1067 SB SB 340 - SB 367

SB
340

COMMITTEE REPORT

SENATE

1/17/80

FURTHER: None

Date: ____________

Mr. President:

The Committee on JUDICIARY has had SB 340

requiring legislative approval of regulations

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for ____________ [ ] same title [ ] new title

and recommends ____________

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the ____________ Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS:

____

CHAIRMAN

S 60 (Rev. 12/78)

Alaska State Legislature

BETTYE FAHRENKAMP
ALASKA STATE SENATOR

FAIRBANKS, ALASKA 99701
4016 EVERGREEN

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WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811

OFFICE 907-465-3763
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Senate

Memorandum

To: Senator Ziegler

From: Senator Fahrenkamp

Re: SB 340

We are all aware of the difficulties which arise through an agency's interpretation and administration of legislation which may impose greater or lesser control on the public than the legislation intended. A further problem exists when the promulgators of a regulation, perhaps having an education or experience level acceptable for designing the regulations, may not have the practical or field experience that shows the relationship of the regulation to the regulated activity. In addition, agencies and even departments within agencies may have regulations which counteract each other. Agencies are not usually aware of other agency regulations.

In attempting to change regulations after they have been drafted, the interested citizen has many barriers to hurdle. First, he is viewing a set of regulations which, while not set in cement, have undergone several drafts within the agency (likely without public or outside participation) and which are less likely to be changed due to the time already spent on drafting. The citizen's views may be noticed, but are not required to be specifically addressed in the review process. (Nor should they be; however, a citizen should be able to prepare or give testimony on a particular set of regulations with the knowledge that his concerns will be considered). Second, his time is likely spent in the private sector trying to earn a living. He may not have the time or money available to prepare testimony or appear at a hearing as an interested party. (Hearings are not known for being convenient). Third, there is a difficulty for the citizen in even learning about a hearing or receiving notice. Much of the information (and misinformation) regarding government is passed by word of mouth. If the person misses the hearing he has no other opportunity to address the issue.

Finally, the preponderance of effort and the number of regulations involved may simply wear down an individual's ability to participate.

At times, an agency gets frustrated with current legislative procedure. In a recent hearing regarding proposed regulations the director of the agency stated that his agency had tried several times to get bills passed by the legislature, but had been unsuccessful. Since the bills never got anywhere, he had promulgated the proposed regulations so that the changes could be made without going through the legislative process. This appears to be a prime example of the need for legislative involvement in the rule-making process.

Separate from all this are the agencies' declarations that drafting regulations is the least enjoyed aspect of their responsibilities.

On February 19, 1980, the Supreme Court held as unconstitutional a statute which permitted the legislature to annul by concurrent resolution regulations issued by the executive department and agencies. In effect, this decision removes the authority for the Regulation Review Committee to do anything but ask that an agency change its regulations. Due to this decision it becomes evident that action is necessary.

The court struck down the statute because it allowed the legislature to legislate without following the safeguards included in Article II of the Constitution. Some of the safeguards include the limitation of one subject per bill, the requirement of three readings per bill and the right of the governor to veto the legislation. Concurrent resolutions are not subject to these provisions.

In the dissenting opinion, Justice Boochever held that the provisions in Article II do not apply to regulations. Noting that a regulation does not have to comply with these provisions to be validly issued, compliance is also not necessary for a regulation's valid annulment. He observed that rule-making is an essentially legislative function which the legislature has delegated to the executive branch of government, that the power of the executive is not infringed by the legislature's retention of the authority to review and annul regulations.

Alaska policy, as stated in AS 44.62.312:, " It is the policy of the state that (1) the governmental units mentioned in 310(a) of this Chapter exist to and in the conduct of

the people's business;" (2) It is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly; (3) The people of this state do not yield their sovereignty to the agencies which serve them; (4) The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know; (5) The people's right to remain informed shall be protected so that they may retain control over the instruments they have created.

Something needs to be done and SB 340 may provide the answer. When SB 340 was introduced there were questions as to whether or not a concurrent resolution would be strong enough to approve regulations of the executive branch, since challenges to the same procedures in other states had been upheld by the court systems. Since the decision came out, we have communicated with legal affairs. (Their memorandum is attached.) Their recommendations for corrections to the bill are contained in the attached sponsor substitute. (The other change in the legislation is the sixty day requirement for the approval of regulations, including those emergency regulations which are being permanently adopted.) I hope you will consider the changes in the sponsor substitute for SB 340 and pass this bill from your committee with a Do Pass recommendation.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K–STATE CAPITOL
JUNEAU, ALASKA 99811

February 27, 1980

The Honorable Bettye Fahrenkamp
Senator
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Sponsor substitute for SB 340 (legislative approval of regulations)

Dear Senator Fahrenkamp:

I have reviewed the Sponsor Substitute for SB 340 which you brought to the meeting of the Senate Judiciary Committee yesterday. It is a great improvement over the original SB 340 -- removing some of that version's constitutional and other problems -- but the Department of Law still cannot support it.

As we discussed at yesterday's meeting of the Senate Judiciary Committee, I will be in Anchorage and will not be able to attend the committee's Thursday, February 28, meeting at which this bill will be considered. Therefore, I am sending a copy of this letter to Senator Ziegler, and will include some comments on the original SB 340 since your sponsor substitute has not yet been formally introduced.

It is our opinion that the bill still suffers two serious defects: (1) it violates the separation-of-powers doctrine, and (2) the 60-day to almost a year's delay in a regulation's effective date is not workable. The delay and the constitutional issue are inextricably related in that the delay so interferes with the execution of the laws, for which the executive branch is responsible, that the executive branch is prevented from performing its constitutionally required functions.

As a practical matter, it is simply not feasible for the Board of Fisheries, for example, to delay the effective date of a June 1 fisheries opening until the following year when the legislature will have had 60 days to consider what to do about

that date. If the regulation is filed, for example, by the lieutenant governor on May 1 and the legislature adjourns May 10, this bill would require that the regulation lie before the legislature for another 50 days during the next regular session -- to convene the following January. In addition, any regulation filed after adjournment of the regular legislative session would have to wait until the full 60 days of the next regular session before taking effect. Again, for many regulations, such a deferred effective date would not be in the best interests of the state. Events and circumstances requiring adoption or amendment or repeal of administrative regulations do not necessarily coincide with legislative sessions, and thus this bill would seriously interfere with the executive branch's performance of its constitutionally required functions. AS 44.62.270 says that it is "state policy that emergencies are held to a minimum and are rarely found to exist," and the emergency regulation approach should be used sparingly.

Concerns similar to those being expressed now in the legislature were expressed in 1975 when the legislature enacted the bill which became ch. 27 SLA 1975, creating the Administrative Regulation Review Committee. At that time, it was recognized that the legislature should not interfere with the regulations-adoption process as a means of executing statutorily required functions. The legislature felt that what was needed was a systematic means of review. See the second sentence of AS 24.20.400 (the last portion of which, as you know, was held invalid on February 19, 1980, by the Alaska Supreme Court in State v. A.L.I.V.E. Voluntary). Section 2, ch. 27 SLA 1975 enacted AS 44.62.320(b), requiring the lieutenant governor to submit a regulation to the new committee within 45 days after the regulation is filed. Believing that an earlier transmission to the committee would be even more helpful, in 1978 the legislature amended AS 44.62.320(b) (see sec. 5, ch. 64 SLA 1978) to require the lieutenant governor to submit the regulation to the committee "at the same time" that the regulation is filed by the lieutenant governor.

The current system involving prompt review of regulations by the Administrative Regulations Review Committee appears to adequately address the concern expressed in Sponsor Substitute for SB 340, and does so without raising the serious constitutional and practical issues that this bill raises.

However, in the A.L.I.V.E. Voluntary case, the Alaska Supreme Court stated (at page 24 of the advance copy), "While the power to void agency regulations could be exercised by either the legislature, or by an agency, when the legislature exercises such power it must do so while acting as a legislature. It may not grant itself the power to act as an agency." Citing cases from other jurisdictions, our court indicated that a statute expressing some administrative agency's role in performing an oversight function would be valid. Perhaps some such arrangement based upon referrals from the Administrative Regulation Review Committee could be developed.

I would like to comment on three statements contained in your undated, but presumably February 26, 1980, memo to Senator Ziegler covering your proposed sponsor substitute. Near the middle of your second paragraph on page 1 you state that "a citizen should be able to prepare or give testimony on a particular set of regulations with the knowledge that its concerns will be considered." The last sentence of AS 44.62.-210(a) already requires this, stating "The state agency shall consider all relevant matter presented to it before adopting, amending or repealing a regulation." An earlier legislature anticipated your concern and enacted a statute covering it.

The last sentence on your first page says "If the person misses the hearing he has no other opportunity to address the issue." That is not quite correct. If an oral hearing is scheduled, and someone is not able to appear in person, he or she may present written comments or arguments. AS 44.62.210(a). If the person misses the opportunity for submitting written comments, AS 44.62.220 gives him or her the right to petition for a change in the regulations. AS 44.62.230 sets out the procedure for such a petition. In addition, AS 44.62.060 prohibits the lieutenant governor from filing a regulation unless it has been approved for legal matters by the Department of Law. If a person has a legal concern regarding a proposed or newly adopted regulation, he or she can submit that concern to the Department of Law with the assurance that it will be considered. If the person believes that a regulation is invalid and the Department of Law has not agreed with that point of view, the person can submit the matter to court for a declaratory judgment under AS 44.62.300. And, of course, if all of these procedures fail to

produce the result sought by the individual, he or she is free to work with the legislature in enacting legislation to supersede the offending regulation.

In the second sentence of the fourth paragraph on page 2 of your memo, you state that the A.L.I.V.E. Voluntary decision "removes the authority for the regulation review committee to do anything but ask that an agency change its regulations." That too is not quite correct. The committee is always free to work for legislative amendment of the statutes under which the regulations were adopted. As a committee of the legislature, it is, of course, in a good position to do so.

With regard to the original bill, I generally agree with Legislative Counsel Joe Guthrie's February 25 comments on the A.L.I.V.E. Voluntary case and the bill's unconstitutionality. As to more technical problems with the original bill, the "or" between paragraphs (3) and (4) of sec. 260 is confusing. It appears to make each paragraph stand independently. For example, an emergency regulation may not remain in effect unless, under paragraph (2), the agency certifies compliance with secs. 60 and 150 -- 210 of the APA, indicating that legislative approval is not required if the agency complies with those sections; but I wonder if that is what you intended. Also, under paragraph (3), an emergency regulation may not remain in effect unless the legislature has approved it under sec. 275; but sec. 275 does not provide for notice, hearing, or the attorney general's legal approval; thus, if the legislature approves the regulation it will remain in effect even though there has been no notice, hearing, or legal approval. And, under paragraph (4), the emergency regulation will not remain in effect unless the time period under sec. 275(c) has not expired; sec. 275(c) sets a one-year period for legislative approval; so, it appears that an emergency regulation could remain in effect a year, but then that is inconsistent with the lead-in line for sec. 260(a) which says 120 days. If the word "and" was intended to be used in place of the word "or," and all four requirements must be met, what happens when the legislature is not in session and it is necessary to adopt an emergency regulation? In addition, line 29 on page 2 of the original bill refers to filing "with" the lieutenant governor; however, under the rest of the APA,

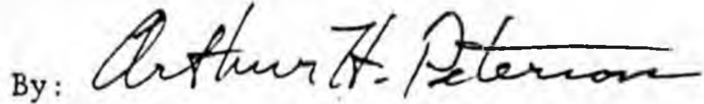
regulations are "submitted to" him and "filed by" him; this distinction is significant because it is the filing by him that starts the time period running under current law.

In summary then, the Department of Law, upon consideration of both the constitutional and practical problems inherent in both the original SB 340 and the proposed Sponsor Substitute for SB 340, cannot support either version. The current law, providing for prompt review of regulations by the Administrative Regulations Review Committee, appears to be adequate, but we are open to suggestions for improving the system within the bounds of the constitution.

Thank you for this opportunity to offer our comments. We would be pleased to discuss this with you and other legislators if you and they wish.

Yours truly,

AVRUM M. GROSS
ATTORNEY GENERAL

By: 
Arthur H. Peterson
Assistant Attorney General

AHP:md

cc: Keith Specking
Legislative Assistant
Governor's Office

STATE OF ALASKA
THE LEGISLATURE

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M February 28, 1980

SUBJECT: State of Alaska v. A.L.I.V.E. Voluntary

TO: Representative Nels A. Anderson, Jr.
House Majority Leader

FROM: Billy G. Berrier
Director
Division of Legal Services

You have asked my comments on the decision of the Supreme Court in the case of State of Alaska v. A.L.I.V.E. Voluntary, (File No. 3670). A copy of the decision is attached.

The case concerns a regulation relating to games of skill and chance annulled by the legislature. The authority for annulment was AS 44.62.320(a) which provides:

> The legislature, by a concurrent resolution adopted by a vote of both houses, may annul a regulation of an agency or department.

The Administrative Procedure Act was adopted by the First State Legislature in 1959. This Act provided, among other things, for the procedure by which regulations of agencies or departments are promulgated and the section was enacted as part of that procedure.

The Court held, with a majority opinion of three justices and a strong dissent by two justices, that regulations could not constitutionally be annulled by concurrent resolution since a resolution is not enacted in accordance with the requirements in Article II of the Constitution for adoption of law. The result, of course, is a non sequitor since the majority opinion avoided addressing the difference between regulation and law and finding that despite the difference, the enactment procedures applied. They, therefore, assumed the middle term of the syllogism and rambled widely to provide a substitute for the missing logic. Various cases were cited, only one of which was relevant and that one is no longer good law in its own jurisdiction.

For this reason, it is very difficult to determine the effect of the decision.

The holding is explicit that regulations may not be annulled by concurrent resolution. Although it is not explicitly stated, there is a clear implication that annulment by bill is constitutional.

Beyond that, the Court made several statements which do not appear necessary to the holding in this case. Much of this dicta is in sweeping terms. It casts doubt over substantial areas and, since the reasoning is essentially stream of consciousness rather than coherent, gives only minimal clues concerning the legal status of these areas.

Essentially the areas affected fall into two classes

> (1) regulations and legislative oversight of regulations; and
>
> (2) other areas of law where concurrent resolutions are used to provide legislative oversight.

On regulations the majority opinion states broadly:

> "The express provision in the Alaska Constitution of two specific legislative veto mechanisms supports our view that no implied general power to veto agency regulations by informal legislative action exists.
>
> * * *
>
> "In our view, the specificity with which the constitution deals with the legislative veto powers it does grant leads logically to the conclusion that no other veto power is implied."

The case law on regulations which the majority opinion cited is not helpful. One of the cases is on point but is no longer good law in its own jurisdiction, the second is a trial court decision and the last is a federal case where the question of a one-house veto was present but not reached. The discussion of this last case illustrates the difficulty in following the reasoning in the majority opinion. The Court referring to the United States Circuit Court decision in <u>Atkins v. United States</u>, 556 F2d 1028 (1977) said:

> The court implied that for one House to have the authority to make such a change would be unconstitutional: "Nor could one House do anything more than preserve existing law. . ." Id. at 1064. In contrast, the annullment provisions of AS 44.62.320(a) permit the legislature to void administrative regulations which are in effect. Such regulations are laws in every meaningful sense, and annulling any one of them effects a change in the law.

The connection and logic totally escape me.

In its discussion of delegation of power to annul regulations, an issue injected into the opinion since no delegation is involved in the case before the Court, the opinion is even less helpful. The majority opinion observes:

> "While the power to void agency regulations could be exercised by either the legislature, or by an agency, when the legislature exercises such power it must do so while acting as a legislature. It may not grant itself the power to act as an agency.
>
> "It might be supposed that if the legislature could condition the validity of a regulation upon the subsequent disapproval by both of its houses by concurrent resolution, it could condition the same upon disapproval by a committee, or a single legislator. Using the theory, propounded by the Amici, that a veto is merely a condition there is no principled distinction between these cases. It is therefore worth observing that most authorities have rejected the validity of laws conferring either affirmative or negatory legislative powers on individual legislators or legislative committees."

Perhaps the second point made by the majority opinion in discussing the desirability of legislative oversight of administrative regulations gives the best clue. The opinion stated:

> Second, at least according to a recent case study, the legislative veto has been unimpressive in practice. See Bruff & Gellhorn, Congressional Control of Administrative Regulation: A Study of Legislative Vetoes, 90 Harv. L. Rev., 1369 (1977). That study concludes, essentially, that the legislative veto encourages secretive, poorly

> informed, and politically unaccountable legislative action. Id. at 1409-20. It is consequences such as these that the enactment provisions of our constitution are designed to guard against.

It should be pointed out that the facts concerning the annulment which was the subject matter of the case do not support a conclusion that the annulment resulted from "secretive, poorly informed and politically unaccountable legislative action" but that, of course, is not material.

It is my conclusion that any annulment of regulation other than by law would be unconstitutional under this case. Although the question is not discussed since it is not relevant to the case, it is very clear that regulations which have the effect of law require statutory authorization and the legislature can withdraw the authorization or establish standards in whatever degree of specificity the legislature desired. Since in case of conflict between statute and regulation the statute controls, it is also clearly permissible to make the substantive statutes detailed thereby leaving less or no areas which must be dealt with by regulations. This latter course, however, involves a loss of flexibility and administrative expertise.

It appears that any form of legislative oversight of administrative regulations would be regarded with suspicion by the court. However, devices such as providing that no regulation can become effective until it has been before the legislature in session for a set time or even a provision that no regulation may become effective unless approved by law are not clearly precluded.

In Plumley v. Hale, 594 P.2d 497 (Alaska 1979), our Court discussed the question of non-retroactive treatment in civil cases. The Court in that case stated:

> In accord with United States Supreme Court precedent, we have previously identified four conditions indicating the propriety of non-retoractive treatment in civil cases: 1) the holding is one of first impression, or overrules prior law, and was not foreshadowed in earlier decisions; 2) there has been justifiable reliance on an alternative interpretation of the law; 3) undue hardship would result from retroactive application; and 4) the

> purpose and intended effect of the holding is best accomplished by prospective application.

The case concerned approval of free conference committee reports without a recorded roll call vote. The Court held the criteria to be satisfied and the decision to be prospective only. In my opinion the facts here, while not as compelling as the facts in Plumley, would lead to a conclusion that annulment of regulations which occurred prior to this case are not affected by the case.

The second major problem area is legislative oversight exercised by concurrent resolution in other areas than regulation oversight. The majority opinion made a very broad statement saying:

> The question presented by this case is whether the legislature can exercise its legislative power without following these enactment provisions. In our view the answer must be in the negative, for otherwise they would serve no purpose.

(The dissenting opinion quite correctly pointed out this is not the question at all. Justice Boochever said

> In my opinion, the majority misstates the question presented as being whether the legislature can exercise its legislative power without the usual constitutional safeguards. The real question is whether, having exercised its legislative power, subject to all those safeguards, it may condition the delegation of regulatory power to an executive agency upon a provision for legislative oversight. I agree with our statement in Boehl that the legislature has that power.

This view will be significant in subsequent cases which concern the use of concurrent resolutions in context other than annulment of regulations placing as it does the issue before the Court in focus.)

The majority opinion went on the say:

> Of course, when the legislature wishes to act in an advisory capacity if may act by resolution. However, when it means to take action having a binding effect on

those outside the legislature it may do so only by following the enactment procedures.

While the dissent noted that numerous other statutes provide some specific legislative review function by concurrent resolution, the majority opinion does not specifically address this. The sweeping generality of the majority opinion clouds, and on its face forbids, these other functions.

These include:

1. AS 18.45.025 -- Approval of facilities siting permit for nuclear facilities.

2. AS 18.65.060 -- Disapproval of regulations relating to compilation of criminal justice information and release of this information.

3. AS 28.05.021 -- Approval of compacts with other states relating to motor vehicle registration and driving licenses.

4. AS 28.15.141 -- Approval of regulations relating to classification of drivers licenses.

5. AS 28.15.081 -- Approval of regulations relating to drivers license examination.

6 AS 35.10.080 -- Approval of physical facility procurement and planning policy.

7. AS 37.05.280 -- Approval of leases by the state with a rental in excess of $12,000. (While this has general application, it was adopted as part of and specifically relates to construction of public buildings by ASHA for lease to the state and is necessary for the validity of the revenue bonds issued by ASHA.)

8. AS 37.12.080 -- Approval of investments in a single project or to a single applicant by Alaska Renewable Resources Corporation if the investment exceeds $1,500,000 or five percent of the resources of the corporation.

9. AS 38.05.037 -- Disapproval of zoning by the division of lands in the unorganized borough.

10. AS 38.05.182 -- Disapproval of a determination by the Commissioner of the Department of Natural Resources that the taking of royalty on natural resources in money rather than in kind is in the best interests of the state.

11. AS 38.05.065 -- Approval of disposition of oil and gas and contracts for sale of state owned royalty gas or oil.

12. AS 39.23.080 -- Approval of salary commission recommendations. (This is now repealed but until the pay bill this year went into effect, it was the basis on which higher government officials, including the governor, legislators and judges, were paid.)

13. AS 44.55.110 -- Approval of Alaska Power Authority plans. This approval is a specific condition on bonding.

14. AS 44.57.210 -- Approval of projects of the Alaska Toll Bridge Authority. This approval is required before bonds may be issued.

15. AS 46.03.758 -- Disapproval of regulations establishing civil penalties for discharge of oil.

16. AS 46.40.080 -- Approval of Alaska coastal management programs.

While all of these are clouded by the language in the majority opinion, that language is clearly dicta except on the point of annulment of regulations. In my opinion, an attempt to determine whether in later cases the court would follow the broad sweep in the instant case, narrow that sweep depending on the issue before it, or even confine the case to its facts would be pure speculation. Courts have frequently done all three. The majority opinion with its conclusionary approach unsupported by a coherent rationale is of little assistance in determing the scope of the opinion.

Earlier in the opinion, I discussed retro-activity as it applied to regulations annuled by concurrent resolution before the opinion. There is an even stronger case for holding that retroactive application cannot be given to a decision in the areas where annulment of regulations is not in question.

I am, however, very distrubed by the possibility that a future decision in this area could be retroactive to the date of this decision based on a finding by the Court that this decision "clearly foreshadowed" a subsequent decision that resolutions could not be used as prescribed in these statutes. I do not think this would be the decision since certainly at the time of enactment of the laws referred to there was no foreshadowing and bringing all legislative action to a halt in areas of major concern to the state while the legislature re-wrote the law in these areas is certainly not reasonable.

Since the alternative would be to halt, among other things, power development, coastal zone management, and oil and gas sales based on a possibility that the Court will look on legislative oversight in these areas as unfavorably as it does on legislative oversight of regulations, I recommend continuing to operate within the statutory framework now established until the Court, by a subsequent decision, clarifies its position.

I would also recommend that the legislature consider the question of what options are open to it to meet the serious problems created by the case.

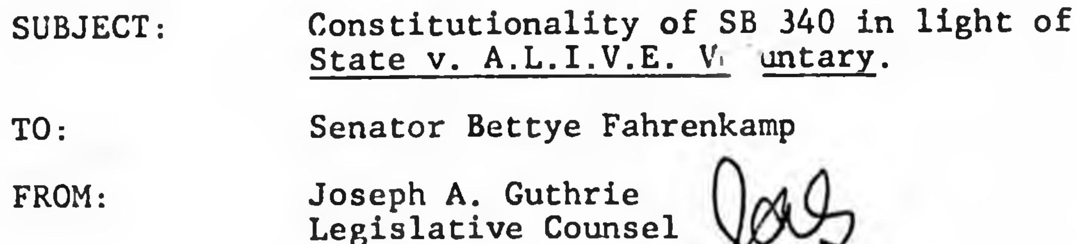
BGB:jdn

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

M E M O R A N D U M February 25, 1980



SUBJECT: Constitutionality of SB 340 in light of State v. A.L.I.V.E. V[illegible]untary.

TO: Senator Bettye Fahrenkamp

FROM: Joseph A. Guthrie
Legislative Counsel

As you may know, on February 19, 1980 the Alaska Supreme Court held in State v. A.L.I.V.E. Voluntary, No. 2022, that the use of a concurrent resolution to annul regulations, as authorized by AS 44.62.320, is unconstitutional. The Court equated annulment of regulations with repeal of statutes in finding that the use of a concurrent resolution to annul regulations violates the procedures specified for lawmaking in Article II of the Alaska Constitution. These procedures, which the Court described as safeguards against ill considered action, include the requirement that each bill be confined to one subject, have a descriptive title, contain an enactment clause of prescribed wording, be read three times on three separate days, and be passed by the recorded votes of a majority of each house.

None of these safeguards, of course, apply to concurrent resolutions.

SB 340 would require that all regulations be approved by concurrent resolution adopted by the legislature before becoming effective. While A.L.I.V.E. Voluntary, supra, is concerned with the annulment of regulations, not their prior approval, the decision turns on the use of the concurrent resolution to effectuate what the Court considered to be lawmaking. That the Court would consider a requirement of prior approval of regulations to be lawmaking seems clear, since the Court cited with approval Reith v. South Carolina State Housing Authority, Ct. C. P., 11th Jud. Dist. (August 28, 1975), rev'd on other grounds, 225 S.E.2d 847, 848, (S. C. 1976). In that case, the South Carolina Court of Common Pleas held invalid a statute stating that regu-

lations adopted would be invalid unless approved by a concurrent resolution of the South Carolina General Assembly on the grounds that the General Assembly could not perform a legislative function by means of a concurrent resolution. Therefore, it seems clear that the legislation you requested is now unconstitutional.

After consulting with your staff assistant, I drafted a sponsor substitute for SB 340 which would require that newly adopted regulations, before becoming effective, be placed before the legislature while it is in session for 60 days. This would afford the legislature an opportunity, before the regulation becomes effective, to review the regulation, consult with the executive regarding any modifications thought necessary, and if need be, enact a bill disapproving the regulation.

JAG:ljb

Enclosure

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

Guthrie copy

M E M O R A N D U M February 27, 1980

SUBJECT: Rationale for the addition of section 2 to the Judiciary Committee Substitute for SB 340

TO: Senator Bettye Fahrenkamp

FROM: Joseph A. Guthrie
Legislative Counsel JAG

You will note that we have added a section 2 to the Senate Judiciary Substitute for SB 340 repealing AS 24.20.445. That section authorizes the Administrative Regulation Review Committee to suspend the effectiveness of regulations adopted since the end of the last session of the legislature until 30 days into the next session. Since your bill would provide that no regulation becomes effective until it is before the legislature for 60 days, regulations adopted since the end of the last session of the legislature would not be effective in any case, and therefore the power of suspension is rendered nugatory.

JAG:ljb

Enclosure

March 5 1980

Senator Robert H. Ziegler Sr.
Pouch V
Juneau, Alaska 99811

Dear Senator Ziegler:

Last night, for the first time ever, I had the opportunity (just took the time) to watch "Capitol 80" on television. Regarding the business of regulations, I applaud your comments and I sincerely hope you can find some way to maintain control over the regulatory powers of agencies and commissioners. I loved your comment about them only wishing to be the legislature themselves! How true, how true!

I have stated repeatedly that commissioners are given far too much power - we've had regulations imposed by the Department of Public Safety on the school bus industry - we've got the Department of Natural Resources proposing some absolutely asinine fire control regulations - and it goes on and on. Commissioners are not elected representatives and should be answerable to those who are! There have been many times that regulations have been gross misinterpretations of legislative intent. The legislature must keep some control over this situation. DON'T GIVE UP!

Public hearings on regulations: what a joke! This last batch of fire control regs being pushed by Resources never had a hearing in the Delta area and we'll be greatly affected. When we objected, they said that a hearing was held in Fairbanks. Perhaps, but it was not announced within the Delta area. No one here knew about it. And the agency rep could not "remember" when it was advertised in the Fairbanks paper! The public needs your attitude on regulations - hang in there and keep legislative control.

E. C. PHILLIPS & SON, INC.
Box 8235
KETCHIKAN, ALASKA 99901

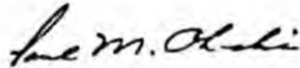
March 2, 1980

The Honorable Bettye Fahrenkamp
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

We support Senate Bill No. 340 which you introduced, requiring that all regulations be approved by the legislature before becoming effective 30 days after approval.

Sincerely,



Paul M. Ohashi

cc: Senator Robert H. Ziegler, Sr., Alaska State Senate
Richard B. Lauber, Pacific Seafood Processors Ass'n.

3/6/80

One way or another, we're going to take care of the regulation situation. Give my regards to your mother, Paul, when you see her.

Regards,

Phone: (907) 225-2080

THE ALASKA CHAPTER

ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.

SKILL
RESPONSIBILITY
INTEGRITY

BOX 4-2500 • ANCHORAGE, ALASKA 99509
TELEPHONE (907) 276-5354

3201 SPENARD ROAD
ANCHORAGE
H. GLENZER, JR.
MANAGER

February 28, 1980

The Honorable Robert H. Ziegler
Chairman, Senate Judiciary Committee
Alaska State Senate
Juneau, Alaska 99811

Dear Senator Ziegler:

At its duly constituted February Board of Directors meeting held in Juneau, Alaska on February 27 and 28, 1980, the members of the Board of Directors of the Alaska Chapter Associated General Contractors of America passed the following resolution in support of Committee Substitute for Senate Bill 340.

BE IT RESOLVED that the Board of Directors of the Alaska Chapter of the Associated General Contractors of America wish their testimony to become a matter of record in support of Committee Substitute for Senate Bill 340.

FURTHER BE IT RESOLVED that no member of the Board of Directors of the Alaska Chapter A.G.C. can recall that any present elected member of the State of Alaska Legislature can be identified as having sought election to office who espoused the increased regulation of the lives or businesses of the citizens of the State of Alaska, and that quite the contrary, to the best of our knowledge all the present elected Senators and Representatives of the State of Alaska had as one of their campaign promises the stopping of quasi-legislative law being promulgated by the regulation writers who form such a substantive portion of the employees of various State agencies and departments.

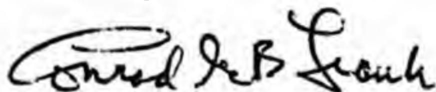
FURTHER BE IT RESOLVED that the Board of Directors of the Alaska Chapter A.G.C. of America is desirous of seeing the responsibility of the laws enacted by the State of Alaska legislature returned totally to their rightful location, which is the legislature itself, and removed from the various regulation writers within the State agencies and commissions.

FURTHER BE IT RESOLVED that it is the opinion of the Board of Directors of the Alaska Chapter A.G.C. of America, acting as spokesman for the over 500 general, associate and sub-contractor members from throughout the entire State of Alaska, that the legislature should concern itself to a much greater degree with the elimination of existing regulations that stifle the freedom of the individual, and which are used as a tool of the radical element of the environmental community to delay, impede or stop the economic development of the State of Alaska.

FURTHER BE IT RESOLVED and noted that it is the opinion of the Board of Directors of the Alaska Chapter A.G.C. of America that the problem addressed by Committee Substitute for Senate Bill 340 is not localized to the State of Alaska but is of national concern and is a root cause of the extremely high inflationary burden being placed upon the citizens of the entire United States by bureaucrats dedicated to the proposition that they alone know what is best for the citizenry in America.

We therefore unanimously have passed this resolution with the hope and intent that the laws of the State of Alaska and the regulations related thereto be returned to the people's elected representatives and removed from the bureaucratic bastions within the various agencies and commissions.

Sincerely,



Con Frank, President
Alaska Chapter Associated General Contractors of America

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL
JUNEAU, ALASKA 99811

February 27, 1980

The Honorable Bettye Fahrenkamp
Senator
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Sponsor substitute for SB 340 (legislative approval of regulations)

Dear Senator Fahrenkamp:

I have reviewed the Sponsor Substitute for SB 340 which you brought to the meeting of the Senate Judiciary Committee yesterday. It is a great improvement over the original SB 340 -- removing some of that version's constitutional and other problems -- but the Department of Law still cannot support it.

As we discussed at yesterday's meeting of the Senate Judiciary Committee, I will be in Anchorage and will not be able to attend the committee's Thursday, February 28, meeting at which this bill will be considered. Therefore, I am sending a copy of this letter to Senator Ziegler, and will include some comments on the original SB 340 since your sponsor substitute has not yet been formally introduced.

It is our opinion that the bill still suffers two serious defects: (1) it violates the separation-of-powers doctrine, and (2) the 60-day to almost a year's delay in a regulation's effective date is not workable. The delay and the constitutional issue are inextricably related in that the delay so interferes with the execution of the laws, for which the executive branch is responsible, that the executive branch is prevented from performing its constitutionally required functions.

As a practical matter, it is simply not feasible for the Board of Fisheries, for example, to delay the effective date of a June 1 fisheries opening until the following year when the legislature will have had 60 days to consider what to do about

that date. If the regulation is filed, for example, by the lieutenant governor on May 1 and the legislature adjourns May 10, this bill would require that the regulation lie before the legislature for another 50 days during the next regular session -- to convene the following January. In addition, any regulation filed after adjournment of the regular legislative session would have to wait until the full 60 days of the next regular session before taking effect. Again, for many regulations, such a deferred effective date would not be in the best interests of the state. Events and circumstances requiring adoption or amendment or repeal of administrative regulations do not necessarily coincide with legislative sessions, and thus this bill would seriously interfere with the executive branch's performance of its constitutionally required functions. AS 44.62.270 says that it is "state policy that emergencies are held to a minimum and are rarely found to exist," and the emergency regulation approach should be used sparingly.

Concerns similar to those being expressed now in the legislature were expressed in 1975 when the legislature enacted the bill which became ch. 27 SLA 1975, creating the Administrative Regulation Review Committee. At that time, it was recognized that the legislature should not interfere with the regulations-adoption process as a means of executing statutorily required functions. The legislature felt that what was needed was a systematic means of review. See the second sentence of AS 24.20.400 (the last portion of which, as you know, was held invalid on February 19, 1980, by the Alaska Supreme Court in State v. A.L.I.V.E Voluntary). Section 2, ch. 27 SLA 1975 enacted AS 44.62.320(b), requiring the lieutenant governor to submit a regulation to the new committee within 45 days after the regulation is filed. Believing that an earlier transmission to the committee would be even more helpful, in 1978 the legislature amended AS 44.62.320(b) (see sec. 5, ch. 64 SLA 1978) to require the lieutenant governor to submit the regulation to the committee "at the same time" that the regulation is filed by the lieutenant governor.

The current system involving prompt review of regulations by the Administrative Regulations Review Committee appears to adequately address the concern expressed in Sponsor Substitute for SB 340, and does so without raising the serious constitutional and practical issues that this bill raises.

However, in the A.L.I.V.E. Voluntary case, the Alaska Supreme Court stated (at page 24 of the advance copy), "While the power to void agency regulations could be exercised by either the legislature, or by an agency, when the legislature exercises such power it must do so while acting as a legislature. It may not grant itself the power to act as an agency." Citing cases from other jurisdictions, our court indicated that a statute expressing some administrative agency's role in performing an oversight function would be valid. Perhaps some such arrangement based upon referrals from the Administrative Regulation Review Committee could be developed.

I would like to comment on three statements contained in your undated, but presumably February 26, 1980, memo to Senator Ziegler covering your proposed sponsor substitute. Near the middle of your second paragraph on page 1 you state that "a citizen should be able to prepare or give testimony on a particular set of regulations with the knowledge that its concerns will be considered." The last sentence of AS 44.62.-210(a) already requires this, stating "The state agency shall consider all relevant matter presented to it before adopting, amending or repealing a regulation." An earlier legislature anticipated your concern and enacted a statute covering it.

The last sentence on your first page says "If the person misses the hearing he has no other opportunity to address the issue." That is not quite correct. If an oral hearing is scheduled, and someone is not able to appear in person, he or she may present written comments or arguments. AS 44.62.210(a). If the person misses the opportunity for submitting written comments, AS 44.62.220 gives him or her the right to petition for a change in the regulations. AS 44.62.230 sets out the procedure for such a petition. In addition, AS 44.62.060 prohibits the lieutenant governor from filing a regulation unless it has been approved for legal matters by the Department of Law. If a person has a legal concern regarding a proposed or newly adopted regulation, he or she can submit that concern to the Department of Law with the assurance that it will be considered. If the person believes that a regulation is invalid and the Department of Law has not agreed with that point of view, the person can submit the matter to court for a declaratory judgment under AS 44.62.300. And, of course, if all of these procedures fail to

produce the result sought by the individual, he or she is free to work with the legislature in enacting legislation to supersede the offending regulation.

In the second sentence of the fourth paragraph on page 2 of your memo, you state that the A.L.I.V.E. Voluntary decision "removes the authority for the regulation review committee to do anything but ask that an agency change its regulations." That too is not quite correct. The committee is always free to work for legislative amendment of the statutes under which the regulations were adopted. As a committee of the legislature, it is, of course, in a good position to do so.

With regard to the original bill, I generally agree with Legislative Counsel Joe Guthrie's February 25 comments on the A.L.I.V.E. Voluntary case and the bill's unconstitutionality. As to more technical problems with the original bill, the "or" between paragraphs (3) and (4) of sec. 260 is confusing. It appears to make each paragraph stand independently. For example, an emergency regulation may not remain in effect unless, under paragraph (2), the agency certifies compliance with secs. 60 and 150 -- 210 of the APA, indicating that legislative approval is not required if the agency complies with those sections; but I wonder if that is what you intended. Also, under paragraph (3), an emergency regulation may not remain in effect unless the legislature has approved it under sec. 275; but sec. 275 does not provide for notice, hearing, or the attorney general's legal approval; thus, if the legislature approves the regulation it will remain in effect even though there has been no notice, hearing, or legal approval. And, under paragraph (4), the emergency regulation will not remain in effect unless the time period under sec. 275(c) has not expired; sec. 275(c) sets a one-year period for legislative approval; so, it appears that an emergency regulation could remain in effect a year, but then that is inconsistent with the lead-in line for sec. 260(a) which says 120 days. If the word "and" was intended to be used in place of the word "or," and all four requirements must be met, what happens when the legislature is not in session and it is necessary to adopt an emergency regulation? In addition, line 29 on page 2 of the original bill refers to filing "with" the lieutenant governor; however, under the rest of the APA,

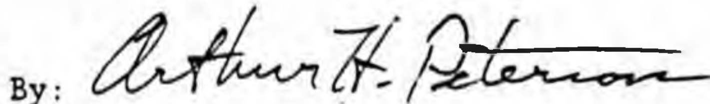
regulations are "submitted to" him and "filed by" him; this distinction is significant because it is the filing by him that starts the time period running under current law.

In summary then, the Department of Law, upon consideration of both the constitutional and practical problems inherent in both the original SB 340 and the proposed Sponsor Substitute for SB 340, cannot support either version. The current law, providing for prompt review of regulations by the Administrative Regulations Review Committee, appears to be adequate, but we are open to suggestions for improving the system within the bounds of the constitution.

Thank you for this opportunity to offer our comments. We would be pleased to discuss this with you and other legislators if you and they wish.

Yours truly,

AVRUM M. GROSS
ATTORNEY GENERAL

By: 
Arthur H. Peterson
Assistant Attorney General

AHP:md

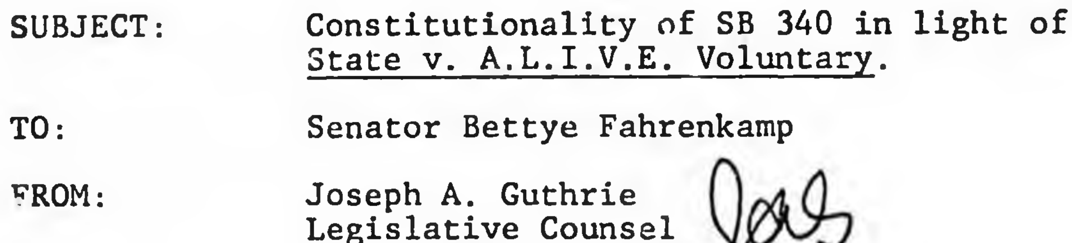
cc: Keith Specking
Legislative Assistant
Governor's Office

STATE OF ALASKA
THE LEGISLATURE

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM February 25, 1980



SUBJECT: Constitutionality of SB 340 in light of State v. A.L.I.V.E. Voluntary.

TO: Senator Bettye Fahrenkamp

FROM: Joseph A. Guthrie
Legislative Counsel

As you may know, on February 19, 1980 the Alaska Supreme Court held in State v. A.L.I.V.E. Voluntary, No. 2022, that the use of a concurrent resolution to annul regulations, as authorized by AS 44.62.320, is unconstitutional. The Court equated annulment of regulations with repeal of statutes in finding that the use of a concurrent resolution to annul regulations violates the procedures specified for lawmaking in Article II of the Alaska Constitution. These procedures, which the Court described as safeguards against ill considered action, include the requirement that each bill be confined to one subject, have a descriptive title, contain an enactment lause of prescribed wording, be read three times on three separate days, and be passed by the recorded votes of a majority of each house.

None of these safeguards, of course, apply to concurrent resolutions.

SB 340 would require that all regulations be approved by concurrent resolution adopted by the legislature before becoming effective. While A.L.I.V.E. Voluntary, supra, is concerned with the annulment of regulations, not their prior approval, the decision turns on the use of the concurrent resolution to effectuate what the Court considered to be lawmaking. That the Court would consider a requirement of prior approval of regulations to be lawmaking seems clear, since the Court cited with approval Reith v. South Carolina State Housing Authority, Ct. C. P., 11th Jud. Dist. (August 28, 1975), rev'd on other grounds, 225 S.E.2d 847, 848, (S. C. 1976). In that case, the South Carolina Court of Common Pleas held invalid a statute stating that regu-

lations adopted would be invalid unless approved by a concurrent resolution of the South Carolina General Assembly on the grounds that the General Assembly could not perform a legislative function by means of a concurrent resolution. Therefore, it seems clear that the legislation you requested is now unconstitutional.

After consulting with your staff assistant, I drafted a sponsor substitute for SB 340 which would require that newly adopted regulations, before becoming effective, be placed before the legislature while it is in session for 60 days. This would afford the legislature an opportunity, before the regulation becomes effective, to review the regulation, consult with the executive regarding any modifications thought necessary, and if need be, enact a bill disapproving the regulation.

JAG:ljb

Enclosure

SB
365

COMMITTEE REPORT

SENATE

FURTHER: None

1/25/80

Date: [illegible]

Mr. President:

The Committee on JUDICIARY has had SB 365
imposing penalties on persons who deal in intoxicating liquors without a license

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass   [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for ______ [ ] same title [ ] new title

and recommends ______

[ ] AND attaches a "Letter of Intent"   [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the ______ Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS:

CHAIRMAN

S 60 (Rev. 12/78)

SENATE AMENDMENT

BY SENATE JUDICIARY COMMITTEE

To: AMEND SENATE BILL No. SB 365

To: HOUSE BILL No.

PAGE: 1. LINE: 16

delete [six] insert five

In context, the sentence will read "a felony and punishable by imprisonment for not more than [six] five years, or by a fine of not more than $30,000, or by both..........

STATE OF ALASKA

Inter-Department Route Slip

TO:
MAIL STATION NUMBER ____________

DEPARTMENT ____________

ATTENTION ____________

☐ Approval	☐ Note & Return
☐ Signature	☐ Initial & Return
☐ Comment	☐ Return As Requested
☐ Contact Me	☐ Return For Approval
☐ Prepare Reply	☐ Necessary Action
☐ For Your File	☐ Your Information

Remarks:

FROM:
MAIL STATION NUMBER ____________

DEPARTMENT ____________

BY ____________ DATE ____________

02-002 (REV.10/73)

BILL ANALYSIS

ASSIGNMENT DATE________

UNASSIGNED________

DEPARTMENT	SPONSOR (PRINCIPAL)	BILL NO.
Public Safety		SB 365

DEPARTMENT POSITION

Support

DIVISION DIRECTOR	DATE	COMMISSIONER	DATE
Col. Anderson	3/18/80	William Nix	3/18/80

GOVERNOR'S OFFICE USE

☐ POSITION NOTED ☐ POSITION APPROVED ☐ POSITION DISAPPROVED

BY: DATE:

SUMMARY

(1) RELATED BILLS (SIMILAR OR CONFLICTING)
(2) OTHER AGENCIES AFFECTED BY BILL

(2) a. ORGANIZATIONAL SUPPORT FOR BILL	(2) b. ORGANIZATIONAL OPPOSITION TO BILL

(3) PROGRAM EFF S OF BILL

(4) FISCAL IMPACT: ☒ NONE ☐ FISCAL ANALYSIS ATTACHED

(5) AMENDMENTS PROPOSED:

(6) COMMENTS:

District Court

State of Alaska

FIRST JUDICIAL DISTRICT
415 MAIN STREET, ROOM 400
KETCHIKAN, ALASKA
99901

CHAMBERS OF
H. C. KEENE, Jr., JUDGE

June 29, 1979

Hon. Robert H. Ziegler, Sr.
Alaska State Senate
Ziegler, Cloudy, Smith, King & Brown
307 Bawden Street
Ketchikan, Alaska 99901

Re: Repeal of Alaska Enoch Arden Law or Presumption of Death After Six Continuous Years of Disappearance

Dear Senator Ziegler:

Pursuant to our conversation of 28 June, 1979 relative to the holding of Presumptive Death Hearing, I have gathered the material concerning repeal of A.S. 20.05.130 which provided that a person missing for six continuous years was presumed to be dead and his estate was to be administered in accordance with the law applicable to the administration of the estate of deceased persons. (Exh. A)

It is noted that this provision was located under Title 20, Infants and Incompetents, and specifically with those sections dealing with Guardianship. Title 20 was deleted out of existence or otherwise amended by the Uniform Probate Code enactment in 1972. This particular section was disposed of by the very last sentence on the last page, 121, of the 1972 Session Laws, Chapter 78, in a most summary manner. (Exh. B)

The above action was noted in the Alsska Statutes Supplement to Title 20 solely with respect to the appointment of a guardian for a missing person. (Exh. C)

Declaration of Death for persons who are missing and presumed to have died without the location of their body is covered under the Code of Civil Procedure, Title 9. Specifically, Sections 09.55.020 - 09.55.060 cover the subject. (Exh. D)

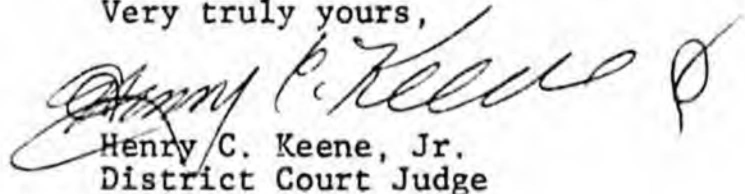
Hon. Robert H. Ziegler, Sr.
June 29, 1979
Page 2

It is my assumption from studying the various statutes and legislative action that the provision for the declaration of death for a person who had been continuously missing for more than six years was inadvertently swept away with the introduction of the Uniform Probate Code. It is felt that this provision should be effective as I indicated when you recently posed questions relative to a Presumptive Death Hearing for a person who had been last seen in 1928 when he went into the woods hunting.

My particular interest in the matter has not been too great since having been relieved of the duties of Coroner some years past. Coroners who have mentioned this to me apparently have not gone further with the subject.

It is my recommendation that a statutory provision be enacted into the Code of Civil Procedure providing that a person missing for a considerable period of time such as six years be presumed dead and a Declaration of Presumptive Death be entered. This would fill the void created by the deletion of this provision from the Guardianship Section, where it really did not belong, and would enable the survivors to administer the estate of the missing person.

Very truly yours,



Henry C. Keene, Jr.
District Court Judge

HCK:ri

Enclosures

TO: SENATOR ZIEGLER

FROM: GUY VAN DOREN

SUBJECT: SENTENCING AND FINES FOR FELONIES AND MISDEMEANORS

Murder in the second degree...	Class A felony
Manslaughter ...	Class A felony
Negligent homicide..........	Class C felony
Assult in the First Degree...	Class A felony
" " " Second "	Class B "
" " " Third "	Class A Misdemeanor
Reckless endangerment.........	Class A Misdemeanor
Sexual Assult in the first degree...	Class A felony
" " " " Second "	Class B felony

FINES

Murder in the first or second degree, or kidnapping	$75,000.00
Class A, B, or C felony.........	50,000.00
Class A Misdemeanor......	5,000.00
Class B Misdemeanor....	[illegible],000.00
Violations..not to exceed...........	300.00

IMPRISONMENT

Murder in the second degree...... 5 to 99 years

Class A Felony....... If the offenseis a first felony conviction, other than for manslaughter and the defendent possessed or used a fire-arm or caused serious physical injury during commission of the crime....six (6) years....

Class B felony..........	Not more than 10 years 2nd. conviction 4 years
Class C felony.......	Not more than 5 years
Class A Misdemeanor...	Not more than 1 year
Class B Misdemeanor	Not more than 90 days

District Court

State of Alaska

FIRST JUDICIAL DISTRICT
415 MAIN STREET, ROOM 400
KETCHIKAN, ALASKA
99901

CHAMBERS OF
H. C. KEENE, Jr., JUDGE

January 21, 1980

Hon. Robert H. Ziegler, Sr.
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: Presumptive Death

Dear ~~Senator Ziegler~~ Bob:

This is in reply to your letter of January 16, 1980.

First and foremost, I must admit that the section pointed out by Mr. Vassar probably escaped my notice although I have considered it in the past.

However, I do not think it will fit the bill. Sec. 13.06.035 is a rule of evidence only. My evaluation is that this is not sufficient for the average magistrate or judge handling presumptive death certificates to act upon. A provision which is more in the nature of a directive or authority for specific action is needed.

I, therefore, feel that Senate Bill No. 293 is still necessary. This evaluation is based on discussions with other judicial officers and my own experience.

Very truly yours,

Henry

Henry C. Keene, Jr.
District Court Judge

HCK:ri

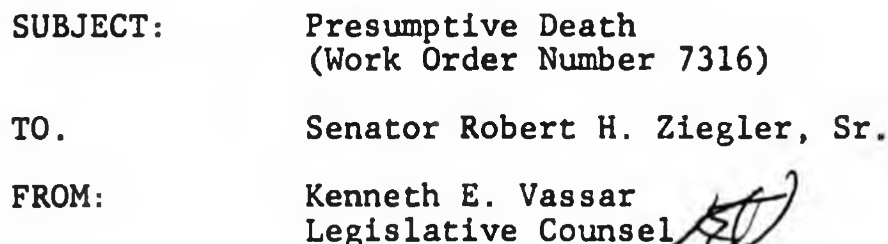
Enclosures

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M   January 15, 1980



SUBJECT: Presumptive Death
(Work Order Number 7316)

TO. Senator Robert H. Ziegler, Sr.

FROM: Kenneth E. Vassar
Legislative Counsel

Enclosed is the letter from Judge Keene with back-up "exhibits". I have found in the Uniform Probate Code (AS 13.06 - 13.36) a section which is substantially similar to the repealed section referred to in Judge Keene's letter and to the provisions of SB 293. That section is AS 13.06.035(3), which provides:

> Sec. 13.06.035. EVIDENCE AS TO DEATH OR STATUS. In proceedings under this code, the rules of evidence in courts of general jurisdiction including any relating to simultaneous deaths, are applicable unless specifically displaced by the code. In addition, the following rules relating to determination of death and status are applicable:
>
> * * *
>
> (3) a person who is absent for a continuous period of five years, during which he has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead; his death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

I regret not having seen this section previously. It appears to accomplish Judge Keene's goal.

KEV:ljb

Enclosures

SB
366

COMMITTEE REPORT

SENATE

FURTHER: FINANCE

1/29/80

Date: 2/5/80

Mr. President:

The Committee on JUDICIARY has had SB 366

increasing the number of superior court judges

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for ______ [ ] same title [ ] new title

and recommends ______

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the ______ Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS:

CHAIRMAN

SUPPORT MATERIAL FOR TWO ADDITIONAL ANCHORAGE JUDGES

The backlog and delay in Superior Court civil cases in Anchorage has reached an unacceptable level. Court delay has reached the point that it takes approximately 18 months from the date that a "Memo to Set" is filed until a trial can be scheduled. Even when this trial date is reached, trials are often postponed for an additional several months due to the congestion of the trial calendar and the inability of the court to provide a judge on the scheduled date. Because of this delay, cases are requiring from 18 months to more than two years from the date of filing to the date of completion at the trial court level.

The median time to trial for civil cases has increased from 417 days in 1976 to 598 days in 1979. Backlog in civil cases has grown from 2,799 at the end of 1975 to 4,499 at the end of 1978, or an increase of 61 per cent in those three years.

What has caused this rapid deterioration of the civil calendar in Anchorage? In the first instance, the civil filings in the Superior Court have increased approximately 30 per cent since 1974, with no additional Superior Court judges added during that time. Second, the number of felony trials has increased by over 80 per cent since 1975, which in turn reduces the available judge time for processing of civil cases. Also, the length of felony trials

has increased 37 per cent in the past three years. There likewise appears to be an increase in the length of trials in the civil area.

The problem of backlog in the Anchorage calendar has been addressed by a committee comprised of the Chief Justice and representatives of the Supreme Court and trial courts of Anchorage. This committee has studied the calendaring process in Anchorage extensively, and has made recommendations to the Anchorage trial court for implementation of procedures that will increase the productivity of the trial court in the future. As a result of this committee's work, the following steps have been taken in an effort to reduce the delay in processing cases and hopefully to bring the system back into a position to process civil cases within approximately a one-year time frame:

1. Beginning January 15, 1980, and continuing for four months, the Anchorage Superior Court is being augmented by an infusion of judges from other jurisdictions within the state and retired judges in an effort to work down the existing backlog. Already these judges have disposed of many pending cases.

2. The committee recommended the implementation of a revised case assignment system which will provide for an assignment of each case to an individual judge for all

future proceedings, including the trial. This earlier individual assignment system will permit the judges to obtain greater familiarity with their cases and increase the elements of judicial accountability and responsibility for efficient disposition of pending cases. These factors should contribute to a more rapid processing of civil cases.

3. A committee comprised of judges and lawyers in Anchorage has been established to work out agreement on standard requirements for pre-trial case preparation. Such requirements should eventually result in shorter, more efficient trials and hearings due to more thorough preparation by the parties

4. A request for two additional Superior Court judges has been introduced. While the steps discussed above will aid in reducing the current short-term problem in Anchorage and will increase the long-term efficiency of the court, additional judicial resources are still necessary if the court is to avoid future backlogs and prevent deterioration of service as has happened in the past three to four years.

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. S.B. 366
Title An Act Relating to the Number of Superior Court Judges
Requested by Senate Judiciary Committee Date Feb. 4, 1980

II. FISCAL DETAIL
Agency Affected Alaska Court System
Program Category Affected Administration of Justice
BRU, Program, or Subprogram(s) Affected Alaska Court System
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES		297.4	319.7	343.7	369.5	397.2
200 TRAVEL		2.0	2.2	2.4	2.6	2.9
300 CONTRACTUAL						
400 COMMODITIES		1.0	1.1	1.2	1.3	1.4
500 EQUIPMENT		14.6				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		315.0	323.0	347.3	373.4	401.5

FUNDING (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
GENERAL FUND		315.0	323.0	347.3	373.4	401.5
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
FULL TIME		8	8	8	8	8
PART TIME						
TEMPORARY						

III ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

See attached Budget Summary.

IV. DATE February 4, 1980 PREPARED BY Richard P. Barrier
AGENCY Alaska Court System
PHONE 264-0545

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/79)

BUDGET SUMMARY - S.B. 366

Personnel:		
2 judges at $63,120	$126,240	
Benefits	7,719	
Total judges	133,959	$133,959
2 secretaries at $20,136 (Range 12)	40,272	
2 in-court clerks at $20,136 (Range 12)	40,272	
2 law clerks at $23,808 (Range 15)	47,616	
Benefits	35,262	
Total support	163,424	163,424
Total Personnel	$297,383	
Travel:		2,000
Commodities:		1,000
Equipment:		14,600
Grand Total		$314,983

SB
367

COMMITTEE REPORT

SENATE

FURTHER: None

3/11/80

Date: 4/24/8?

Mr. President:

The Committee on JUDICIARY has had SB 367

savings associations

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[X] do pass with attached amendments(s)

[ ] replace with CS for ______ [ ] same title [ ] new title

and recommends ______

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the ______ Committee

MEMBERS SIGNING DO PASS	MEMBERS HAVING OTHER RECOMMENDATIONS:

______
CHAIRMAN

S 60 (Rev. 12/78)

AMENDMENT

OFFERED IN THE SENATE: BY: SENATE JUDICIARY COMMITTEE

TO: AMEND SENATE BILL No. CSSB 367

HOUSE BILL No. ______

PAGE: 1 LINE: 15 through line 19

Beginning with the word "For" on line 15, delete all material through line 19.

Original sponsor: Hackney

Offered: 3/11/80
Referred: Judiciary

1 IN THE SENATE BY THE COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 367

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to savings associations."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 06.30.025 is repealed and re-enacted to read:

9 Sec. 06.30.025. DECLARATION OF POLI Y; RULE-MAKING AUTHORITY. (a)
10 In giving authority for the establishment of associations, it is the
11 intent of the legislature to make available to the people of the state
12 the benefits of savings and loan associations, thereby promoting a sound
13 and competitive association system, the practice of thrift, savings,
14 investment, home financing, and the security of persons saving through
15 associations. For the accomplishment of these purposes, the legislature
16 intends by this chapter to vest in the department, in addition to other
17 regulatory authority, the authority to allow by regulation those powers
18 possessed by state-chartered associations in other states which the
19 department determines have demonstrated accomplishment of these purposes.

20 (b) The commissioner may by regulation define the powers of asso-
21 ciations and adopt regulations to carry out the purposes of associations
22 consistent with this chapter and AS 06.01.020.

23 * Sec. 2. AS 06.30.030 is amended to read:

24 Sec. 06.30.030. STANDARDS FOR REGULATIONS. The commissioner in
25 the exercise of the power to issue regulations under [NECESSARY TO CARRY
26 OUT] this chapter shall act in the interests of a sound and competitive
27 savings and loan system and in the interest of promoting and encouraging
28 thrift, savings, investment, home financing, and the security of persons
29 saving through savings associations.

* Sec. 3. AS 06.30.280 is amended by adding a new paragraph to read:

(19) under regulations adopted by the department provide negotiable or nonnegotiable orders of withdrawal accounts for its depositors.

* Sec. 4. AS 06.30.295 is amended to read:

Sec. 06.30.295. FIXED RATE, FIXED TERM ACCOUNTS. No association may issue, sell, negotiate, or advertise for sale either to members or the public any type of investment security other than savings accounts unless otherwise provided in this chapter or in regulations adopted under AS 06.01.020. An association may accept accounts bearing a definite rate of return for fixed periods of time when its board of directors has adopted a resolution providing for the issuance of fixed rate, fixed term accounts and those accounts are insured by the Federal Savings and Loan Insurance Corporation.

* Sec. 5. AS 06.30.375 is amended to read:

Sec. 06.30.375. SAVINGS ACCOUNTS IN GENERAL. (a) Savings accounts shall be opened for cash or its equivalent. Except as limited by the board of directors, a member may make additions to his savings accounts in amounts and at times he chooses.

(b) Earnings on accounts shall be fixed or otherwise declared in accordance with the provisions of this chapter, the implementing regulations adopted under this chapter, or regulations adopted under AS 06.01.020.

(c) Under regulations adopted by the department, each association may classify and differentiate among accounts but [EXCEPT AS PROVIDED IN AS 06.30.450 - 06.30.455,] an association may not prefer one of its savings accounts within an account class over another savings account in the same class as to the right to participate in earnings [RECEIVE DIVIDENDS].

(d) No preference between savings account members may be created with respect to the distribution of assets upon voluntary or involuntary liquidation, dissolution or winding up the business of the association.

* Sec. 6. AS 06.30.450 is amended to read:

Sec. 06.30.450. DECLARATION OF DIVIDENDS. As of one of the last three business days before the closing of any period as fixed by the board of directors, the board may declare a dividend on various account classifications [SAVINGS ACCOUNTS] of record on that date. The dividend shall be payable as of that date or a later date not more than 30 days following the close of the period as determined by the board. No dividends shall be declared except dividends payable as provided in this section.

* Sec. 7. AS 06.30.455 is amended to read:

Sec. 06.30.455. COMPUTATION AND PAYMENT OF DIVIDENDS ON SAVINGS PLANS. Dividends shall be credited to savings accounts on the books of the association on the dividend-payment date unless a savings account holder requests and the association agrees to pay dividends on all or part of a savings account in cash. Dividends payable in cash shall be paid on the dividend-payment date and may be paid by check or bank draft. All [SAVINGS] account holders shall participate equally in earnings [DIVIDENDS] pro rata to the withdrawal value of their respective accounts unless an association has classified or differentiated among its accounts. If an association has classified and differentiated among its accounts, all account holders in the same class participate equally in earnings pro rata to the withdrawal value of their respective accounts. [, EXCEPT THE] The association may pay dividends according to the rate limitations prescribed for different classes of accounts and administered by the Federal Home Loan Bank Board. Dividends shall be declared on the withdrawal value of each savings account at the begin-

1 ning of the dividend period, plus additions to it made during the
2 dividend period, less amounts withdrawn and noticed for withdrawal,
3 which for dividend purposes shall be deducted from the latest previous
4 addition, computed at the declared rate for the time invested. The date
5 of investment is the date of actual receipt by the association of an
6 account or an addition to an account. If the board of directors so
7 determines, accounts or additions received by the association on or
8 before a date not later than the 10th day of the month, unless the day
9 determined is not a business day, in which case it may be the next
10 succeeding business day, shall receive dividends as if invested on the
11 first day of the month in which the payments were received. If the
12 board makes this determination, it also shall determine that payments
13 received after the determination date shall either (1) receive dividends
14 as if invested on the first day of the next succeeding month, or (2)
15 receive dividends from the date of actual receipt by the association.
16 * Sec. 8. AS 06.30.460 is repealed and re-enacted to read:
17 Sec. 06.30.460. APPLICATION FOR WITHDRAWAL OR TRANSFER. An
18 account holder or an authorized representative may at any time apply for
19 withdrawal or transfer of all or a part of an account. The application
20 may consist of a negotiable or nonnegotiable order of withdrawal or an
21 authorization for transfer from one account to another. Each appli-
22 cation shall request immediate withdrawal or transfer of a specified
23 amount in accordance with AS 06.30.470. A member may cancel his
24 application at any time in whole or in part by written notice.
25 * Sec. 9. AS 06.30 is amended by adding a new section to article 15 to
26 read:
27 Sec. 06.30.897. ADDITIONAL POWERS. The enumeration of the general
28 powers of association in AS 06.30.280 does not exclude the exercise of
29 other powers that are appropriate for the achievement of the objectives

and purposes of an association under this chapter. With the approval of the department, an association may provide for the exercise of other powers in its bylaws or regulations.

* Sec. 10. AS 06.30.910 is amended by adding a new paragraph to read:

(27) "order of withdrawal" means an order directing withdrawal from a savings or similar interest-bearing account.

SECTION ANALYSIS OF CS FOR SB 367 BY TOM BISS REPRESENTING PENN. SAVINGS.

SECTION ONE: VESTS THE DEPT OF COMMERCE WITH REGULATORY POWERS TO PROMULGATE REGULATIONS EXISTING IN OTHER STATES FOR STATE CHARTERED SAVINGS AND LOAN ASSOCIATIONS.

SECTION TWO: EMPOWERS THE COMMISIONER OF COMMERCE TO ISSUE REGULATIONS UNDER THIS ACT.

SECTION THREE: PROVIDES REGULATORY POWER TO THE DEPT. OF COMMERCE TO ALLOW NEGOTIABLE AND NONNEGOTIABLE ORDERS OF WITHDRAWAL (NOW) ACCOUNTS.

SECTION FOUR: AMENDS SEC. 06.30.295 TO ALLOW FOR NOW ACCOUNTS.

SECTION FIVE: ALLOWS DEPT. OF COMMERCE TO ESTABLISH NOW ACCOUNTS BY REGULATION ALLOWS WITHDRAWLS FROM INTEREST BERING ACCOUNTS AND GIVES THE DEPOSITOR THE RIGHT TO EARNINGS.

SECTION SIX: EXPANDS AUTHORITY FOR PAYMENT OF DIVIDENDS FROM JUST SAVINGS ACCOUNTS TO VARIOUS ACCOUNT CLASSIFICATIONS. ALLOWS DIVIDENDS TO BE PAID ON NOW ACCOUNTS.

SECTION SEVEN: ESTABLISHES AUTHORITY OF DEPT. OF DEPT. OF COMMERCE TO ESTABLISH INTEREST RATES TO BE PAID TO NOW ACCOUNT HOLDERS. RE-CLASSIFIES DIVIDENDS AS EARNINGS AND EXPANDS PAYMENTS ON EARNINGS FOR SAVINGS ACCOUNTS TO COVER ALL CLASSIFICATIONS OF ACCOUNTS.

SECTION EIGHT:REWRITES AS 06.30.460 TO ALLOW FOR NOW ACCOUNTS.

SECTION NINE: PROVIDES SAVINGS AND LOANS ASSOCIATIONS THE AUTHORITY TO AMEND THEIR BY-LAWS TO ALLOW FOR NOW ACCOUNTS.

SECTION TEN: REDEFINES ORDER OF WITHDRAWL TO ACCOMODATE NOW ACCOUNTS.

THE FIRST NATIONAL BANK OF ANCHORAGE

February 25, 1980

Brad Bradley, State Senator
Chairman, Senate Commerce Committee
Pouch V State Capitol
Juneau, Alaska 99811

Dear Senator Bradley:

I just am not conversant with the activities, structure, and laws relating to savings and loan associations to comment on Senate Bill #367.

Rather than to make an uninformed comment, I thought better to make none. I do thank you for considering me and my advise.

Sincerely,

D. H. CUDDY,
President

DHC:hla
cc

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT
DIVISION OF BANKING, SECURITIES, SMALL LOANS & CORPORATIONS

POUCH D
JUNEAU, ALASKA 99811

February 27, 1980

Senator Brad Bradley
Chairman, House Commerce Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Bradley:

Re: NOW Account Legislation
(SB 367)

At the hearing held by the Senate Commerce Committee several weeks ago on SB 367, I indicated that the department had just received an opinion from the Department of Law stating that as a practical matter the Alaska Savings Association Act (AS 06.30) precluded state-chartered savings associations from offering NOW accounts.

Since that time I had the opportunity to review the provisions of AS 06.30 in the context of the Attorney General's opinion. I have found that to make clear that these accounts are not prohibited by AS 06.30, one must make adjustments to five other sections of that chapter. I am therefore resubmitting the full set of amendments that I believe are necessary to provide clear authority and procedures for state-chartered savings associations to offer NOW accounts.

I have reviewed this new set of amendments with Mr. Turner, President of Peninsula Savings and Loan Association. It is my understanding that he is in agreement with them.

I stand ready to discuss these proposed amendments with you or members of your staff at your convenience.

Sincerely,

Julius J. Brecht
Director

JJB:aw
Enclosure

08-H14LH

cc: Senator Glen Hackney
Eddie Turner

February 27, 1980

PROPOSED AMENDMENTS TO SB 367

1. I suggest the following to replace Section 1 of the bill so that there is a clear expression of legislative intent:

"Sec. 06.30.025 DECLARATION OF POLICY; RULE-MAKING AUTHORITY. (a) In providing authority for the establishment of associations, it is the intent of the legislature to make available the benefits of savings and loan association business, thereby promoting a sound and competitive association system, the practice of thrift, savings, investment, home financing, and the security of persons saving through associations. For the accomplishment of these purposes, the legislature intends by this chapter to vest in the department, in addition to other regulatory authority, the authority to allow by regulation those powers possessed by state-chartered associations in other states which the department determines have demonstrated accomplishment of this declaration of policy.

(b) The commissioner may by regulation define the powers of associations and adopt regulations to carry out the purposes for their creation consistent with the provisions of this chapter and AS 06.01.020."

2. I suggest that the word "savings" be deleted in lines 28 and 29 on page 1 of the bill in that the term "association" is defined as a savings and loan association in AS 06.30.910(1).

3. Line 19 of the bi[illegible]l be changed to read:

"exercise of the power to issue regulations <u>under</u> [NECESSARY TO CARRY OUT] this"

In this way the provisions of AS 06.30.030 will be more compatible with the proposed changes to AS 06.30.025 and the new Sec. 06.30.897.

4. The word "objects" on line 28 of page 1 of the bill should be replaced with the word "objectives."

5. In addition, I suggest that the following amendments be made to make clear that state-chartered savings associations may offer NOW accounts. (These recommendations are made as a result of the February 1, 1980 opinion of the Department of Law on NOW accounts under AS 06.30):

(a) AS 06.30.295 is amended to read:

"AS 06.30.295. FIXED RATE; FIXED TERM ACCOUNTS. No association may issue, sell, negotiate or advertise for sale either to members or the public any type of investment security other than savings accounts unless otherwise provided under this chapter or AS 06.01.020. An association may accept accounts bearing a definite rate of return for fixed periods of time when its board of directors has adopted a resolution providing for the issuance of fixed rate, fixed term accounts and those accounts are insured by the Federal Savings and Loan Insurance Corporation."

(b) AS 06.30.375 is amended to read:

"Sec 06.30.375. SAVINGS ACCOUNTS IN GENERAL. (a) Savings accounts shall be opened for cash or its equivalent. Except as limited by the board of directors, a member may make additions to his savings accounts in amounts and at times he chooses.

(b) Earnings on accounts shall be fixed or otherwise declared in accordance with the provisions of this chapter, the implementing regulations, or AS 06.01.020.

(c) Under regulations adopted by the department, each association may classify and differentiate among deposits but no association shall prefer one of its savings accounts within an account classification over any other savings account in the same classification as to the right to participate in earnings. [EXCEPT AS PROVIDED IN §§ 450-455 OF THIS CHAPTER, AN ASSOCIATION MAY NOT PREFER ONE OF ITS SAVINGS ACCOUNTS OVER ANOTHER AS TO THE RIGHT TO RECEIVE DIVIDENDS.]

(d) No preference between savings account members may be created with respect to the distribution of assets upon voluntary or involuntary liquidation, dissolution or winding up the business of the association."

(c) AS 06.30.450 is amended to read:

"Sec. 06.30.450. DECLARATION OF DIVIDENDS. As of one of the last three business days before the closing of any period as fixed by the board of directors, the board may declare dividends on various account classifications of record on that date. The board is not required to declare any dividends or the same dividends for the various account classifications [A DIVIDEND ON SAVINGS ACCOUNTS OF RECORD ON THAT DATE]. The dividends shall be payable as of that date or a later date not more than 30 days following the close of that period as determined by the board. No dividends shall be declared except dividends as provided in this section."

(d) AS 06.30.455 is amended to read:

"Sec. 06.30.455. COMPUTATION AND PAYMENT OF DIVIDENDS ON SAVINGS PLANS. Dividends shall be credited to savings accounts on the books of the association on the dividend-payment date unless a savings account holder requests and the association agrees to pay dividends on all or part of a savings account in cash. Dividends payable in cash shall be paid on the dividend-payment date and may be paid by check or bank draft.

All account holders shall participate equally in earnings pro rata to the withdrawal value of their respective accounts unless an association has classified or differentiated among its accounts. If an association has classified and differentiated among its accounts, all account holders within the same classification shall participate equally in earnings pro rata to the withdrawal value of their respective accounts.

[ALL SAVINGS ACCOUNT HOLDERS SHALL PARTICIPATE EQUALLY IN DIVIDENDS PRO RATA TO THE WITHDRAWAL VALUE OF THEIR RESPECTIVE ACCOUNTS, EXCEPT THE] The association may pay dividends according to the rate limitations prescribed for different classes of accounts and administered by the Federal Home Loan Bank Board. Dividends shall be declared on the withdrawal value of each savings account at the beginning of the dividend period, plus additions to it made during the dividend period, less amounts withdrawn and noticed for withdrawal, which for dividend purposes shall be deducted from the latest previous addition, computed at the declared rate for the time invested. The date of investment is the date of actual receipt by the association of an account or an addition to an account. If the board of directors so determines, accounts or additions received by the association on or before a date not later than the 10th day of the month, unless the day determined is not a business day, in which case it may be the next succeeding business day, shall receive dividends as if invested on the first day of the month in which the payments were received. If the board makes this determination, it also shall determine that payments received after the determination date shall either (1) receive dividends as if invested on the first day of the next succeeding month or (2) receive dividends from the date of actual receipt by the association."

(e) AS 06.30.460 is repealed and reenacted to read:

"Sec. 06.30.460. APPLICATION FOR WITHDRAWAL OR TRANSFER. Any account holder or an authorized representative may at anytime apply for withdrawal or transfer of all or any part of an account. Application may consist of negotiable or nonnegotiable orders or transfer authorizations from one account to another. Every application shall request immediate withdrawal of a specified amount in accordance with secs. 460-470 of this chapter. A member may cancel his application at any time in whole or in part by a writing."

(f) AS 06.30.910 is amended by adding a new paragraph to read:

"(19) provide the service of negotiable or nonnegotiable orders of withdrawal accounts to its depositors under regulations adopted by the department."

Brad:

Chris has the Model Act (273 page booklet) referred to in this letter

J

PENINSULA SAVINGS AND LOAN ASSOCIATION

Eddie J. Turner
President
and Managing Officer

February 19, 1980

The Honorable W. E. "Brad" Bradley
Chairman, Senate Commerce Committee
State Capital
Pouch V
Juneau, Alaska 99811

Re: Senate Bill No. 367

Dear Senator Bradley:

In reviewing this necessary legislation together with an opinion of the Assistant Attorney General regarding N.O.W. accounts as they relate to savings and loan associations, AS 06.30.455 should be amended to include suitable language similiar to the U.S. League's "Model Savings and Loan Act".

I have enclosed proposed changes and a copy of the model act for your perusal.

Jan and I are planning to be in Juneau on Thursday, February 28th, and would therefore request a hearing be scheduled to consider SB 367 on that date if at all possible.

Your prompt consideration of this matter is greatly appreciated.

Sincerely,

Eddie J. Turner

EJT/jt

Enclosures

cc: Julius J. Brecht, Director
File

Pouch 1000
Soldotna, Alaska 99669
907/262-9166
Blazy Mall — Sterling Highway

Sec. 06.30.455. COMPUTATION AND PAYMENT OF DIVIDENDS ON SAVINGS PLANS.

Dividends shall be credited to savings accounts on the books of the association on the dividend-payment date unless a savings account holder requests and the association agrees to pay dividends on all or part of a savings account in cash. Dividends payable in cash shall be paid on the dividend-payment date and may be paid by check or bank draft. All savings account holders shall participate equally in dividends pro rata to the withdrawal value of their respective accounts, [except the association may pay dividends according to the rate limitations prescribed for different classes of accounts and administered by the Federal Home Loan Bank Board.] except that an association may classify its savings accounts according to the character, amount, or duration thereof, or regularity of additions thereto, and may agree in advance to pay an additional or different rate of dividends on all savings accounts in the same account classification, and shall regulate such dividends in such manner that each savings account in the same classification shall receive the same ratable portion of such additional dividends. Except for accounts which shall be classified according to a specified contractual time or notice period, dividends shall be declared on the withdrawal value of each savings account at the beginning of the dividend period, plus additions to it made during the dividend period, less amounts withdrawn and noticed for withdrawal, which for dividend purposes shall be deducted from the latest previous addition, computed at the declared rate for the time invested. The date of investment is the date of actual receipt by the association of an account or an addition to an account. If the board of directors so determines, accounts or additions received by the association on or before a date not later than the 10th day of the month, unless the day determined is not a business day, in which case it may be the next succeeding business day, shall receive dividends as if invested on the first day of the month in which the payments were received. If the board makes this determination, it also shall determine that payments received after the determination date shall either (1) receive dividends as if invested on the first day of the next succeeding month, or (2) receive dividends from the date of actual receipt by the association. Notwithstanding the provisions of the third sentence of this section, the board of directors, by resolution, may determine that dividends shall not be paid on designated savings accounts (1) from which withdrawals may be made by negotiable and transferable order or authorization, or (2) which are established for the purpose of accumulating funds to pay taxes or insurance premiums, or both, in connection with a loan, or (3) which have a withdrawal value of a specified amount less than $50, or (4) which are intended to be closed within a specified period less than twenty-four (24) months from the date on which such savings account is opened. The directors shall determine by resolution the method of calculating the amount of any dividends on any savings account classification as herein provided, and the time or times when dividends are to be declared, paid or credited.

Julius Brecht Amendment February 4, 1980

AMENDMENTS:

1. I suggest the following to replace Section 1 of the bill so that there is a clear expression of legislative intent:

   Sec. 06.30.025 DECLARATION OF POLICY; RULE-MAKING AUTHORITY [GENERAL RULE-MAKING AUTHORITY OF COMMISSIONER]. (a) In providing authority for the establishment of associations, it is the intent of the legislature to make available the benefits of savings and loan association business, thereby promoting a sound and competitive association system, the practice of thrift, savings, investment, home financing, and the security of persons saving through associations. For the accomplishment of these purposes, the legislature intends by this chapter to vest in associations those powers generally possessed by state-chartered associations in other states, as permitted by the dept by regulation.

   (b) [Insert the present language of AS 06.30.025.]

2. Furthermore, I suggest that the word "savings" be deleted in lines 28 and 29 on page 1 of the bill in that the term "association" is defined as a savings and loan association in AS 06.30.910(1).

3. Line 19 of page 1 of the bill should be changed to read:

   "exercise of the power to issue regulations under [NECESSARY TO CARRY OUT] this"

   In this way the provisions of AS 06.30.030 will be more compatible with the proposed changes to AS 06.30.025 and the new Sec. 06.30.897.

4. Finally, the word "objects" on line 28 of page 1 of the bill should be replaced with the word "objectives."

The Hackney Amendment

* Sec. 4. AS 06.30.280 is amended by adding a new subsection to read:

(19) provide the service of negotiable order of withdrawal accounts to its depositors under regulations adopted by the department.

FRONTIER INCORPORATORS

P. O. BOX 74320 • FAIRBANKS, ALASKA 99707

February 7, 1980

Honorable Brad Bradley
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: Senate Bill # 367 (CSSB 367)

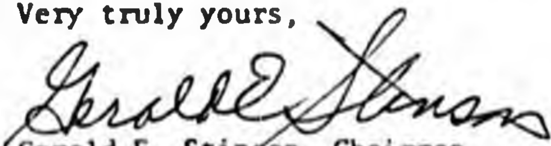
Dear Sir:

I am told that Senate Bill 367 will become CSSB 367 in your committee. I am familiar with the substitute language and Senator Hackney's amendment. I believe that the new language and amendment are superior to the original version of the bill in that the substitute as amended more clearly sets forth the legislative declaration of policy and the mechanism of remedy.

I therefore ask that the bill be reported out as is. Its language will suffice to end the disparity between mutual savings banks and savings and loan associations in their competition for savings dollars, ensuring that both compete on on equal footing.

I am sending a copy of this letter to all members of the Fairbanks delegation along with my request that each of them do whatever he or she can on either the House or Senate side to see that this (substitute) bill moves to the Governor's desk this session. I am also sending a copy hereof to Mr. Julius J. Brecht, Director of Banking, Securities and Corporations for his information and advice.

Very truly yours,



Gerald E. Stinson, Chairman
FRONTIER SAVINGS AND LOAN ASSOCIATION

GES/kr

PENINSULA SAVINGS AND LOAN ASSOCIATION

Eddie J. Turner
President
and Managing Officer

February 12, 1980

Honorable W. E. "Brad" Bradley
Senate Commerce Committee Chairman
Pouch V
Juneau, Alaska 99811

RE: Senate Bill No. 367 - "An act relating to savings associations"

Dear Senator Bradley:

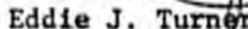
It was indeed a pleasure discussing with you today the worthwhile efforts of the commerce committee.

The referenced senate bill, as approved by the committee, appears to be very satisfactory and indicates the concentrated efforts for proper legislation which is beneficial to the residents of our state.

I have discussed this bill with Mr. Julius Brecht, Director of Banking and it is my understanding that he supports the commerce committees' recommendations. In addition, this bill has also been a subject for conversation with a colleague from the Alaska League of Insured Savings and Loan Associations, Mr. Lee Coffman, who indicated an amicable attitude toward this legislative effort.

The careful consideration of legislative needs for our new state industry, as exhibited by you and your committee members is greatly appreciated. If I can be of further service please let me know.

Sincerely,



Eddie J. Turner

EJT/jt

cc: Julius J. Brecht, Director
L. C. Coffman
File

Pouch 1000
Soldotna, Alaska 99669
907/262-9166
Blazy Mall — Sterling Highway

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

March 4, 1980

Mr. R. T. Hall
Senior Vice President
National Bank of Alaska
Corporate Headquarters
Box 600
Anchorage, AK 99510

Dear Mr. Hall:

We appreciate your comments on Senate Bill 367. After going over this section with our various experts we do agree with you that "those powers generally possessed" are too vague and we have amended that to say "those powers possessed by state chartered associations in other states which the department determines have demonstrated accomplishment of this declaration of policy."

We will be having a Senate Commerce Committee hearing on this bill on March 11 at 8:30 a.m. in the Assembly Building, Room 106. We have numerous other amendments to this bill and we feel that this will satisfy most segments of this industry.

Sincerely,

Frank P. Lee
Administrative Assistant
Senate Commerce Committee

bm

PEOPLES BANK & TRUST

POUCH 7007 • 8TH AVENUE AND G STREET • ANCHORAGE, ALASKA 99510
TELEPHONE (907) 279-7511

February 19, 1980

Honorable Brad Bradley, State Senator
Chairman, Senate Commerce Committee
Alaska State Legislature
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Mr. Bradley:

Thank you for your letter of February 13, 1980 together with proposed Senate Bill No. 367. I appreciate your bringing this to my attention as we are interested in all legislation that effects the banking industry.

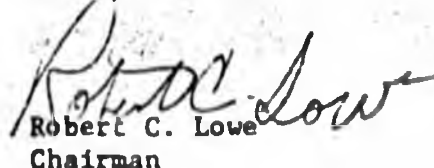
I have reviewed the proposed bill and the code sections which it effects.

With respect to savings and thrift institutions, we as a commercial bank are primarily interested in the legislative trends which seem to be developing a double standard in the banking industry favoring the savings and thrift institutions with preferential rates so as to give them an advantage in the competitive market but at the same time expanding their powers so that the savings and thrift institutions are given all of the powers of the commercial banks. Like other commercial banks, we feel that if the savings and thrift institutions are going to have all the powers of commercial banks, then they should be placed on the same competitive level as commercial banks and not given the preferential interest rates and tax advantages that they now enjoy.

We do appreciate your advising us of this proposed bill and we do not have any comments with respect to it.

Very truly yours,

PEOPLES BANK & TRUST COMPANY



Robert C. Lowe
Chairman

RCL:bwa
0328

P. O. BOX 74320 • FAIRBANKS, ALASKA 99707

Hackney

December 27, 1979

Honorable Glenn Hackney
1136 Sunset Drive
Fairbanks, Alaska 99701

Re: (1) Budget For Division Of Banking, Securities and Corporations, (2) Changes In Chapter 30 (Savings Association Code), and (3) Recodification Of Banking And Savings Association Acts

Dear Sir:

I am Gerald E. Stinson, Chairman of the Board of Directors of Frontier Savings and Loan Association (in organization), a state-chartered stock savings and loan association. I will treat the captioned topics in sequential order after giving a brief background sketch of Frontier Savings and Loan which will establish our interest in seeking the relief (largely remedial) here sought.

Frontier was begun by twenty incorporators, all from Fairbanks. Its stock subscribed to date is subscribed to by approximately 80% Fairbanksans who, counting joint tenants, number over 200 individuals, and that number is growing. It is the first and (to-date) the only state-chartered stock association in Interior Alaska.

(1) You are probably no more eagle-eyed than I when it comes to increasing budget and personnel slots for a division or department of state government, but however biased against paying out more money we may be, I trust that we will guard against knee-jerk negative reaction in a given instance and instead study the supposed need with an open mind and have the courage and responsibility to spend more money if fairly warranted. For the past several months there have been severe shortages of both staff and budget in the Division of Banking brought about by increases in regulatory duties associated with the increasing number of newly filed applications for banking and savings association charters. The division has had to train some of its staff for new and expanded auditing responsibilities. The division has neither sufficient staff nor budget with which to do the job it was statutorily enjoined to do. I suggest that you review the situation with Mr. Brecht, Director of the Division of Banking, Securities and Corporations, when you go to Juneau in the next few weeks. He can detail the situation to you with more precision than I. From the point of view of Frontier and its shareholders, there is no more important division or department of state government than this division, and we are vitally interested in its funding and efficient operation. I therefore trust that you will find time to check this situation out with Mr. Brecht either before or early in the next session.

(2) As you know, Title 06, Chapter 30 (the savings association act) was amended session before last to permit the formation of state-chartered stock savings and loan associations. Hitherto all had been mutuals. The amendment was good, but as are many amendments engrafted on old statutes, the old and the new parts don't always mesh well, but whether they do or not, frequently

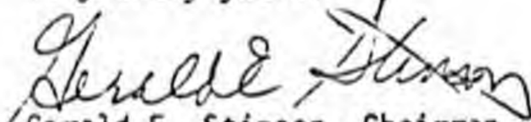
an unintended incidental injustice will occur. Thus the savings association act (Chapter 30) does not contain language which would permit state-chartered stocks to involve themselves in NOW (negotiable orders of withdrawal) accounts. Such language does exist in the mutual banking code (Title 06, Chapter 15), however, and thus state-chartered associations such as Frontier are (though I'm sure it was unintended) at a severe competitive disadvantage in attracting savings when a mutual savings bank (in our case - Mt. McKinley Mutual) is doing business in the same Alaskan community. I am told that this could be corrected by using the counterpart language of the mutual bank code found at AS 06.15.360 to amend the savings association act, or perhaps by other language of amendment designed to serve as a base for a more liberal regulation which would allow savings associations to be competitive with mutual savings banks in attracting savings dollars. I recommend that this matter of concern to us be likewise addressed to Mr. Brecht when you go to Juneau next month.

(3) The last item above captioned would involve a substantial expenditure of legislative time and effort, particularly in committee(s), but needs to be done. Band-aid amendments such as I propose above, though absolutely necessary to prevent injustice, have their limitations. With some exceptions, the provisions of the acts are financial horse and buggy vehicles in a jet age, of poor design and integration, and in need of major overhaul or replacement. Perhaps some model act could serve as a starting point from which committee hearings would tailor it to Alaska's specific situation. Recodification is necessary as the current statutory language, unlike wine, will not improve with age, and since it must be done sometime, I suggest we initiate the process next session. As with the other two items, I believe Mr. Brecht can be very helpful to you in selection of a model code (and appropriate amendments thereto for introduction) and accordingly suggest that you discuss this matter with him prior to or early in the next session.

The suggestions set forth to you in this letter are essentially housekeeping matters not susceptible to partisan points of view. I trust that each of you can and will support and implement such suggestions into concrete legislative action.

If you have any questions pertaining to this letter, please feel free to write or call me (456-6617) at any time.

Very truly yours,



Gerald E. Stinson, Chairman
FRONTIER SAVINGS AND LOAN ASSOCIATION

cc: Julius J. Brecht, Director
Division of Banking and Securities
Charles Parr, Respresentative
L. W. Stinson, Director
Robert Bettisworth, Respresentative
William Gordon, Director

GES/kr

AMENDMENT

OFFERED IN THE SENATE: BY: SENATE JUDICIARY COMMITTEE

TO: AMEND SENATE BILL No. CSSB 367

HOUSE BILL No.

PAGE: 1 LINE: 15 through line 19

Beginning with the word "For" on line 15, delete all material through line 19.

PENINSULA SAVINGS AND LOAN ASSOCIATION

Eddie J. Turner
President
and Managing Officer

February 12, 1980

Honorable W. E. "Brad" Bradley
Senate Commerce Committee Chairman
Pouch V
Juneau, Alaska 99811

RE: Senate Bill No. 367 - "An act relating to savings associations"

Dear Senator Bradley:

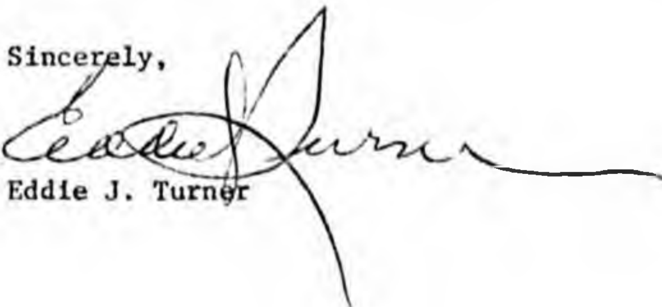
It was indeed a pleasure discussing with you today the worthwhile efforts of the commerce committee.

The referenced senate bill, as approved by the committee, appears to be very satisfactory and indicates the concentrated efforts for proper legislation which is beneficial to the residents of our state.

I have discussed this bill with Mr. Julius Brecht, Director of Banking and it is my understanding that he supports the commerce committees' recommendations. In addition, this bill has also been a subject for conversation with a colleague from the Alaska League of Insured Savings and Loan Associations, Mr. Lee Coffman, who indicated an amicable attitude toward this legislative effort.

The careful consideration of legislative needs for our new state industry, as exhibited by you and your committee members is greatly appreciated. If I can be of further service please let me know.

Sincerely,



Eddie J. Turner

EJT/jt

cc: Julius J. Brecht, Director
L. C. Coffman
File

Pouch 1000
Soldotna, Alaska 99669
907/262-9166
Blazy Mall — Sterling Highway

Alaska State Legislature

Senate

Committee on Commerce

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

March 4, 1980

Mr. R. T. Hall
Senior Vice President
National Bank of Alaska
Corporate Headquarters
Box 600
Anchorage, AK 99510

Dear Mr. Hall:

We appreciate your comments on Senate Bill 367. After going over this section with our various experts we do agree with you that "those powers generally possessed" are too vague and we have amended that to say "those powers possessed by state chartered associations in other states which the department determines have demonstrated accomplishment of this declaration of policy."

We will be having a Senate Commerce Committee hearing on this bill on March 11 at 8:30 a.m. in the Assembly Building, Room 106. We have numerous other amendments to this bill and we feel that this will satisfy most segments of this industry.

Sincerely,

Frank P. Lee
Administrative Assistant
Senate Commerce Committee

bm

PEOPLES BANK & TRUST

POUCH 7007 • 8TH AVENUE AND G STREET • ANCHORAGE, ALASKA 99510
TELEPHONE (907) 279-7511

February 19, 1980

Honorable Brad Bradley, State Senator
Chairman, Senate Commerce Committee
Alaska State Legislature
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Mr. Bradley:

Thank you for your letter of February 13, 1980 together with proposed Senate Bill No. 367. I appreciate your bringing this to my attention as we are interested in all legislation that effects the banking industry.

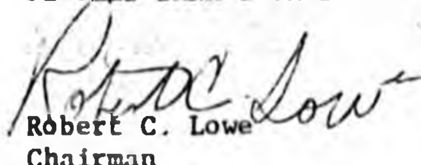
I have reviewed the proposed bill and the code sections which it effects.

With respect to savings and thrift institutions, we as a commercial bank are primarily interested in the legislative trends which seem to be developing a double standard in the banking industry favoring the savings and thrift institutions with preferential rates so as to give them an advantage in the competitive market but at the same time expanding their powers so that the savings and thrift institutions are given all of the powers of the commercial banks. Like other commercial banks, we feel that if the savings and thrift institutions are going to have all the powers of commercial banks, then they should be placed on the same competitive level as commercial banks and not given the preferential interest rates and tax advantages that they now enjoy.

We do appreciate your advising us of this proposed bill and we do not have any comments with respect to it.

Very truly yours,

PEOPLES BANK & TRUST COMPANY



Robert C. Lowe
Chairman

RCL:bwa
0328