change the written regulations is costly, time consuming, and requires the support of the Governor who may be a party to circumvention of the legislative intent.
5. A joint resolution of the Legislature to repeal regulations that circumvent their intent is the most efficient and equitable manner in which to rectify the problem and assure the people of Alaska that their best interests are served.

SO RESOLVED THIS 11<sup>th</sup> DAY OF FEBRUARY 1997

  
John Spalding, President  
Alaska Airmen's Association

SERVING GENERAL AVIATION IN ALASKA SINCE 1961

P.O. Box 241185 Anchorage, Alaska 99524-1185 Tel/Fax 907-272-1251 e-mail airmens@alaska.net



**NFIB**  
National Federation of  
Independent Business

---

**National Federation of Independent Business**

**Statement of Support**

**of HJR 2**

**A resolution calling for a constitutional amendment to allow the legislature to annul regulations found to be inconsistent with the intent of the law.**

**February 17, 1996**

The Alaska Chapter of the National Federation of Independent Business has 4,400 members, making it the largest small-business advocacy group in the state.

The legislative agenda of NFIB is determined by ballot. The ballot is our poll of members on a series of state legislative and regulatory issues.

The 1996 ballot results showed very strong support for giving the voters the chance to amend the constitution to allow repeal of regulations by the legislature. Following are the ballot results on this issue:

**Should the State of Alaska place a proposed constitutional amendment before the voters to decide whether the legislature should be given the authority to repeal regulations found to be improper or inconsistent with the law?**

**73 % YES**

**15 % NO**

**12 % Undecided**

NFIB/Alaska urges support for HJR 2.

Submitted by Thyes Shaub on behalf of NFIB/Alaska.

MAR 03 1997

Headquarters:  
217 2nd Street, Suite 201  
Juneau, Alaska 99801  
(907) 586-2323 FAX 463-5515



February 27, 1997

Representative Norman Rokeberg  
Alaska State Capitol  
Juneau, Alaska 99801-1182

Dear Representative Rokeberg:

Thank you for your letter regarding HJR 2, proposing an amendment to the State Constitution relating to repeal of regulations by the legislature. We are pleased to know that you and Representative James have undertaken this important legislative issue.

Reform of the present regulatory system is one of the highest priorities of the Alaska State Chamber of Commerce. Our resolution on this matter asks the legislature and the administration to create a regulatory and economic environment supportive of business development that encourages businesses to locate and grow in Alaska. ASCC's resolution also asks the legislature and the administration to provide for an effective oversight mechanism to assure that regulations are producing effective results that follow legislative intent.

A common complaint of the business community is that too often regulations ignore or miss the point of the legislation to which the regulations are intended to apply. Presently, the only recourse the legislature has in correcting regulation that is contrary to their intent is to pass further corrective legislation. However, if the administration is supportive of the regulatory intent, rather than the legislative intent, the governor is able to veto the corrective legislation. In this manner, under the present system, the power of the legislative branch can be usurped by the executive branch of government.

Throughout the legislative process the public has opportunity to provide input on the laws under consideration and, therefore, has the opportunity to influence the laws by which they must abide. The regulatory process is not nearly so open or receptive to the thoughts of the public, and regulations are sometimes adopted in spite of public sentiment.

HJR 2 provides the public with the opportunity to express their wishes on this matter by placing it before them on the ballot in the next general election. The Alaska State Chamber fully supports your effort.

Sincerely,

A handwritten signature in cursive script that reads "Pamela La Bolle".

Pamela La Bolle  
President

MAR 04 1997



# Juneau Chamber of Commerce

February 27, 1997

The Honorable Norman Rokeberg  
State Representative  
State Capitol  
Juneau, AK 99801-1182

Dear Rep. Rokeberg:

Thank you for your inquiry relating to House Joint Resolution No. 2, proposing an amendment to the Constitution of the State of Alaska relating to repeal of regulations by the legislature.

As the Juneau Chamber of Commerce has previously supported similar legislation, the Chamber Board at its meeting on February 18, 1997, reaffirmed its continuing support of legislation proposing an amendment to the Constitution of the State of Alaska for the repeal of regulations by the legislature.

Thank you for the opportunity to comment on proposed legislation.

Sincerely,

Patty Ann Polley  
Executive Director



# ALASKA MINERS ASSOCIATION, INC.

561 W. Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503 FAX: (907) 279-7887 Telephone: (907) 276-0347

March 5, 1997

Honorable Norm Rokeberg  
Alaska State House of Representatives  
Capitol Building  
Juneau, AK 99801

RE: IJR-2, Repeal of Regulations by the Legislature

Dear Representative Rokeberg,

The Alaska Miners Association wishes to go on record in support of House Joint Resolution 2 relating to the repeal of regulations by the legislature with some changes as described below.

It is our understanding that the purpose of this legislation is to insure that if regulations do not accurately implement the Legislature's intent in passing a statute, the regulations can be repealed, with the result that the agency will have to rewrite them. This approach has several advantages. First, the Legislature, the Administration, and the public would not have to again go through the entire law-making process to address an issue that everyone believed had been settled in a previous Session of the Legislature. A second advantage is that this approach does not infringe on the administrative public process under which the regulations are developed. This approach in effect says, no, these regulations were not our intent, Department of XYZ, go back to the drawing board and develop new regulations on this topic that will satisfy our intent. A third advantage is that the agencies will be more concerned to insure that the regulations accurately implement the statutes.

A potential problem with this approach is that a simple majority in a future legislature could repeal regulations which would cause tremendous uncertainty until new regulations were promulgated. Also, when there is a major high-visibility issue, for example an "Exxon Valdez" incident, there could be a tendency to over-react without allowing sufficient time and perspective to deal properly with an issue.


It appears that some minor changes to IJR-2 could be made that would preserve the advantages of this approach while at the same time minimize the potential problems. One way to accomplish this would be to change Section 1 of the bill to read as follows

with the new material underlined:

"Section 22. Repeal of Regulations. The legislature may, by joint resolution, repeal a regulation adopted by a State department or agency within one year after promulgation of regulations to implement a statute that has become law. The repeal of the regulation..."

There are other ways to accomplish the same thing but this is one approach.

Sincerely,



Steven C. Borell, P.E.  
Executive Director

cc: Representative Jeannette James

**DEPARTMENT OF LAW**

*OFFICE OF THE ATTORNEY GENERAL*

February 28, 1997

Hon. Jeanette James  
House of Representatives  
State Capitol  
Juneau, Alaska 99801

RE: HJR 2

Dear Representative James:

HJR 2 has been scheduled for review by the House State Affairs Committee. This letter is to express the Department of Law's opposition to HJR 2.

HJR 2 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. 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.

2. 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

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

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FAX: (907) 276-3697

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FAIRBANKS, ALASKA 99701-4679  
PHONE: (907) 451-2811  
FAX: (907) 451-2846

P.O. BOX 110300-DIMOND COURT HC  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600  
FAX: (907) 465-6735

believes that the regulation is not consistent with the 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 regulations formation.

3. 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 the 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.

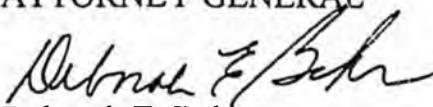
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5. The Administrative Procedure Act allows legislators, as well as the general public, to comment on any new regulation proposed. The executive branch considers comments in the development of regulations. In this way, the legislature and the public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

If you have additional questions, please let me know.

Sincerely,

BRUCE M. BOTELHO  
ATTORNEY GENERAL

  
By: Deborah E. Behr  
Assistant Attorney General

Hon. Jeanette James  
HJR 2

February 28, 1997  
Page 3

cc: Hon. Norman Rokeberg  
Alaska House of Representatives

Pat Pourchot, Legislative Director  
Office of the Governor

Bruce M. Botelho, Attorney General  
Barbara Ritchie, Deputy Attorney General  
Chrystal Smith, Legal Administrator  
Dept. of Law  
Juneau

AMENDMENT #1  
Fails 4/30/97

OFFERED IN THE HOUSE  
TO: HJR 2

CROFT

Shift of BoP  
to agency

1 Page 1, line 2:

2 Delete "repeal of regulations by the legislature"

3 Insert "the burden of proof in a judicial proceeding for the review or enforcement  
4 of regulations"

5 Page 1, line 6:

6 Delete "Repeal"

7 Insert "Review and Enforcement"

8 PAGE 1, LINE 7 AGENCY  
Following "~~Regulations~~", through line 9:

9 Delete all material.

DISAPPROVED BY ME  
4/30/97

10 Insert "In a judicial proceeding for the review or enforcement of a regulation, the  
11 burden is on the agency that adopted the regulation to establish that all or part of the  
12 regulation is within the procedural and substantive authority delegated by the legislature to  
13 the agency."

PAGE 1, LINE 7

DELETE "REPEAL"

INSERT "BURDEN OF PROOF IN A JUDICIAL PROCEEDING FOR THE REVIEW OR ENFORCEMENT OF"

# ALASKA STATE LEGISLATURE

## House of Representatives

### COMMITTEE ASSIGNMENTS:

LABOR & COMMERCE COMMITTEE, CHAIRMAN  
SPECIAL COMMITTEE ON OIL & GAS, MEMBER  
JUDICIARY COMMITTEE, MEMBER  
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## Representative Norman Rokeberg

### SPONSOR STATEMENT

### HOUSE JOINT RESOLUTION 2 - REPEAL OF REGULATIONS

### REPRESENTATIVE NORMAN ROKEBERG

House Joint Resolution 2 proposes an amendment to Alaska's Constitution which would allow the legislature to repeal a regulation adopted by a state department or agency. The question of whether or not to adopt this proposal would be placed before Alaskan voters at the next general election (1998).

In many cases, legislative directives are ignored or regulations are created that go far beyond the scope of what the legislature intended. Once regulations go into effect, they have all the force and effect of law. The bureaucracy may, and has, subverted the will of the legislature by creating regulations with different effects and consequences than that intended under the actual law adopted by Alaska's elected representatives.

Currently, the only recourse the legislature has to rogue regulations is to rewrite the entire law which is expensive and time consuming. Under the current system, if a constituent calls with a concern about a particular regulation, a legislator can only respond by rewriting the law instead of reviewing the regulation in question and repealing it if it does not accomplish what the legislature intended.

Over 9,500 pages of regulations are in the Alaska Administrative Code. No elected official voted on these regulations and the public has no one to hold responsible for the bad regulations. It is the legislature's responsibility to make laws -- not the bureaucracy. HJR 2 opens the process to public scrutiny.

This resolution would allow the public to express its view on this matter. The last consideration of this matter by voters was in 1986. While the voters have turned down repeal of regulations three times since 1980, the regulations adopted since that time have become so onerous that it is time to again ask the voters about this process. The repeal of onerous regulations is needed to ensure a healthy environment for resource and other economic development in Alaska.

I urge your support of this resolution.

Ed1:2 /25/97