ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 8672
1257 SCRA CZM DIST. PROGRAMS - COASTAL MANAGEMENT PLAN 1257

ACMP REQUIREMENTS	FINDINGS	CONCLUSIONS
6AAC 80.050. GEOPHYSICAL HAZARD AREAS. (a) Districts and state agencies shall identify known geophysical hazard areas and areas of high development potential in which there is a substantial possibility that geophysical hazards may occur. (b) Development in areas identified under (a) of this section may not be approved by the appropriate state or local authority until siting, design, and construction measures for minimizing property damage and protecting against loss of life have been provided.	(a) Ex. 2 displays maps delineating various hazards identified in Ex. 4. (b) 1. Ex. 1, Ch. V, p.76 establishes a Hazardous Lands resource policy unit (RPU) which limits development of lands classified into this unit. 2. Ex. 5, Ex. 6, Ex. 7, & Ex. 8 are listed in Ex.2 as existing local controls to implement the policies of the Hazardous land RPU. 3. Ex. 1, Ch. VIII, p.114 recommends the development of a hazardous lands ordinance or other tools for further managing development in hazardous areas.	OCM concludes that the district program has not adequately addressed 6 AAC 80.050. Any inconsistency may be resolved by district adoption of the recommendation listed in finding (b) 3. REVISED CONCLUSIONS 1/4/80 OCM conludes that the district program is substantially consistent with 6 AAC 80.050. Any inconsistency cited in the 11/20/79 Conclusions are now discussed in the revised Conclusions concerning 6 AAC 85.100 Implementation page 26.

ACMP REQUIREMENTS	FINDINGS	CONCLUSIONS
6 AAC 80.060. RECREATION. (a) Districts shall designate areas for recreational use. Criteria for designation of areas of recreational use are (1) the area receives significant use by persons engaging in recreational pursuits or is a major tourist destination or (2) the area has potential for high quality recreational use because of physical, biological, or cultural features. (b) Districts and state agencies shall give high priority to maintaining and, where appropriate, increasing public access to coastal water.	(a) 1. Ex. 1, Ch. V, p. 72 establishes the following RPUs: Class III Waters; Recreation. Scenic Corridors, Areas and Vistas; and Parks and Recreation Areas. Lands included in these RPUs are displayed in Ex. 2. 2. Ex. 1, Ch. VII designates AMSAs #1,2, 3,4,5, & 7 for recreational use. (b) 1. Policies for the three RPUs listed in (a) (2) above are to maintain and where possible increase opportunities (Ex. 1, Ch. V, p. 77). 2. Allowable uses for the six AMSAs referenced above include various forms of recreation (Ex. 1, Ch. VII). 3. Ex. 1, Ch. VIII, p. 114, recommends that scenic protection and coastal access elements be prepared to become components of Ex. 9 and that the MOA should designate and adopt management plans for the AMSAs contained in Ch. VII.	OCM concludes that the district program has not adequately addressed 6 AAC 80.060. Any inconsistency may be resolved by district adoption of the recommendation described in finding (b) 3. REVISED CONCLUSIONS 1/4/80 OCM concludes that the district program is substantially consistent with 6 AAC 80.060. Any inconsistency cited in the 11/20/79 Conclusions are now issued in the revised Conclusions concerning 6 AAC 85.100 Implementation, page 26.

ACMP REQUIREMENTS	FINDINGS	CONCLUSIONS
6 AAC 80.080. TRANSPORTATION AND UTILITIES. (a) Transportation and utility routes and facilities in the coastal area must be sited, designed, and constructed so as to be compatible with district programs. (b) Transportation and utility routes and facilities must be sited inland from beaches and shorelines unless the route or facility is water-dependent or no feasible and prudent inland alternative exists to meet the public need for the route or facility.	(a) Ex. 1, Ch. 2, p.29 describes this requirement. (b) Ex. 1, Ch. VIII, p.114 recommends that Ex. 11 be in conformance with the provisions of the Anchorage Coastal Management Program and the ACMP.	OCM concludes that the district program has not adequately addressed 6 AAC 80.080. Any inconsistency may be resolved by district adoption of the recommendation described in finding (b). REVISED CONCLUSIONS 1/4/80 OCM concludes that the district program is substantially consistent with 6 AAC 80.080. Any inconsistency cited in the 11/20/79 Conclusions are now discussed in the revised Conclusions concerning 6 AAC 85.100 Implementation, page 26.
6 AAC 80.090. FISH AND SEAFOOD PROCESSING. Districts shall identify and may designate areas of the coast suitable for the location or development of facilities related to commercial fishing and seafood processing.	1. Ex. 1, Ch.. 2, p.29 describes this requirement. 2. Ex. 1, Ch. V, p.73 establishes Urban Development and Urban Water Front RPUs. Lands included in these resource policy units are displayed in Ex. 2, p.38-41. 3. The purpose of these RPUs is to provide for efficient utilization of such areas for water dependent commerce and industry consistent with the standards and guidelines of the ACMP (Ex. 1, Ch. V, p.79,80). Special emphasis is placed on particular characteristics required for water front uses and activities in the Urban Water Front RPU classification (Ex. 1, Ch. V, p.80). 4. The Port of Anchorage is included in the Urban Water Front RPU (Ex. 2, p.) and is designated an AMSA in Ex. 1, Ch. VIII, p.100,101.	By virture of the fact that fish and seafood processing is a water dependent use, OCM concludes that the district program is substantially consistent with 6 AAC 80.090.

ACMP REQUIREMENTS	FINDINGS	CONCLUSIONS
6 AAC 80.110. MINING AND MINERAL PROCESSING. (a) Mining and mineral processing in the coastal area must be regulated, designed, and conducted so as to be compatible with the standards contained in this chapter, adjacent uses and activities, statewide and national needs, and district programs. b) Sand and gravel may be extracted from coastal waters, intertidal areas, barrier islands, and spits, when there is no feasible and prudent alternative to coastal extraction which will meet the public need for the sand and gravel.	(a) Ex. 1, Ch. 2,p.29 describes this requirement prior to its revision on 5/29/79. (b) Ex. 1, Ch. VIII, p. 114 recommends that Ex. 3, AMC 21.50.070, Standard for Natural Resource Extraction, be amended to comply with this requirement.	OCM concludes that the district program has not adequately addressed 6 AAC 80.110. Any inconsistency may be resolved by district adoption of the recommendation described in finding (b). REVISED CONCLUSIONS 1/4/80 OCM concludes that the district program is substantially consistent with 6 AAC 80.110. Any inconsistency cited in the 11/20/79 Conclusions are now discussed in the revised Conclusions concerning 6 AAC 85.100 Implementation page 26.

ACMP REQUIREMENTS	FINDINGS	CONCLUSIONS
6 AAC 80.130. HABITATS. (a) Habitats in the coastal area which are subject to the Alaska coastal management program include (1) offshore areas; (2) estuaries; (3) wetlands and tideflats; (4) rocky islands and seacliffs; (5) barrier islands and lagoons; (6) exposed high energy coasts; (7) rivers, streams, and lakes; and (8) important upland habitat. (b) The habitats contained in (a) of this section must be managed so as to maintain or enhance the biological, physical, and chemical characteristics of the habitat which contribute to its capacity to support living resources. (c) In addition to the standard contained in (b) of this section, the following standards apply to the management of the following habitats: (1) offshore areas must be managed as a fisheries conservation zone so as to maintain or enhance the state's sport, commercial, and subsistence fishery;	(a) 1. Ex. 1, Ch. II, p. 30 describes this requirement. (b) & (c) (1) 1. Offshore areas are classified into the Class IV Waters RPU (Ex. 1, Ch. V, p. 73). The purpose of this RPU is to maintain, improve and monitor these waters and the uses and activities (including commercial fishing)on and adjacent to them to prevent a reduction in water quality (Ex. 1, Ch. V, p. 78,79). 2. Ex. 1, Ch. VIII, p. 113,114 recommend that the MOA undertake continuing review of Federal and State actions for consistency with the Anchorage Coastal Management Program. (b) & (c) (2) 1. These areas are classified into the Salt Water Marshes RPU (Ex. 1, Ch. V, p. 71). The purpose of this RPU is to prohibit all development in these areas and to protect the basic natural functions served by the estuaries (Ex. 1, Ch. V, p. 75). 2. Ex. 1, Ch. VIII, p. 113,114 recommend that the MOA undertake continuing review of Federal and State action for consistency with the Anchorage Coastal Management Program. Further, the MOA should adopt the recommendations of Ex. 12 and continue work on Ex. 13	OCM concludes that the district program has not adequateky addressed 6 AAC 80.130. Any inconsistency may be resolved by district adoption of the recommendations listed in findings: (b) & (c) (1) 2; (b) & (c) (2) 2; (b) & (c) (5) 2. & 3; (b) & (c) (6) 2; and (b) & (c) (7) 2. REVISED CONCLUSIONS 1/4/80 OCM concludes that the district program is substantially consistent with 6 AAC 80.130. Any inconsistency cited in the 11/20/79 Conclusions are now discussed in the revised Conclusions concerning 6 AAC 85.100 Implementation page 26.

ACMP REQUIREMENTS	FINDINGS	CONCLUSIONS
6 AAC 80.160. AREAS WHICH MERIT SPECIAL ATTENTION. (a) Any person may recommend to a district or to the council areas to be designated as areas which merit special attention. Districts shall designate in district programs areas which merit special attention. Areas which are not in districts and which merit special attention shall be designated by the council with the concurrence of appropriate state agencies, municipalities, and villages affected by the designation. Designations must include the following information: (1) the basis or bases for designation under AS 46.40.210(1) or (b) of this section; (2) a map showing the geographical location, surface area and, where appropriate, bathymetry of the area; (3) a description of the area which includes dominant physical and biological features; (4) the existing ownership, jurisdiction, and management status of the area, including existing uses and activities; (5) the existing ownership, jurisdiction, and management status of adjacent shoreland and sea areas, including existing uses and activities; (6) present and anticipated conflicts among uses and activities within or adjacent to the area, if any; and	1. Ex. 1, Ch. VII, designates 10 AMSAs: #1--Seward Highway/Turnagain Arm (p.90-91). #2--Old Girdwood Townsite South of Seward Highway (p. 92-93). #3--Bird Creek Regional Park (p. 94-95). #4 -Fish Creek (p. 96-97). #5--Point Campbell--Point Woronzof Coastal Wetlands (p. 98-99). #6--Port of Anchorage Area (p.100-101). #7--Eagle River Drainage (p. 102-103). #8--Pt. Woronzof Bluffs (p. 104-105). #9--Pt. Campbell Dunes and Delta (p. 106-108). #10--Andesitic Dike at Potter Marsh on Old Seward Highway (p. 108-109). 2. Each AMSA designation in Ex. 1, Ch. VII includes the following information: * Name of Area * Value Classification * Location * Seaward Distance for Protection * Existing Ownership and Management * Adjoining Ownership/Management * Area Description (including dominant physical/biological features) * Proposed Management * Allowable Uses * AMSA Categorical Classification (the basis or bases for designation) * Present and Anticipated Conflicts * A Topographic Map of the Area 3. Each proposed management scheme for the AMSAs recommends preservation, protection, enhancement, or restoration of the value(s) for which the area was designated (Ex. 1, Ch. VII).	OCM concludes that the district program has not adequately addressed 6 AAC 80.160. Any inconsistency may be resolved by the district adoption of the recommendation listed in finding # 4 which should include an identification of the authority which will be used to implement the management plans. REVISED CONCLUSIONS 1/4/80 OCM concludes that the district program is substantially consistent with 6 AAC 80.160. Any inconsistency cited in the 11/20/79 Conclusions are now discussed in the revised Conclusions concerning 6 AAC 85.100 Implementation, page 26.

ACMP REQUIREMENTS	FINDINGS	CONCLUSIONS
6 AAC 85.040. BOUNDARIES. (a) Each district must include a map of the boundaries of the coastal area within the district subject to the district program. Boundaries must enclose those lands which would reasonably be included in the coastal area subject to the district program if they were not subject to the exclusive jurisdiction of the federal government. (b) Before coastal approval of the district program, initial boundaries must be based on *Biophysical Boundaries of Alaska's Coastal Zone* (published by the Office of Coastal Management and the Alaska Department of Fish and Game, 1978, a copy of which is on file with the Office of the Lieutenant Governor, and which is available from the Office of Coastal Management) and must include the zone of direct interaction and the zone of direct influence. (c) Final boundaries of the coastal area subject to the district program may diverge from the initial boundaries if the final boundaries (1) extend inland and seaward to the extent necessary to manage uses and activities that have or are likely to have a direct and significant impact on marine coastal water; and (2) include all transitional and intertidal areas, salt marshes, saltwater wetlands, islands, and beaches. (d) If the criteria in (c) of this section are met, final boundaries of the coastal area subject to the district program may be based on political jurisdiction, cultural features, planning areas, watersheds, topographic features, uniform	(a) 1. Ex. 2, p.43,81,111, display maps of the boundaries of the coastal area within the district subject to the district program. 2. Ex 1, Ch.VI, p. 81 acknowledges that federally owned lands are excluded from the coastal zone. 3. Ex. 1, Ch. VI, p.83 describes the inland and seaward extent of the coastal zone boundaries for the NOA district program. (b) Ex. 1, Ch. VI, p.82 describes this requirement. (c) 1. The final boundaries of the coastal are subject to the NOA district program diverge from the initial boundaries described in 6 AAC 85.040 (b) (Ex. 1, Ch. VI, p. 83). 2. As a result of an analysis of land and water uses and activities on each of the RPUs (Ex. 1, Ch. V) it was determined that the initial planning boundary of 1,000 ft. could diverge closer to the shore line and that no direct and significant impacts were likely to occur within the area deleted from the initial boundary area (Ex. 1, Ch. VI, p.84). 3. The final boundaries include all transitional and intertidal areas, salt marshes, saltwater wetlands, and beaches (Ex. 1, Ch. VI, p.83).	OCM concludes that the district program is not substantially consistent with 6 AAC 85.040 because all of Fire Island must be included in the final boundaries pursuant to 6 AAC 85.040 (c)(2). It is recommended that the NOA amend the description of the seaward extent of the boundaries to include the entire upland portion of Fire Island (or all islands). REVISED CONCLUSIONS 1/4/80 OCM concludes that the district program is substantially consistent with 6 AAC 85.040. According to OCZM (see OCZM comment summary, page 1) 6 AAC 85.040 was based on an earlier version of NOAA regulation. Current NOAA regulation allows exclusion from a states coastal zone those interior portions of islands the use of which will not have direct and significant impacts on coastal waters. Exhibit 2 indicates few if any resource units in the upland portions of Fire Island.

ACMP REQUIREMENTS	FINDINGS	CONCLUSIONS
6 AAC 85.100. IMPLEMENTATION. Each district program must include a description of the methods and authority which will be used to implement the district program. Methods and authority must be adequate to insure program implementation, and any additional methods or authority which are required must be specified. Methods and authority include land and water use plans, municipal ordinances and resolutions, (including shoreline, zoning, and subdivision ordinances and building codes), state and federal statutes and regulations, capital improvement programs, the purchase, sale, lease, or exchange of coastal land and water resources, cooperative agreements, tax exemptions for nondevelopment purchase of development rights, memoranda of understanding, and coordinated project or permit review procedures.	1. Ex. 1, Ch. VIII, p. 111, describes the existing federal and state controls which will be used to implement the district program. These include: Federal * National Pollution Discharge Elimination System * Corps of Engineers Permit for the Discharge of Dredged or Fill Material * Corps of Engineers Permit for Work or Structures * Executive Order 11988, Floodplain Management * Executive Order 11990, Protection of Wetlands * Historic Preservation State * Water Quality Standards * Wastewater Disposal Permit * Water Appropriation Permit * Game Refuges * Anadromous Fish Protection * Tidelands Lease and Permit * Land Classification * Mining and Oil and Gas Regulation * Historic Preservation * Solid Waste Disposal * Certification of Activities under Section 401 of the Clean Water Act Ex. 1, Appendix 1 summarizes the controls listed above. In addition Federal consistency requirements are discussed in Ex. 1, Ch. VIII.	OCM concludes that the district program has not adequately addressed 6 AAC 85.100, but the district program and the existing ACMP standards when used together, will provide an acceptable level of management for the interim. Any inconsistency may be resolved by district adoption of the thirteen recommendations described in finding # 3. REVISED CONCLUSIONS 1/4/80 OCM concludes that the district program has not adequately addressed 6 AAC 85.100, but the district program and the existing ACMP standards when used together, will provide an acceptable level of management for the interim. Inconsistencies will be resolved when the district implements the twelve recommendations described in finding #3 11/20/79 OCM initially found that the district had failed to adequately address several ACMP Standards. Recommendations for additional actions necessary to implement these standards are addressed by MOA in the twelve recommendations described in finding #3. Consequently, these standards which include: 6 AAC 80.040, .050, .060, .080, .110, .130, & .160, are now found to be consistent.

Coastal Zone Mgmt

STATE OF ALASKA

JAY S. HAMMOND, Governor

OFFICE OF THE GOVERNOR

DIVISION OF POLICY DEVELOPMENT AND PLANNING

POUCH AP
JUNEAU, ALASKA 99811
(907) 465-3541 OR ~~XXX-XXXX~~
465-3516

November 19, 1979

per schedule attached to legislation on 1-23-80

All Legislators:

This letter is written to inform you that the Office of Coastal Management has released its findings and conclusions on four district coastal management programs submitted to the Coastal Policy Council for their action. This action is in accordance with the Alaska Coastal Management Act (AS 46.40) and 6 AAC 85.150. As you will be reviewing any district program approved by the Council for incorporation into the Alaska Coastal Management Program during the 1980 Legislature session, it is important that you be apprised of potential Council actions.

The four programs under review are the Municipality of Anchorage, the City of Haines, the North Slope Borough Mid-Beaufort Segment, and Annette Islands Indian Reserve. Copies of these plans together with staff recommendations will be sent to members of the House and Senate Community and Regional Affairs Committees. In addition, the members of the Legislature representing Anchorage, Haines, North Slope Borough and Ketchikan will receive copies of the program for their respective area. Anyone else wishing to review these programs and the staff recommendations can obtain copies by contacting this office.

Attached is a copy of the schedule for action on these programs. Those programs receiving Council approval on January 16,17,18, 1980 will be submitted to the Legislature on January 23, 1980 pursuant to AS 44.19.893 (4).

If we can provide you with additional information or if we can be of any assistance, please do not hesitate to contact us.

Sincerely,

Murray Walsh /dgi

Murray Walsh
Coordinator

ALASKA COASTAL MANAGEMENT PROGRAM

01-A17LH

Schedule

November 20, 1979	*Copies of all four programs, plus OCM's Preliminary Recommendation on all four programs are sent to Council and reviewers who have requested them. Districts are sent OCM's Preliminary Recommendation on their respective programs. (This is the First mailing to the Council and districts).
November 25, 1979	*Begin 30 day review period for all participants to comment on both the conceptually approved district programs and OCM's Preliminary Recommendations. (Five days allowed for mailing.)
November 30, 1979	*Coastal Policy Council workshop on four district programs in Anchorage.
December 25, 1979	*End 30 day review period.
December 26, 1979	*Begin OCM's final review and response to comments. All comments on all four programs and OCM Preliminary Recommendations will be sent only to the Council and the appropriate district. (This is the Second mailing to the Council and districts). Comments will be available to the public in the district, Anchorage, and Juneau.
January 4, 1980	*End OCM's final review. On this day, OCM's final recommendations, including a summary of comments and OCM's response to the comments, will be sent to the Council, districts, and all reviewers. Also sent will be the regular Council Packet and agenda for the January meeting. (This is the Third Council and district Mailing.)
January 16, 1980	*Council meets in Anchorage, acts in Haines, Anchorage, and Annette Islands programs.
January 17, 1980	*Council meets in Barrow, acts on North Slope Borough Program.
January 18, 1980	*Council continues meeting in Barrow if needed, and takes up other Council business in Barrow. Otherwise, Council meets again in Anchorage to complete other business.
January 23, 1980	*OCM submits Council's actions to legislature.

Alaska State Legislature

Senate

Office of the Secretary
January 24, 1980

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM TO: Community and Regional Affairs Committee

From: Secretary of the Senate RM

Subject: Coastal Management Program for the Municipality of Anchorage, City of Haines and Annette Islands Indian Reserve

The President this date referred the following reports to your committee in accordance with the enclosed letter:

Municipality of Anchorage Coastal Management Program (Fi l report April 1979 Volume II, Office of Coastal Management Summary of Revised Findings and Conclusions, and the Final Report September 1979 of the Coastal Management Program

Haines Coastal Management Plan and Office of Coastal Management Summary of Revised Findings and Conclusions January 4, 1980

Annette Islands Coastal Management Program and the Office of Coastal Management Summary of Findings and Conclusions of January 4, 1980

Encls: Letter
3 Reports w/ attach.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM February 26, 1980

SUBJECT: Legislative role in approving coastal management programs.

TO: Senator Arliss Sturgulewski, Chairman
Senate Community and Regional Affairs Committee
Attn: Margo Waring, A.A.

FROM: Tamara Brandt Cook TBC
Legislative Counsel

AS 46.40.080 simply provides for adoption by the legislature of coastal management programs which have already been reviewed and approved by the council. Clearly under the terms of this statute the legislature may approve the program or disapprove the program. Although the statute does not provide for the situation involving legislative approval of only part of a program, there is also no clear requirement that the legislature approve or disapprove the entire program. In fact, the legislature has done just that on previous occasions, so there is some precedent for the proposition that under the terms of AS 46.40.080 the legislature may approve a program in part and disapprove it in part. SLA 1978, Legislative Resolve Number 41.

Under AS 46.40.060 all district coastal management programs are submitted to the Alaska Coastal Policy Council for review and approval. Standards for council review are itemized in AS 46.40.070. In view of these provisions, an argument could be made that the legislature should not disapprove a program or part of a program that has been adopted by the council unless it finds that the council failed to properly apply the standards set out.

Since there is no case law on point and the language of the statute does not specifically restrict the legislative role, the legislature appears to be free to approve a management program, disapprove a program, or approve it in part and disapprove it in part. Note that the recent case, State of Alaska, and Department of Revenue v. A.L.I.V.E. Voluntary No. 2022, February 19, 1980 casts considerable doubt upon the ultimate effect of legislative resolutions.

TBC:ljb

STATE OF ALASKA
THE LEGISLATURE

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

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Since there is no case law on point and the language of the statute does not specifically restrict the legislative role, the legislature appears to be free to approve a management program, disapprove a program, or approve it in part and disapprove it in part. Note that the recent case, State of Alaska, and Department of Revenue v. A.L.I.V.E. Voluntary, No. 2022, February 19, 1980 casts considerable doubt upon the ultimate effect of legislative resolutions.

TBC:ljb

2/26/80 note to file.
all Senators agreed
pr. phone call ok to
introduce SCR's
re Coastal Mgmnt

Hans

al

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM February 26, 1980

SUBJECT: Constitutionality of legislative approval or disapproval by resolution of agency regulations.
(Work Orders No. 8190, 8191, 8192, and 8193)

TO: Senator Arliss Sturgulewski, Chairman
Senate Community and Regional Affairs Committee

FROM: Tamara Brandt Cook
Legislative Counsel

AS 44.62.320(a) which provides that the legislature, by a concurrent resolution, may annul a regulation of an agency or department, was recently held to be unconstitutional. State of Alaska, and Department of Revenue v. A.L.I.V.E. Voluntary, No. 2022, February 19, 1980. Essentially, that case held that specific provisions of the Alaska Constitution set out in Article II, sections 13, 14, and 18 must be complied with before the legislature can make new law. Additionally, the governor must have the opportunity to veto any new law. In view of these mechanics, the Supreme Court has concluded that the legislature may not create new law through resolution. The proposition that administrative regulations are not the same as bills and ought not to be subject to the same requirements was specifically presented and rejected by the Court. "Such regulations are laws in every meaningful sense, and annulling any one of them effects a change in the law." State of Alaska, and Department of Revenue v. A.L.I.V.E. Voluntary, supra, 21.

The Court recognized that the legislature may delegate law-making power to an administrative agency, and that the delegation could be made subject to a condition. But the condition must be lawful. Making a delegation subject to later change by the legislature through informal action (resolution) was held to be an unlawful condition. The Court reasoned that whenever the legislature exercises its law-making power, it must do so pursuant to the mechanics

set out in the constitution. While an agency may adopt regulations without following any of the same mechanics, the legislature may not act as an agency itself.

In view of this broad holding, AS 46.40.080, requiring approval of amendments to the state coastal management program by adoption of concurrent resolution or by majority vote while both houses are convened to confirm executive appointments, is questionable constitutionally since both these methods constitute informal law-making on the part of the legislature. Although this case did not deal with AS 46.40.080 specifically, it is significant to note that AS 46.40.080 was identified in the dissenting opinion as another example of a statute similar to the one held to be unconstitutional. State of Alaska, and Department of Revenue v. A.L.I.V.E. Voluntary, supra, 46.

TBC:ljb

Enclosure

THE SUPREME COURT OF THE STATE OF ALASKA

STATE OF ALASKA, AND DEPARTMENT OF REVENUE, Appellants, v. A.L.I.V.E. VOLUNTARY, Appellee.	)	File No. 3670 O P I N I O N [No. 2022 -- February 19, 1980]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Peter J. Kalamarides, Judge.

Appearances: Joseph K. Donohue, Assistant Attorney General, Avrum M. Gross, Attorney General, Juneau, for Appellants. Joe P. Josephson, Josephson & Trickey, Inc., Anchorage, for Appellee. Stephen M. Ellis, Delaney, Wiles, Moore, Hayes & Reitman, Inc., Anchorage, for Amici Curiae Alaska Legislative Council and Administrative Regulation Review Committee.

Before: Boochever, Chief Justice, Rabinowitz, Connor, Burke and Matthews Justices.

MATTHEWS, Justice.
BOOCHEVER, Chief Justice, with whom CONNOR, Justice, joins, dissenting.

AS 44.62.320(a) provides:

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

This statute encompasses a variant of what has come to be called the legislative veto.[1] The question in this case is whether this device violates article II of the Alaska Constitution. We hold that it does.

I

Chapter 15 of Title 5 of the Alaska Statutes authorizes games of chance and skill to be operated by permit holders. Only certain kinds of games, ("bingo, raffles and lotteries, ice classics, dog mushers' contests, fish derbies and contests of skill")[2] are allowed, only nonprofit organizations may be issued a permit,[3] and all revenues must be devoted to "the awarding of prizes to contestants or participants and to educational, civic, public, charitable, patriotic or religious uses."[4] The Commissioner of Revenue has been delegated the authority to adopt rules and regulations "necessary to carry out this chapter or protect the best interest of the public."[5]

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1. For excellent histories of the legislative veto, see Ginnane, The Control of Federal Administration by Congressional Resolutions and Committees, 66 Harv. L. Rev. 569 (1953); Newman & Keaton, Congress and the Faithful Execution of Laws - Should Legislators Supervise Administrators? 41 Cal. L. Rev. 565 (1953); and Watson, Congress Steps Out: A Look at Congressional Control of the Executive, 63 Cal. L. Rev. 983 (1975).

2. AS 05.15.100.

3. AS 05.15.120, .210(15).

4. AS 05.15.150.

5. AS 05.15.060(11).

From 1960 until 1976 one of the Commissioner's regulations prohibited lottery operators from giving prizes exceeding $15,000 in personal property or $30,000 in real property annually.[6] In November of 1976 the regulation was amended by increasing the annual personal property limit to $30,000 and the annual real property limit to $50,000 and by stating that personal property included cash and negotiable instruments.[7]

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6. The regulation was designated 15 AAC 05.410(4). It provided:

> In holding, operating, and conducting raffles or lotteries, no permittee shall raffle prizes of personal property in excess of the sum or value of $15,000.00 in any one calendar year and real property in excess of the sum or value of $30,000.00 in any one calendar year.

7. As amended the regulation reads:

> (4) In holding, operating and conducting raffles or lotteries, a permittee may not raffle prizes of personal property, including cash or a negotiable instrument, the aggregate total of which is in excess of the sum or value of $30,000 in any one calendar year and real property in excess of the sum or value of $50,000 in any one calendar year.

A.L.I.V.E. Voluntary is an unincorporated association which acts as the political action committee for the Teamster's Union Local No. 959. and affiliated unions. For three years it has operated fund raising lotteries under a permit issued by the Department of Revenue. It applied for a permit for 1977 and reported that during 1976 it had distributed $80,000 in cash prizes. The Department denied A.L.I.V.E. a permit for 1977 on the ground that its prize distribution in 1976 had exceeded the allowable limit.

A.L.I.V.E. then brought suit against the Department alleging that the denial of the permit was wrongful, claiming that under the first version of the regulation which was in effect for most of 1976 cash prizes were not included within the personal property limitation of $15,000. While the case was pending before the superior court, the legislature, acting under AS 44.62.320(a), annulled, by

concurrent resolution, 15 AAC 05.410(4).

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8. Legislative Resolve No. 79, in full, states:

Annulling a regulation of the Department of Revenue pertaining to the value of prizes awarded in raffles and lotteries.

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

WHEREAS under AS 44.62.320 the legislature by concurrent resolution adopted by a vote of both houses may annul a regulation of an agency or department; and

WHEREAS 15 AAC 05.410(4), adopted by the Department of Revenue, restricts the value of prizes which may be awarded in a single year by a qualified organization in a raffle or lottery to $30,000 in personal property and $50,000 in real property; and

WHEREAS the prevention of high-stakes gambling sought by this regulation could be achieved more effectively through less restrictive means; specifically, the value of prizes awarded in individual raffles or lotteries could be limited or the prize limit could be related to the amount required to participate in the raffle or lottery; and

WHEREAS this regulation would frustrate the intent of AS 05.15.150, which specifies permissible uses for net proceeds of raffles and lotteries, by preventing qualified organizations from garnering net proceeds in sufficient amounts for uses specifically mentioned in AS 05.15.150, such as erecting or maintaining public buildings or works, or lessening the burden on government;

BE IT RESOLVED by the Alaska State Legislature that administrative regulation 15 AAC 05.410(4) is annulled.

As a result of the legislative annulment A.L.I.V.E. added another count to its complaint under which it claimed that the denial of its permit was wrongful because it was based on continuing enforcement of the regulation despite its nullification by the legislature. In response, the state claimed that the legislature could not constitutionally annul an administrative regulation by concurrent resolution and therefore the regulation had not been annulled. Both parties moved for summary judgment on this issue. The court granted partial summary judgment in favor of A.L.I.V.E., holding that the legislative annulment power was constitutional and that the regulation in question was void ab initio.[9]

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9. That is, since 1960. Legislative Resolve No. 79 purported to annul not merely the 1976 amendments to the regulation, but the regulation in its entirety. See note 8, supra.

II

The Alaska Constitution defines with specificity the mechanics of legislation.[10] Each provision has a purpose "designed to engender a responsible legislative process worthy of the public trust." Plumley v. Hale, 594 P.2d 497, 500 (Alaska 1979).

Article II, section 13 requires that every bill be confined to one subject and that there be a descriptive

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10. Art. II, § 13 provides:

> Form of Bills. Every bill shall be confined to one subject unless it is an appropriation bill or one codifying, revising, or rearranging existing laws. Bills for appropriations shall be confined to appropriations. The subject of each bill shall be expressed in the title. The enacting clause shall be: "Be it enacted by the Legislature of the State of Alaska."

Art. II, § 14 provides:

> Passage of Bills. The legislature shall establish the procedure for enactment of bills into law. No bill may become law unless it has passed three readings in each house on three separate days, except that any bill may be advanced from second to third reading on the same day by concurrence of three-fourths of the house considering it. No bill may become law without an affirmative vote of a majority of the membership of each house. The yeas and nays on final passage shall be entered in the journal.

title. These requirements are designed "to prevent the inclusion of incongruous and unrelated matters in the same bill in order to get support for it which the several subjects might not separately command, and to guard against inadvertence, stealth and fraud in legislation." Suber v. Alaska State Bond Committee, 414 P.2d 546, 557 (Alaska 1966). The same section also requires a specific form of enactment clause to avoid confusion as to when the legislature is speaking with the force and effect of law, as distinguished from the mere expression of its views and desires.[11]

Article II, section 14 requires three readings of a bill, on three separate days in order "to ensure that the legislature knows what it is passing," North Slope Borough v. Sohio Petroleum Corp., 585 P.2d 534, 543 n.11 (Alaska 1978), and to ensure an opportunity for the expression of public opinion and due deliberation.[12] Section 14 also requires that the vote of each legislator on final passage of a bill be recorded and that no bill may pass without an affirmative vote of a majority of the membership of each house. These provisions are meant "to ensure deliberation prior to passage, to ensure that the requisite majority of each house affirmatively votes to enact a bill into law, and

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11. See 3 Proceedings of the Alaska Constitutional Convention 1746-48 (January 11, 1956).

12. See 3 Proceedings of the Alaska Constitutional Convention 1751-54 (January 11, 1956).

to provide a public record of the vote cast by each legislator." Plumley v. Hale, 594 P.2d 497, 500 (Alaska 1979).

In addition to these formal safeguards there is the condition that no bill shall become law unless the governor has the opportunity to veto it.[13] This power is granted "'to preserve the integrity of . . . [the executive] branch of government . . . and thus maintain an equilibrium of governmental powers . . . [and] to act as a check upon hasty and ill-considered legislation.'" Thomas v. Rosen, 569 P.2d 793, 795 n.5 (Alaska 1977)(citation omitted). Finally, there is the clause that laws do not become effective, unless a two-thirds vote of the membership of each house provides otherwise, until ninety days after they are enacted. Art. II, § 18. This is designed to provide a fair opportunity to those people affected by legislation to learn of the laws they must live by.[14]

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. In Plumley v. Hale, 594 P.2d 497, 502 (Alaska

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13. Art. II, §§ 15, 16 and 17.

14. See 4 Proceedings of the Alaska Constitutional Convention 3110 (January 25, 1956).

1979) we held that the requirements of Art. II § 14 are mandatory, not permissive.[15] The minutes of the proceedings of our constitutional convention indicate that the delegates were fully aware that only by following the enactment procedures could the legislature make law. Thus, Delegate Sundborg stated:

> Now, a majority vote in each house of the legislature is not equivalent to passing a law, because it does not require the signature of the governor, and it does not require conformance with the provisions of this constitution and the provisions of such laws as will be passed under it with respect to the procedure in enacting a law. So, when we say in the second sentence, "The state may by law," we are saying that that law must be passed by the legislature in the manner that is required by the constitution and the statutes, and either signed by the governor or passed over his veto or become law without his signature in the manner provided in the constitution, which we felt was the real intention of the body rather than merely requiring that the legislature by a majority in each house and without adhering to any of those other restrictions and without any reference to the governor could contract debt on behalf of the state.

5 Proceedings of the Alaska Constitutional Convention at 3405 (January 28, 1956). Of course, when the legislature

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15. We also referred to the Art. II §§ 14 and 15 safeguards in North Slope Borough v. Sohio Pet. Corp., 585 P.2d 534, 543 n. 11 (Alaska 1978), stating: "Our constitution imposes certain requirements of formality on legislative action . . . . The legislature enacts laws by the passage of bills meeting the foregoing formalities. It may not enact a law or change one by committee report."

wishes to act in an advisory capacity it 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. Other state courts have so held with virtual unanimity.[16]

Thus in People ex rel. Burritt v. Commissioners of State Contracts, 11 N.E. 180 (Ill. 1887) a joint resolution directed state officials to make a contract for the publication and distribution of certain municipal laws and provided an appropriation for that purpose. The Illinois Supreme Court held that the joint resolution was invalid because the enactment procedures prescribed by the Illinois Constitution had not been followed. Speaking of them, the court stated:

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16. Watrous v. Golden Chamber of Commerce, 218 P.2d 498 (Colo. 1950) is perhaps an exception. At issue there was a statute allowing certain tax proceeds to be pledged as security for bonds to pay for construction of state turnpikes under the condition "that any such pledge shall first be approved by joint resolution of the Senate and House of Representatives." Id. at 502. The court upheld the statute, finding that such a resolution was not legislative in character, but "relat[ed] solely to the transaction of the business of the two houses." Id. at 510. One proponent of the legislative veto has remarked that the reasoning of this case is "so unsatisfactory as to destroy its value as a precedent." Schwartz, Legislative Control of Administrative Rules & Regulations, 30 N.Y.U. L. Rev. 1031, 1043 n.56 (1955).

> That these various provisions, giving the form and mode by which, through the concurrent action of the legislative and executive departments, valid and binding laws are enacted, are, in the highest sense, mandatory, cannot be doubted.

11 N.E. at 185. The court went on to note that

> nothing becomes law simply and solely because men who possess the legislative power will that it shall be, unless they express their determination to that effect in the mode pointed out by the instrument which invests them with the power, and under all the forms which that instrument has rendered essential. [Citation omitted].

Id.

In Mullan v. State, 46 P. 670 (Cal. 1896) the California legislature had passed a resolution requiring compensation of a private individual. In rejecting the argument that the resolution had the effect of law, the court stated:

> A mere resolution . . . is not a competent method of expressing the legislative will, where that expression is to have the force of law, and bind others than the members of the house or houses adopting it.

46 P. at 672.

Moran v. La Guardia, 1 N.E.2d 961 (N.Y. 1936) involved statutory provisions reducing public employees' salaries during an economic emergency "until the legislature shall find their further operation unnecessary." The legislature first attempted to repeal this law by passing a bill, but it was vetoed by the Governor. The same result

was then sought by the passage of a joint resolution. In an alternative holding the court held that the legislature could not constitutionally terminate the operation of the statute by resolution:[17]

> A concurrent resolution of the Legislature is not effective to modify or repeal a statutory enactment. . . To repeal or modify a statute requires a legislative act of equal dignity and import. Nothing less than another statute will suffice. A concurrent resolution of the two Houses is not a statute. . . A concurrent resolution, unlike a statute, is binding only on the members and officers of the legislative body. It resembles a statute neither in its mode of passage nor in its consequences. The form of a bill is lacking, and readings are not required. It does not have to lie on the desks of members of the Legislature for three legislative days . . But more important, its adoption is complete without the concurrent action of the Governor, or, lacking this, passage by a two-thirds vote of each House of the Legislature over his veto. Thus a joint resolution may be adopted by a mere majority of the Legislature without action by the Governor or notice to the public, whereas the enactment of a statute requires action by three distinct bodies and at least three days' notice to the public. As has been well said: "In the exercise of this vast power [of the Legislature] according to the fundamental idea and constitution of parliament the concurrence of the three distinct bodies of which it is composed, each acting by

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17. The other alternative holding was that the statute had not authorized termination by resolution.

> itself and independent of the others, is necessary. No two of them acting together, much less alone, can make a law."[Citations omitted].[18]

1 N.E.2d at 962.

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. On the subject of the organization of the executive department the governor

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18. To the same effect are: Becker v. Detroit Sav. Bank, 257 N.W. 853 (Mich. 1934); Cleveland Terminal & V.R. Co. v. State ex rel. Attorney General, 97 N.E. 967, 973 (Ohio 1912)("[A] joint resolution is not an act of legislation and . . . it cannot be effective for any purpose for which an exercise of legislative power is necessary . . ."); Scudder v. Smith, 200 A. 601, 604 (Pa. 1938)("The subject matter of this joint resolution is legislative in its nature. It is not a mere formal expression of legislative opinion [and is therefore invalid]); State ex rel. Todd v. Yelle, 110 P.2d 162, 165 (Wash. 1941)("It is . . . clear that a house resolution is not a law. A law must be enacted either by popular initiative or by the legislature, and, when by the legislature, must be by bill. . ."); Rowley v. City of Medford, 285 P. 1111, 1114 (Or. 1930)(" e power of the legislature to effectively legislate by resolution is confined within very narrow limits. It may provide for expenses incident to its sessions, such as employing clerks and stenographers and procuring supplies, and other matters incident to the carrying on of its own business, but it cannot go outside and legislate generally on matters involving property or other rights. As to such matters, its resolutions have only the effect of an expression of opinion and no more."); Hawks v. Bland, 9 P.2d 720, 721 (Okla. 1932)("[a] resolution is the mere expression of an opinion and not an enactment of law."); Newport News Fire Fighters Ass'n, Local 794 v. City of Newport News, 307 F.Supp. 1113, 1115 (E.D.Va. 1969) ("[T]he resolution expresses only the opinion of that legislative body.").

may propose changes in the law by executive order. Unless they are disapproved by the legislature within sixty days by "resolution concurred in by a majority of the members in joint session. . . .", such changes shall "become effective at a date thereafter to be designated by the governor."[19] On the subject of municipal boundary changes, the state local boundary commission may make recommendations. They become effective forty-five days after presentation to the legislature unless vetoed by a "resolution concurred in by a majority of the members of each house."[20]

There are several noteworthy aspects of these expressed powers. First, they are accompanied by specific time deadlines. Second, the deadlines are different, sixty days in one case and forty-five days in the other. One may question, if there is an implied legislative veto power in the constitution, whether it is accompanied by a time limit, and if so, what the limit is. Third, the expressed legislative vetoes annul proposed executive action, they do not

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19. Art. III § 23.

20. Art. X § 12. We do not agree with the dissent's characterization of the power granted in these two provisions as rule-making power, which we see as the power to interpret and implement statutes. Rather, the power contained in these provisions is the power to change statutes; therefore, the expression of these extraordinary powers in the constitution cannot be regarded as carrying an implication that general administrative rule making was meant to be forbidden.

change existing law. They therefore do not have the same potential for the disruption of public expectations and on-going executive programs that the blanket veto in question has. Fourth, the legislative vote required for the exercise of each of the expressed vetoes is different. Re-organization orders may be blocked by a resolution of disapproval concurred in by a majority of the members of the legislature in joint session,[21] while boundary change vetoes require disapproval by a resolution concurred in by a majority of the members of each house.[22] Since the Senate has twenty members and the House has forty,[23] these differences can be quite important. The votes of thirty legislators are required to forestall a veto taken in joint session, while ten senators can prevent a veto if the vote is to be by a majority of the members of each house. Here, as with the differing time deadlines mentioned above, one may inquire as to which voting method the constitution would impose as part of an implied general legislative veto power. The answer, of course, is that the constitution contains no clue. 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.

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21. Art. III § 23.

22. Art. X § 12.

23. Art. II, § 1.

III

We are aware of only three cases which have decided the question whether a legislative veto is constitutional.[24] They are Atkins v. United States, 556 F.2d 1028 (Ct. Cl. 1977), cert. denied, 434 U.S. 1009, 54 L.Ed.2d 751 (1978); Opinion of the Justices, 83 A.2d 738 (N.H. 1950); and Reith v. South Carolina State Housing Authority, (Ct. C.P., 11th Jud. Dist., Aug. 28, 1975), rev'd on other grounds,[25] 225 S.E.2d 847, 848 (S.C. 1976).

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24. The dissent suggests that our comment in Boehl v. Sabre Jet Room, Inc., 345 P.2d 585 (Alaska 1960), supports an affirmative answer to this question. We stated that "[the legislature] has the power by resolution to annul any agency or department rule or regulation." However, the constitutionality of annulment was not argued in that case, and our statement obviously was not a judgment on this issue.

25. The Amici would add Sibbach v. Wilson, 312 U.S. 1, 85 L.Ed. 479 (1940) to this list; however, the type of veto discussed there apparently entailed formal law enactment and, therefore, the case has no relevance to the question before us. See Atkins v. United States, 556 F.2d at 1060 and n. 21. In Buckley v. Valeo, 424 U.S. 1, 140 n. 176, 46 L.Ed.2d 659, 757 n. 176 (1976), the United States Supreme Court found it unnecessary to pass on the validity of a legislative veto, but Justice White in a concurring opinion indicated he thought it was constitutional. 424 U.S. at 284-85, 46 L.Ed.2d at 838-39. Subsequently, the Court of Appeals for the District of Columbia avoided the same issue, Clark v. Valeo, 559 F.2d 642 (D.C. Cir.)(en banc) aff'd mem. sub. nom. Clark v. Kimmitt, 431 U.S. 950, 53 L.Ed.2d 267 (1977), but Circuit Judge MacKinnon reached the merits in a vigorous dissent criticizing Justice White's conclusion in Buckley. 559 F.2d at 685.

The New Hampshire case, Opinion of the Justices, 83 A.2d 738 (N.H. 1950), involved the question whether a reorganization statute violated the state constitution. The statute provided that the reorganization plan proposed by the governor would become law if the two legislative houses did not disapprove it by concurrent resolution. The court concluded that the statute violated the enactment provisions of the New Hampshire Constitution:

> The procedure which [the reorganizaton statute] provides is in distinct contrast to that contemplated by the Constitution. Consent is to be manifested by silence or adjournment, and disapproval by "concurrent resolution" . . . [T]he contemplated procedure violates the constitutional provisions requiring separate action by each house of the Legislature . . . [T]he act would dispense with the "passage" of any measure, as that word is commonly used, and with the requirement of presentation to the Governor. In a sense the act provides for a reversal of the democratic processes required by the Constitution, for under it the Governor would propose the legislative action, rather than approve or disapprove of action taken. 83 A.2d at 741.

In Reith v. South Carolina State Housing Authority, (Ct. C.P., 11th Jud. Dist., Aug. 28, 1975), rev'd on other grounds, 225 S.E.2d 847, 848 (S.C. 1976), the South Carolina Court of Common Pleas considered, inter alia, the validity of a statutory provision stating that regulations promulgated by the Housing Authority shall be "null and void unless approved by a concurrent resolution of the General

Assembly at its session following such promulgation." The court held that this provision violated the constitutional enactment requirements because "the General Assembly may not perform a legislative function by means of a concurrent resolution."[26] The court also concluded that the provision impermissibly infringed on the executive's power to administer and enforce the laws.[27] On appeal, neither ruling was challenged, but the state supreme court reversed on the grounds that the legislative veto provision was not severable and, therefore, the whole act was unconstitutional.[28] The appellate court accepted the lower court's ruling on the veto provision as the law of the case and did not pass on the issue.[29]

Atkins v. United States, 556 F.2d 1028 (Ct. Cl. 1977), cert. denied, 434 U.S. 1009, 54 L.Ed.2d 751 (1978) involved a statute empowering the President to make recommendations for judicial salary increases and transmit them to Congress; the recommendations would become effective after thirty days unless disapproved by either House. It was claimed that this mechanism was unconstitutional because

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26. Reith v. South Carolina State Housing Authority, Op. at 9.

27. Id. at 10.

28. 225 S.E.2d at 848-49.

29. 225 S.E.2d at 848.

that no change in the law was accomplished by the one-House veto, because the President's recommendations never had the effect of law. Id. at 1063. 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,[31] and annulling any one of them effects a change in the law.

IV

We turn now to a discussion of the major arguments of Appellee and the Amici.

The first is that since AS 44.62.320(a) was passed by the first state legislature, several members of which had served in the Alaska Constitutional Convention, and was

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31. 1 Mezines, Stein & Gruff, Administrative Law § 1.02[2] at 1-45 (1977); 2A Sutherland, Statutes and Statutory Construction § 49.05 at 240 (4th ed. Sands 1973), which states:

> An administrative agency may be vested with the power to promulgate legislative interpretive rules which have the force and effect of law. Such powers must be limited by a standard, and, when exercised, the ensuing regulations, if within the standards, have the same efficacy as an original statute enacted by the legislature. [Footnote omitted].

approved by Governor Egan, who had been chairman of the convention, a stronger than usual presumption of constitutionality should be applied.[32] We need not pause to debate that point. Whatever the strength of the presumption might be, it will be overcome if the statute cannot be squared with a reasonable reading of the constitution. That, in our opinion is the situation here.

The Amici argue that since the legislature may delegate law-making power to an administrative agency, it follows that it may reserve to itself a part of the delegable power, and that a delegation can be made subject to a condition that the legislature may later change the terms of the delegation by informal action. The answer to this argument, in our opinion, is that while the legislature can delegate the power to make laws conditionally, the condition must be lawful and may not contain a grant of power to any branch of government to function in a manner prohibited by the constitution. The legislature is bound to act in accordance with the constraints provided in article II of the constitution. The fact that it can delegate legislative power to others who are not bound by article II does not

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32. The same argument was unsuccessfully made in Bradner v. Hammond, 553 P.2d 1, 4 nn. 4 & 5 (Alaska 1976).

mean that it can delegate the same power to itself and, in the process, escape from the constraints under which it must operate.[33]

To illustrate this point we may assume that the legislature has the power to establish an independent agency which would have the power to disapprove of agency regulations. Since the agency would be a part of the executive department the article II constraints on legislative action would not govern its functions. Could the legislature instead convey to its own members the power to act as such an agency free from these constraints? The answer, we think, is clearly no for that would amount to dual office-holding, prohibited by article II, section 5,[34] and would infringe on the executive appointment power set out in

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33. "A delegation which disperses power is not necessarily constitutionally equivalent to one which concentrates power in the hands of the delegating agency." Watson, Congress Steps Out: A Look at Congressional Control of the Executive, 63 Cal. L. Rev. 983, 1067 n.430 (1975).

34. Art. II, § 5 provides in relevant part:

> Disqualifications. No legislator may hold any other office or position of profit under the United States or the State.

article III, section 26. 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 com-

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35. Art. III, § 26 provides:

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

See, e.g., Buckley v. Valeo, 424 U.S. 1, 118-43, 46 L.Ed.2d 659, 744-58 holding that Federal Elections Commission members were necessarily "Officers of the United States" because, among other reasons, of their administrative rule-making power, and therefore could not be appointed by Congress; People v. Tremaine, 168 N.E. 817 (N.Y. 1929) discussed infra, pp. 25-26.

Appeals struck down a statute granting certain legislative committee chairmen the power to disapprove of the allocation of lump sum appropriations to an executive agency. The court acknowledged that the legislature might itself legislate the allocation, or it could delegate the responsibility to an executive agency. It could not, however, delegate the responsibility to one, or more than one, of its members: "The Legislature might make the segregation itself, but it may not confer administrative powers upon its members without giving them, unconstitutionally, civil appointments to administrative offices. It might by general law confer the power of segregation or approval of segregation upon any one but its own members . . . but the Constitution . . . makes its own members ineligible to such an appointment." Id. at 822. See also, Stockman v. Leddy, 129 P. 220, 223 (Colo. 1912); Bramlette v. Stringer, 195 S.E. 257, 264 (S.C. 1938). Contra, Opinion of the Justices, 266 A.2d 823 (N.H. 1970).

The Appellee also argues that legislative oversight of administrative regulations is desirable and that such oversight can not take place effectively if it must follow the path of legislation prescribed by article II. There are two answers to this argument. First, and most important, the question of whether the legislature might

perform a task more efficiently if it did not have to follow article II is essentially irrelevant. Since article II applies, the question of whether efficiency take primacy over other goals must be taken to have been answered by our constitutional framers. 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. See discussion, supra, pp. 7-10.

Appellee also makes an argument based on the doctrine of separation of powers. Rule-making is essentially a legislative rather than executive function and so, the argument goes, broad latitude must be afforded the legislature to act as it sees fit in this, the core area of its duties. This argument is essentially inconsistent with the requirements prescribed in article II of the constitution which must be observed in the process of legislation. The legislature is not free to ignore these requirements. See, discussion supra, pp. 7-10.

Appellee finds it significant that the Alaska Constitution contains no provision like that in section 7, clause 3 of article I of the United States Constitution[38] which authorizes the executive to veto legislative resolutions, and that executive involvement in the enactment of resolutions was not deemed necessary by the framers of the state constitution. This point, however, does not advance Appellee's case. Under the United States Constitution joint resolutions are one means by which laws are enacted;[39] they are therefore naturally included among those legislative acts subject to Presidential veto. However, under the state constitution resolutions are not an alternative law enactment process, and therefore there is no need to make them subject to an executive veto.

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38. This clause provides:

> Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill. [Emphasis added].

39. United States ex rel. Levey v. Stockslager, 129 U.S. 470, 32 L.Ed. 785 (1889).

The Amici contend that since AS 44.62.320(a) was itself passed in accordance with all constitutional mandates and since the governor had the opportunity to veto the statute, constitutional requirements have been satisfied with respect to subsequent acts of the legislature taken pursuant to the statute. In other words, by virtue of one enactment approved by the governor, the legislature can free itself, in certain instances, of the constitutional constraints that would otherwise govern its actions. Such an enactment would impermissibly preserve legislative power possessed at one instant in time for future periods when the legislature might otherwise be incapable of acting because of the executive veto.[40] It would also do away with the formal safeguards of article II which are meant to accompany law-making. The requirements of the constitution may not be eliminated in this fashion.

REVERSED AND REMANDED with directions to enter partial summary judgment in favor of the state as to the effect of the concurrent resolution and for further proceedings.

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40. See Watson, Congress Steps Out: A Look at Congressional Control of the Executive, 63 Cal. L. Rev. 983 at 1067 (1975).

...NEVER, Chief Justice, with whom CONNOR, Justice, joins, ...senting.

I

I believe that the legislative power to annul administrative regulations by concurrent resolution is constitutional. In my opinion, the majority reasoning is fallacious in equating regulations with laws passed by the legislature. The litany of constitutional requirements outlined in the majority opinion is indeed mandated for the passage of a bill into law. The constitution, however, makes none of those requirements applicable to regulations. In fact, the constitution is silent as to the practice of delegating authority by the legislature to the executive or administrative agencies for promulgation of regulations.[1] Regulations may be promulgated without having each regulation confined to one subject, a descriptive title, a specific form of enactment clause, three readings on three separate days, the vote of each member adopting the regulation recorded, a majority vote of each house of the legislature, a public record of the vote cast, being subject to veto by the governor,

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1. The constitution does authorize "[r]egulatory, quasi-judicial and temporary agencies" to be established by law. Art. III, § 22. There are no constitutional requirements for promulgation of regulations.

a 90-day waiting period before becoming effective.[2] Nevertheless, the majority does not question the authority of the legislature to delegate the power to promulgate regulations without these safeguards. It seems to me that if the legislature, in authorizing regulations, cannot condition that authority with a reasonable provision for oversight because the annulment of a regulation is equated with repeal of a statute, then the regulation itself must be considered invalid as not having been passed with the requirements necessary for enacting a bill into law.

This issue was considered by this court shortly after statehood in Boehl v. Sabre Jet Room, Inc., 349 P.2d 585, 588 (Alaska 1960), where we stated:

> The legislative power of the state "is vested in a legislature." It is argued that because of this constitutional provision the power may not be delegated.
>
> But such a strict theory of separation of powers ignores realities and the practical necessities of government. The United States Supreme Court has said that delegation by Congress has long been recognized as necessary in order that the exertion of legislative power does not become a futility, and that necessity fixes a point beyond which it is unreasonable and impracticable to compel the legislature to prescribe detailed rules. [Footnotes omitted.]

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2. AS 44.62.180 does specify that, with certain exceptions, regulations become effective on the 30th day after filing by the lieutenant governor.

one of the bases specified in Boehl for upholding this power of the legislature to delegate regulatory authority was the identical right to annul regulations which the majority now finds to be unconstitutional. In Boehl we stated:

> It also is not essential, in order to sustain the grant of authority, that the legislature circumscribe administrative discretion by express standards of action in order that the opportunity for capricious exercise of power will not exist. There is slight danger of that. The exercise of the board's powers is hedged about by substantial safeguards. Before the board may act it must conduct a public hearing and afford any interested person the opportunity to be heard, and it must then "consider all relevant matter presented to it." There is ample opportunity for judicial review; for "any interested person may obtain a judicial declaration as to the validity of any regulation * * ". Finally, there is legislative supervision. The legislature, which meets annually, may revise the statute and thus restrict the bounds of administrative action; it has the power by resolution to annul any agency or department rule or regulation; and the Legislative Council, an interim legislative committee charged with the duty of making recommendations to the legislature, must annually review all agency regulations to determine if the legislative intent is being correctly followed.

349 P.2d at 590 (emphasis added)(footnotes omitted).

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.

II

The advent of the industrial revolution vastly increased and complicated the tasks of legislatures. Due to limits of time and specialized expertise, legislatures have found it impossible to prescribe laws adequately covering the tremendously varied and intricate forms of social relationships arising out of the proliferation of business, manufacturing, trade, transportation, communication and commercial enterprises.[3] Of necessity, legislative authority had to be delegated to administrative agencies. Nevertheless, both in England and in the United States, efforts were initiated to maintain some controls over broad delegations of authority.[4]

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3. See generally Stone, The Twentieth Century Administrative Explosion and After, 52 Calif. L. Rev. 513 (1964).

4. See Boisvert, A Legislative Tool for Supervision of Administrative Agencies: The Laying System, 25 Fordham L. Rev. 638 (1957); Schwartz, Legislative Control of Administrative Rules and Regulations: The American Experience, 30 N.Y.U. L. Rev. 1039 (1955) (hereinafter cited as Schwartz); Carr, Legislative Control of Administrative Rules and Regulations: Parliamentary Supervision in Britain, 30 N.Y.U. L. Rev. 1045 (1955).

England has long utilized the laying system, whereby an administrative order or regulation must be laid before Parliament for a specified period of time before becoming effective.

> Parliamentary control over administrative rules and regulations . . . is asserted principally through provisions in enabling statutes that rules made under them shall be laid before Parliament. This is customarily combined with a provision in the statute, either that the rule shall not be operative until it is approved by resolution, either of both Houses or of the House of Commons alone . . . , or that, if within forty days a resolution is passed by either House for annulling the rule, the rule is to be void . . . .[5]

In the United States, the issue of whether a legislature can reserve to itself the power to disapprove administrative regulations has been brewing for more than forty years.[6] The early stages of the dispute involved the Reorganization Acts of the 1930's and 1940's which provided that executive reorganization plans became effective sixty days after transmission to Congress, unless within that

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5. Schwartz, supra note 4, at 1032-33.

6. Clark v. Valeo, 559 F.2d 642, 649-50 (D.C. Cir.) (en banc) (per curiam), aff'd mem. sub nom., Clark v. Kimmit, 431 U.S. 950, 53 L. Ed. 2d 267 (1977).

period Congress disapproved by resolution.[7] Federal acts incorporating similar provisions have proliferated in recent years.[8] Yet no federal court has squarely evaluated the validity of provisions reserving to Congress the power to disapprove administrative regulations.[9]

III

I agree with the majority that there is scant case authority on the specific issue in the United States. Our court, however, has favorably discussed the legislative veto in Boehl.

The holding in Atkins v. United States, 556 F.2d 1028 (Ct. Cl. 1977)(en banc)(per curiam), cert. denied, 434 U.S. 1009, 54 L. Ed. 2d 751 (1978), supports the position

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7. Ginnane, The Control of Federal Administration by Congressional Resolutions and Committees, 66 Harv. L. Rev. 569, 576-82 (1953). The 1939 and 1945 Reorganization Acts provided for disapproval by a concurrent resolution; the 1949 Act allowed disapproval by either House. Id. at 579, 581.

8. Watson, Congress Steps Out: A Look at Congressional Control of the Executive, 63 Calif. L. Rev. 983, 989 (1975). An appendix to this article lists many statutes giving special effect to congressional resolutions. Many have been passed in the 1970's and involve veto power over actions of executive agencies or the President. See id. at 1089-92 app. A.

9. Stewart, Constitutionality of the Legislative Veto, 13 Harv. J. Legis. 593, 595 (1976).

taken in this dissent. Atkins upheld a statute allowing either House of Congress to veto judicial salary increases recommended by a presidential commission.

In Buckley v. Valeo, 424 U.S. 1, 46 L. Ed. 2d 659 (1976), the majority of the United States Supreme Court did not reach the issue of whether regulations promulgated by the Federal Election Commission would become effective within thirty days of filing if either House of Congress did not disapprove them. In his concurrence, Justice White did approve the oversight provision, stating:

> I am also of the view that the otherwise valid regulatory power of a properly created independent agency is not rendered constitutionally infirm, as violative of the President's veto power, by a statutory provision subjecting agency regulations to disapproval by either House of Congress. For a bill to become law it must pass both Houses and be signed by the President or be passed over his veto. Also, "Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary" is likewise subject to the veto power. Under § 438(c) the FEC's regulations are subject to disapproval; but for a regulation to become effective, neither House need approve it, pass it, or take any action at all with respect to it. The regulation becomes effective by nonaction. This no more invades the President's powers than does a regulation not required to be laid before Congress. Congressional influence over the substantive content of agency regulation may be enhanced, but I would not view the power of either House to disapprove as equivalent to legislation or to an order, resolution or vote requiring the concurrence of both Houses.

424 U.S. at 284-85, 46 L. Ed. 2d at 838-39 (emphasis added) (footnotes omitted).

The majority cites Reith v. South Carolina State Housing Authority, (Ct. C.P., 11th Jud. Dist., Aug. 28, 1975), rev'd on other grounds, 225 S.E.2d 847, 848 (S.C. 1976), but appropriately concedes that the Supreme Court of South Carolina did not reach the issue with which we are concerned.

Also cited is the New Hampshire case, Opinion of the Justices, 83 A.2d 738 (N.H. 1950), an advisory opinion on whether a reorganization statute violated the state constitution. The statute provided that the reorganization plan proposed by the governor would become law if the two legislative houses did not disapprove it by concurrent resolution. The court concluded that the statute violated the state constitution. Id. at 741. Three of the five justices felt the procedure violated the principle of bicameralism because each house "has undertaken in advance to surrender to the other its constitutional authority to veto or refuse assent to action taken or approved by the other." Id. at 741-42.

It is also significant that twenty years later the New Hampshire Supreme Court examined a statute requiring certain salary increases to be approved by a legislative committee prior to submission to the governor for final approval. Opinion of the Justices, 266 A.2d 823 (N.H. 1970). The court, without analysis of its earlier

opinion, found no violation of separation of powers, reasoning that since the legislature could delegate its power to fix salaries, it could impose conditions upon the exercise of such delegated authority. Id. at 826. In conclusion, it seems to me that what case authority exists is more supportive than not of the concept of legislative annulment.

IV

The legislature's participation in the promulgation of regulations is within the core area of legislative power, formulation of policy. Accordingly, the legislature's power to select the means of participation should be generously construed.[10]

The delegation of rule-making authority to executive agencies does not alter the basic legislative nature of the function. Conditioning that delegation on the right of the legislature to review and annul regulations does not infringe on the power of the executive, where, as here, the

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10. We have held that when the legislature exercises power with reference to an essentially executive function those powers should be construed narrowly. Bradner v. Hammond, 553 P.2d 1, 7 (Alaska 1976). Conversely, when, as here, a basically legislative function is involved, the powers of the legislature should be construed broadly.

...lling action is taken at the first session of the legislature following promulgation of the regulation.[11]

I believe that a statute can validly condition the delegated power to enact regulations by requiring that the regulations be subject to annulment by resolution, just as it could limit the effective date of the new regulations or the length of time during which they would be in force. I find no material difference between AS 44.62.320 and other statutes, upheld by the United States Supreme Court, that condition the exercise of rule-making authority by approval of private citizens.[12] If private citizens can exercise such power, then certainly the legislature should be able to exercise the same power.

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11. A long-term scrutiny of executive action taken pursuant to regulations leading to delayed annulment might involve legislative infringement on the executive power to enforce laws. We are not confronted with such a question and need not pass on it because the regulation here in question was annulled at the first legislative session following its promulgation. We are similarly not confronted with an annulment by a single legislator, a committee of the legislature, or by one house.

12. United States v. Rock Royal Co-Operative, Inc., 307 U.S. 533, 574-78, 83 L. Ed. 1446, 1470-72 (1939) (upholding federal statute delegating to Secretary of Agriculture authority to issue marketing orders for specified commodities, if approval of producers was secured); Currin v. Wallace, 306 U.S. 1, 15-18, 83 L. Ed. 441, 451-52 (1939) (upholding statute authorizing Secretary of Agriculture to regulate marketing of tobacco if two-thirds of growers in a market requested, by referendum, such action).

V

As the majority correctly notes, there are two provisions in our constitution which deal specifically with the legislative veto. These are article III, section 23, concerning executive reorganization, which provides that the legislature may veto a reorganization plan by a resolution "in joint session,"[13] and article X, section 12, concerning local boundaries, which provides that the legis-

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13. The full text of article III, section 23, provides:

> The governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders. The legislature shall have sixty days of a regular session, or a full session if of shorter duration, to disapprove these executive orders. Unless disapproved by resolution concurred in by a majority of the members in joint session, these orders become effective at a date thereafter to be designated by the governor.

lature may veto by resolution local boundary changes proposed by an executive branch commission.[14]

The majority concludes that these two express provisions creating a legislative veto by resolution exclude the possibility of an implied legislative veto. They state:

> 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.

Adopting the majority's logic, however, it might be said with equal force that the delegation of any rule-making powers to the executive by the legislature would also be unconstitutional. It might be argued that where the constitutional drafters intended to create rule-making power in the executive branch they created it expressly, with

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14. Article X, section 12, provides:

> A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.

specificity, as they did in these two provisions, and that other rule-making powers created by statute cannot be implied.

In my view, the expression of some powers in these provisions does not lead to the conclusion that the constitution forbids either an expansion of rule-making powers in the executive or a denial of the legislative veto. The Alaska Constitution is silent on the question of administrative regulations. It does not say what powers may be delegated, how rules may be promulgated, or whether the legislature may retain a veto power by resolution. Presumably, these were questions that the constitutional drafters thought could best be resolved by the legislature.

There is an aspect of these two provisions, however, that is worthy of some notice. It seems significant that in the only two instances where the constitution does make a specific grant of rule-making power directly to the executive, it does so with a power reserved in the legislature to veto the rule by resolution. There seems to be little logic to a position that maintains that the constitutional drafters would have sanctioned the use of the resolution here, yet demanded the higher enactment standard when the legislature delegated power on its own.

Finally, the majority argues that where a veto power by resolution exists, it must also specify time limits, the method of voting and so forth. This argument is

unconvincing. Having allocated a specific rule-making power to the executive branch, it was appropriate for the constitutional drafters to define in the constitution a specific legislative check to that power. This would seem to be a virtual necessity, because any statute that the legislature might pass to circumscribe these executive powers otherwise would in all likelihood be unconstitutional. But where the legislature delegates rule-making power by statute, the constitutional drafters might well presume that the legislature could also design an appropriate system of checks and balances by statute law, as they have done here in AS 44.62.320(a).

VI

It is also of significance that the Administrative Procedure Act, chapter 143, SLA 1959, containing an annulment provision, was passed shortly after the drafting of the constitution at the first session of the Alaska State Legislature. Many of the delegates to the Constitutional Convention were among the members of the legislature.[15] In fact, two of the more active delegates, Hellenthal and Taylor, introduced House Bill 13 which was enacted as

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15. Thirteen delegates and Convention Secretary (now Judge) Thomas B. Stewart were legislators in the first session of the Alaska State Legislature.

chapter 143, SLA 1959.[16] The bill was passed by a House vote of 37 to 1,[17] and by a unanimous Senate vote.[18]

At that time, the governor of Alaska was William A. Egan, who had presided as President over the Constitutional Convention. In signing House Bill 13 into law, Governor Egan delivered the following message to the legislature:

> I am signing into law HOUSE BILL NO. 13, the administrative procedures bill. I wish to call attention to the Attorney General's statement that Section 1, Article VI of Chapter 1 thereof may be unconstitutional in its seeking to impose new duties on local governing bodies.
>
> Because of the bill's separability clause, however, I do not consider this flaw of such seriousness that the bill should not be signed and utilized.[19]

Although the governor saw fit to point out a possible constitutional problem with article VI because it required local governing bodies to hold public hearings, no question was raised about the legislature's power to annul regulations by joint resolution.[20]

What was said by the United States Supreme Court about legislation passed by Congress shortly after the

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16. 1959 House Journal 52.

17. 1959 House Journal 427.

18. 1959 Senate Journal 708.

19. 1959 Senate Journal 1092.

20. See ch. 143 (ch. I, art. VII, § 1), SLA 1959.

enactment of the United States Constitution is apropos here:

> What, then, are the elements that enter into our decision of this case? We have first a construction of the Constitution made by a Congress which was to provide by legislation for the organization of the Government in accord with the Constitution which had just then been adopted, and in which there were, as representatives and senators, a considerable number of those who had been members of the Convention that framed the Constitution and presented it for ratification. It was the Congress that launched the Government. It was the Congress that rounded out the Constitution itself by the proposing of the first ten amendments which had in effect been promised to the people as a consideration for the ratification. It was the Congress in which Mr. Madison, one of the first in the framing of the Constitution, led also in the organization of the Government under it. It was a Congress whose constitutional decisions have always been regarded as they should be regarded as of the greatest weight in the interpretation of that fundamental instrument. . . . This court has repeatedly laid down the principle that a contemporaneous legislative exposition of the Constitution when the founders of our Government and framers of our Constitution were actively participating in public affairs acquiesced in for a long term of years fixes the construction to be given its provisions.

Myers v. United States, 272 U.S. 52, 174-75, 71 L. Ed. 160, 189-90 (1926)(citation omitted).

Finally, I note that the policy of authorizing legislative annulment of regulations is becoming increasingly widespread in Alaska, in other states, and in the federal

government. Such a practice, affording a practical means

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21. Numerous other statutes enacted in recent legislative sessions in Alaska provide for some specific legislative review function. See AS 46.03.758(c)(regulations relating to oil spills); AS 46.40.080 (regulations relating to coastal zone management); AS 38.50.140 (regulations pertaining to land exchanges); AS 39.23.080(c) (regulations relating to salary increases); AS 38.06.055(a) (oil and gas dispositions). Some regulations annulled by resolution are the following: regulations relating to nursing home administrators, annulled by Senate Concurrent Resolution No. 94 in 1976; motor vehicle inspection regulations, annulled by Senate Concurrent Resolution No. 62 (HCS CSSCR), in 1976; the prize limit regulation, annulled by Legislative Resolve No. 79 (House Concurrent Resolution No. 60) in 1977; school loan regulations, annulled by Legislative Resolve No. 87 (Senate Concurrent Resolution No. 32) in 1977; and certain regulations adopted by the Department of Community and Regional Affairs, annulled by Legislative Resolve No. 95 (Senate Concurrent Resolution No. 12) in 1977.

For a review of laws from other states relating to annulment of regulations, see Jackson, Legislative Review of Administrative Rules and Regulations 1 (July 1977)(papers prepared for Southern Legislative Conference). A chart at the end of Professor Jackson's paper indicates that the following states allow regulations to be annulled by means of resolution: Alaska, Connecticut, Idaho, Michigan, Montana, Oklahoma, Tennessee, and Vermont. A New York report gives slightly different figures, stating that fourteen of the twenty-two states with legislative review mechanisms have procedures which can "cause an agency rule to be promulgated, approved, amended, modified, or annulled." Task Force on Critical Problems, Senate Research Service, New York State Legislature, Administrative Rules . . . What is the Legislature's Role?, 7 (June 1976). Appellant states that eight states allow nonstatutory legislative annulment -- six by concurrent resolution, two by one-House vetoes.

The states which do not allow annulment of the regulation generally provide that a legislative committee may review regulations to determine if they are consistent with legislative intent, hold hearings on questionable regulations, notify the agencies of its doubts, and sometimes, recommend statutory action by the legislature.

For a discussion of federal laws on the subject, see note 8 supra.

of supervision of the broad delegation of legislative powers required by the complexities of modern society, should not be hastily voided.

I conclude that the legislature's annulment of the cash prize regulation, pursuant to AS 44.62.320(a), does not violate the principle of separation of powers, does not provide a means by which the legislature can enact laws without passage of a bill, and does not unconstitutionally encroach on the power of the executive.

WORK ORDER REQUEST FORM

NC 8150

KEYWORDS: Coastal Management

ASSIGNED TO Cook

REQUEST FOR: BILL ☐ RESOLUTION ☒ RESEARCH ☐ OTHER ☐

SUBJECT SCR: Approve coastal management plan of the City of Haines

REQUESTED FOR Senate C&RA Committee BY Twyla EXT.

DELIVER TO Senate C&RA Committee TAKEN BY Chenoweth

INSTRUCTIONS, EXPLANATIONS Approve City of Haines (not Municipality of Haines as written) coastal management plan.

OBTAIN

SPECIAL DRAFTING INSTRUCTIONS ATTACHED ☐

AUTHORIZED TO CONFER WITH

RETURN

TO REQUESTER

APPROVED: BGB Director, Legal Services

Director, Research

REVIEWED

IN 2/21 DUE for intro. 2/27

TYPED - Draft DATE

Final DATE

PROOFED DELIVERED

SPECIAL INSTRUCTIONS TO TYPIST/PROOFREADER

DRAFT ☐ FINAL ☐

LA-L 10

WORK ORDER REQUEST FORM

No 8191

KEYWORDS: Coastal Management

Regulations

ASSIGNED TO Cook

REQUEST FOR: BILL ☐ RESOLUTION ☒ RESEARCH ☐ OTHER ☐

SUBJECT SCR: Amend coastal policy council standards

REQUESTED FOR Senate C&RA BY Twyla EXT.

DELIVER TO Senate C&RA Committee TAKEN BY Greenough

INSTRUCTIONS, EXPLANATIONS SCR amending coastal policy council regulations relative to forest practices provision.

OBTAIN

SPECIAL DRAFTING INSTRUCTIONS ATTACHED ☐

AUTHORIZED TO CONFER WITH

RETURN TO REQUESTER

APPROVED: BCB Director, Legal Services

Director, Research

REVIEWED

IN 2/21 DUE

TYPED - Draft DATE

Final DATE

PROOFED DELIVERED

SPECIAL INSTRUCTIONS TO TYPIST/PROOFREADER

DRAFT ☐ FINAL ☐

LA-L 10

WORK ORDER REQUEST FORM

WO 8292

KEYWORDS: Coastal Management

ASSIGNED TO Cook

REQUEST FOR: BILL ☐ RESOLUTION ☒ RESEARCH ☐ OTHER ☐

SUBJECT: Approve Municipality of Anchorage coastal management plan by SCR

REQUESTED FOR Senate C&RA Committee BY Tavia EXT. ____

DELIVER TO Senate C&RA Committee TAKEN BY Chenoweth

INSTRUCTIONS, EXPLANATIONS SCR approving the coastal management plan of the Municipality of Anchorage.

OBTAIN

SPECIAL DRAFTING INSTRUCTIONS ATTACHED ☐

AUTHORIZED TO CONFER WITH ____

RETURN ____

____ TO REQUESTER

APPROVED BCH Director, Legal Services

____ Director, Research

REVIEWED ____

IN 2/21 DUE for intro. 2/27

TYPED - Draft ____ DATE ____

Final ____ DATE ____

PROOFED ____ DELIVERED ____

SPECIAL INSTRUCTIONS TO TYPIST/PROOFREADER

DRAFT ☐ FINAL ☐

LAW L 10

WORK ORDER REQUEST FOI M

8193

KEYWORDS: Coastal Management

ASSIGNED TO Cook

REQUEST FOR: BILL ☐ RESOLUTION ☒ RESEARCH ☐ OTHER ☐

SUBJECT SCR: Approve coastal management plan for Annette Islands reserve

REQUESTED FOR Senate C&RA Committee BY Tvyla EXT.

DELIVER TO Senate C&RA Committee TAKEN BY Chenoweth

INSTRUCTIONS, EXPLANATIONS SCR: Approve the coastal management plan submitted by counc for the Annette Islands Reserve.

OBTAIN

SPECIAL DRAFTING INSTRUCTIONS ATTACHED ☐

AUTHORIZED TO CONFER WITH

RETURN

TO REQUESTER

APPROVED: GB Director, Legal Services

Director, Research

REVIEWED

IN 2/21 DUE for intro 2/27

TYPED - Draft DATE

Final DATE

PROOFED DELIVERED

SPECIAL INSTRUCTIONS TO TYPIST/PROOFREADER

DRAFT ☐ FINAL ☐

LA-L 10

COASTAL MANAGEMENT PLAN

MEMORANDUM State of Alaska

TO Murray Walsh, Coordinator
Office of Coastal Management
Office of the Governor

DATE: July 16, 1982

FILE NO: J66-502-81

TELEPHONE NO: 465-3600 x 53

FROM WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT: Scope of [illegible] consistency determinations

By:
Lauri J. Adams
Assistant Attorney General

You have requested our advice regarding the breadth of matters which may be reviewed by state agencies in their coastal management consistency determinations on development projects in the coastal zone. The Alaska Coastal Management Act ("the Act"), does not encourage the establishment of a new permit or license system for activities occurring in the coastal zone of the state. Ch. 84, sec. 2(5), SLA 1977. Rather, implementation of the coastal program is achieved in large measure through integration of substantive coastal development standards into each state agency's project review and action on existing permits, licenses and proprietary authorizations. Your question involves a determination of the extent to which consistency review of a particular activity by a state agency may encompass aspects of the project which might not have been considered as part of the agency's approval process before enactment of the coastal program. Put another way, the issue is the extent to which agency jurisdiction over a regulated project is expanded or extended by the requirements of the Coastal Management Act.

It is difficult in the abstract to draw conclusions regarding the appropriate scope of consistency reviews for every specific example of a development activity with coastal zone implications. State agencies have considerable discretion in enforcing their regulatory authorities on a case-by-case basis so as to best meet the objectives of the Coastal Management Act. Nevertheless, the policies and purposes of the Act provide significant guidance concerning the coverage intended by the legislature in devising a statutory scheme for management of the coastal resources of the state. First, the Act emphasizes a comprehensive approach to regulating uses of the coastal zone. It requires consideration of the impacts of each new proposed use, both as they might adversely affect other resources of the coastal area, and as they might limit the range of remaining alternative possible uses. Second, the Act requires consideration of cumulative impacts of development. As a result, in some cases, at least, matters to be considered by the agency before granting its approval might be substantially broadened by consideration of coastal program standards, if, for instance, the

agency's authorizing permit involves only very limited criteria by itself. The general discussion of the scope of consistency determinations which follows is amplified by a few examples which may assist you in your review of specific projects.

In enacting the state-wide coastal management program, the legislature expressly recognized the need for the establishment of a comprehensive planning process for the coastal resources of the state and for a means of addressing and resolving conflicts among competing uses in the coastal area. Ch. 84, sec. 1, SLA 1977. In the legislative findings accompanying the Act, the legislature criticized the overly narrow scope of the planning and governmental decisionmaking which had occurred with respect to the state's coastal zone:

> The degree of planning and resource allocation which has occurred in the coastal area has often been motivated by short-term considerations, unrelated to sound planning principles.

Ch. 84, sec. 1(5), SLA 1977 (emphasis added). This state of affairs was the impetus for the comprehensive planning and regulatory approach embodied in the ACMP:

> there is a critical need to engage in comprehensive land and water use planning in coastal areas and to establish the means by which a planning process and management program involving the several governments and areas of the unorganized borough having interest in the coastal area may be effectively implemented.

Id., sec. 1(6) (emphasis added).

In the statement of policy enacted as part of the Act, the legislature articulated the broad scope of coverage intended in the Act. Section 2(3) of chapter 84, SLA 1977 provides:

> It is the policy of the state to . . . develop a management program which sets out policies, objectives, standards and procedures to guide and resolve conflicts among public and private activities involving the use of resources which have a direct and significant impact on the coastal land and water of the state. (Emphasis added)

A key qualifying term in this statement of policy is "use of direct and significant impact". It

identifies the scope of concerns which are to be addressed through the coastal program. AS 46.40.210(5) defines that term as follows:

> 'Use of direct and significant impact' means a use, or an activity associated with the use, which proximately contributes to a material change or alteration in a natural or social characteristic of a part of the state's coastal area and in which
>
> (A) the use, or activity associated with it, would have an adverse effect on the quality of the resource area,
>
> (B) the use, or activity associated with it, would limit the range of alternative uses of the resources of the coastal area; or
>
> (C) the use would, of itself, constitute a tolerable change or alteration of the resources within the coastal area but which, cumulatively, would have an adverse effect.

This definition gives the clearest legislative indication of the intended scope of application of the Act to land and water uses and activities. It defines the uses and activities subject to regulation under the coastal program based on a broad notion of potential impacts on the resources of the coastal area, or the degree to which a proposed coastal use or associated activity would materially alter any natural or social characteristics of a part of the coast. AS 46.40.210(5) The focus on the effects or impacts of proposed uses and their associated activities furthers the legislative policy of accomplishing comprehensive land and water use management of the coastal zone by requiring effective consideration of the full range of impacts of any given proposed development project in order to determine whether it satisfies the standards of the coastal program. By ensuring full consideration of the effects of anticipated uses and activities which are part of or associated with the project, this approach also effectuates the objective of the Act of protecting identified priority uses and activities in the coastal zone where the potential for conflict exists. See generally AS 46.40.020.

Subparagraphs (B) and (C) of AS 46.40.210(5) are of particular importance as they effectively establish the scope of

an agency's permit review for consistency purposes. Subsection (B) invites agency consideration of the range of alternative uses of coastal resources which could be preempted or diminished by allowing the proposed use to occur. Subsection (C) broadens the focus of agency attention by requiring consideration of cumulative impacts, which would include impacts of the project as a whole, as well as subsequent associated or similar developments.

Together, these subsections evidence an intent to deal with the problems of piecemeal review of development. Two major problems in this respect are the tendency of permit reviews to focus on isolated aspects of projects, and thus to fail to see the forest for the trees; and the incremental approval of minor projects which cumulatively result in major impacts. The Act's solution is to substitute comprehensive review for piecemeal review by requiring agencies to look at proposed uses and associated activities, at potential alternative uses, and at the effects of cumulative development. As discussed further below, this change is accomplished by expanding the scope of existing state authorizations, rather than by creating a new coastal permit.

Another indicator of legislative intent that consistency determinations under the ACMP may be broader in scope than the permit or other approval to which they are attached is the legislature's desire to obtain federal approval of the ACMP. For example, AS 44.19.893 requires that the ACMP be developed in conformity with the Coastal Zone Management Act of 1972 (16 U.S.C. § 1451 et seq.). By having an approved coastal management program, Alaska receives federal funds to help run the program. See 1978 Opn. Att. Gen., "State Agency Implementation of Alaska Coastal Management Plan Standards," October 26, 1978. In addition, the power of federal consistency, which increases the degree of state control over federal activities affecting the state's coastal zone, is only available to states with approved management programs. 16 U.S.C. § 1456(c).

To obtain federal approval under the Coastal Zone Management Act, 16 U.S.C. § 1451 et seq., a state must demonstrate that its program contains the authorities necessary to implement the program, including the power to:

> administer land and water use regulations, control development in order to ensure compliance with the management program, and to resolve conflicts among competing uses.

16 U.S.C. § 1455(d)(1). The federal Office of Coastal Zone Management (OCZM), within the Department of Commerce, review each

state program on behalf of the Secretary of Commerce to ensure that this federal requirement is met. 16 U.S.C. § 1455. That such regulatory power must include comprehensive management of state coastal resources was reflected in the OCZM's review of Alaska's coastal program for purposes of federal approval of the program. OCZM noted that the adequacy of Alaska's wetlands management system was "a matter of great concern" to them during the development and review of the ACMP. Final Environmental Statement on the ACMP, p. 508 (1979). This concern arose largely due to the manner in which the Alaska legislature sought to carry out the goals of comprehensive coastal zone planning and management. The legislature sought to avoid the creation of a new state bureaucracy with the general authority to regulate coastal zone development through a new coastal permit. This goal was expressed in the policy of utilizing "existing governmental structures and authorities to the maximum extent feasible to achieve the policies set out in this section . . . ." Ch. 84, sec. 2(5), SLA 1977. To this end, primary responsibility for implementation of the coastal program was assigned to state agencies which approve and authorize uses and activities in the coastal area under existing statutory authorizations and to coastal resource districts which have and exercise zoning and other land use controls on the use of resources within the each district. AS 46.40.100(a), 6 AAC 80.010(b).

It was the absence of a coastal permit, and the unlikelihood that a specific wetlands permit would be adopted by the state, which gave rise to OCZM's concern over the ability of Alaska to comprehensively plan for and manage its coastal wetlands as the federal CZMA required. To ensure that this ability indeed existed, OCZM carefully scrutinized the relation of the state's implementation mechanism to the existing state regulatory authorities governing land and water use and development. This relationship involves what is essentially a "piggy-back" arrangement for enforcement of the coastal management standards. It requires that each state administrative agency's regulatory and proprietary jurisdiction over uses and activities in the coastal zone is expanded to include the standards and guidelines in 6 AAC 80 and 6 AAC 85 which were adopted by the Coastal Policy Council and each district program subsequently approved by the council. In essence, the Coastal Management Act imposes new obligations on state agencies to review proposed uses and activities in the coastal area for consistency with the coastal program, as well as for compliance with their own statutes and regulations. This review authority includes the responsibility to deny regulatory or proprietary permits and licenses whenever the activity to be authorized does not comport with the coastal program. See 1978

Opn. Att. Gen., "State Agency Implementation of Alaska Coastal Management Plan Standards," October 26, 1978.

As a result, in order to include consideration of the elements of the state's coastal program, the review which state agencies are mandated to undertake may, in many cases, be substantially more comprehensive than what was undertaken under pre-existing authorities. In performing a consistency review, state agencies are expected to expand their review of permit applications to consider impacts on coastal resources arising from the uses of, and activities associated with the uses of, a proposed facility or project. Ch. 84, § 2(3), SLA 1977; AS 46.40.210(5).

OCZM relied on this expanded scope of existing permit review afforded by the ACMP in finding that state authorities were adequate to manage wetlands. Specifically, it noted that Alaska's Department of Environmental Conservation could issue a "certificate of reasonable assurance" under § 401 of the Clean Water Act for an Army Corps of Engineers § 404 permit "only if it contained such conditions as were necessary to assure compliance with the ACMP." FEIS to the ACMP, p. 508.

Other examples of the scope of expected consistency review are discussed further in the Final Environmental Statement on the Alaska Program:

> The capacity of these [existing regulatory] procedures for ensuring compliance with the ACMP policies is derived from the obligation of the agencies administering them to deny approval where issuance would be inconsistent with those policies. This is true even with permits that have in the past been granted or denied on the basis of fairly specialized criteria. For example, it is no longer sufficient for the Department of Natural Resources in its consideration of an application for a water use permit, to take account only of such factors as the capacity of the water source to accommodate the proposed appropriation and the effect it would have on the rights of prior appropriators. The Department of Natural Resources must now, in addition, consider such matters as whether the use depending upon the appropriation is water dependent or water related, and whether it would eliminate opportunities for subsistence usage of local resources. Similarly, the Public Utilities Commission must now

> incorporate the ACMP policies into its concept of the 'public convenience and necessity,' the touchstone for the authorization of public utilities. Thus, if the only prospective user of a proposed electric line would be a planned major non-water-dependent development on the shorelines that could readily be located elsewhere, the Public Utilities Commission would be obliged to deny a certificate of public convenience and necessity, even if the applicant was willing and able to provide the proposed service, and the service would be fully utilized by the proposed development.

FEIS Id. at 143-44 (emphasis added). See also 6 AAC 80.010(b).

Thus, federal requirements for approval of the state's coastal management program reveal the need for a comprehensive approach in state review of projects. In the case of Alaska, federal approval required that the scope of existing state permit reviews for consistency purposes be expanded to ensure that all coastal zone impacts of a given project be considered. Because the Alaska legislature clearly intended that the ACMP receive federal approval, the Act should be construed, if possible, so that the above requirement is met.

Some additional hypothetical examples may further elucidate the nature of the expanded scope of review required by the Act. Under § 401 of the Clean Water Act, the Army Corps of Engineers is required to obtain the state's consent before it may issue a permit to place fill in navigable waters of the state. 33 U.S.C. § 1341. This consent takes the form of the Department of Environmental Conservation's "certificate of reasonable assurance" that the state's water quality standards will not be violated. AS 46.03.020(9). If DEC, as a condition of this certificate, requests that certain mitigation measures be taken to prevent excessive water quality degradation, the Corps of Engineers must include these measures as stipulations on their § 404 permit (should they decide to issue one). Thus, absent the ACMP, DEC's review of the Corps § 404 permit is limited to water quality considerations. For example, if the Corps received an application to place gravel fill in state waters for use as a drilling pad for oil and gas exploration, absent the ACMP, DEC would review the project for its water quality impacts only, and would either grant or deny certification based on those considerations.

Under the ACMP however, DEC is required to consider not only water quality impacts, but also whether the drill pad is consistent with other standards of the ACMP. This consideration

would involve an analysis of the proposed use of coastal resources (i.e., exploratory drilling), the activities associated with the use (e.g., transportation of materials and workers to and from the site, construction of support facilities), and the impacts of both the use and its associated activities (e.g., disturbance of nearby wildlife). If DEC were to find that exploratory drilling in a particular area would only be consistent with the ACMP under certain mitigating conditions, it would condition its certificate of reasonable assurance appropriately, and the Corps would in turn be required to include those conditions should it issue a permit. Similarly, if DEC were to find the proposed exploratory drilling inconsistent with the standards of the ACMP, it would deny the § 401 certificate, even if the specific ACMP concerns requiring denial did not relate to water quality.

Another example illustrates how the ACMP may in some cases expand the scope of an agency's permit review even further. Suppose the Department of Fish and Game receives an application under AS 16.05.870 for a Title 16 permit to build a bridge for automobile traffic across an anadromous fish stream in the state's coastal zone. Having determined that the construction and use of the bridge can be conditioned adequately to protect the stream's salmon, DF&G must also consider whether construction of the bridge is consistent with the other standards of the ACMP. 6 AAC 80.040 requires DF&G to determine whether the bridge is a water-dependent or water-related use or activity and, if neither, whether there is a feasible and prudent inland alternative. The determination required by this section cannot be made by reviewing the bridge in the abstract, however. The bridge may or may not be water-dependent or water-related depending on the nature of its use. Obviously, automobile traffic is the direct use to be made of the bridge, but this brings us no closer to accommodation of the standard contained 6 AAC 80.040. We need to ask "automobile traffic for what purpose?", since it is the ultimate purpose of installing the bridge which determines whether the bridge in this example is water-related, water-dependent, or neither. Thus, in order to determine the consistency of the bridge with ACMP, DF&G must have information about the ultimate use associated with the permitted facility.

To take the example further, then, suppose that the proposed bridge is part of a proposed road leading to a proposed waterfront mobile home park, and that there is a feasible and prudent inland alternative site for the mobile home park. In this case, the use associated with the bridge would be providing access to a mobile home park -- a non-water-related or water-dependent use for which feasible and prudent inland alternative

site exist. If the mobile home park site were suitable for development as some higher priority use, the bridge would probably be inconsistent under the ACMP because it would fail to meet the criteria set out in 6 AAC 80.040. If, on the other hand, there were no feasible and prudent inland alternatives, such that the mobile home park fit within 6 AAC 80.040(a)(3), and the site possessed little potential for a higher priority use, it would satisfy this standard of the ACMP.

As these examples reveal, determining the scope of a particular consistency determination may, in some instances, be a highly factual process. However, as far as general guidance is possible, administrative agencies are mandated, as part of their determinations on permits, licenses or other authorizations, to review the uses for which a particular authorization is issued, the ultimate activities associated with those uses, and the impacts of both the uses and the associated activities on the state's coastal area. The uses and associated activities for which resources within the coastal zone are to be committed must be compatible with the coastal management program before the permit may be granted. 1/

If you have any further questions regarding this matter, please contact me at your convenience.

LJA/jb

1/ One obvious consequence of the expansive scope of consistency reviews necessary in some cases to ensure compliance with the standards of the coastal program is that more than one agency with jurisdiction over the same project, or particular aspects of a project, may be required to perform duplicative reviews for consistency with the ACMP. This situation could be remedied by the allocation of responsibility for ACMP consistency reviews to specific lead agencies assigned on a project, rather than an individual permit, basis. Various regulatory reform proposals with this as one objective have been considered by the legislature and the Administration over the past three years. As of this date, however, none of these proposals have been put into effect. In the absence of an established division of responsibility for consistency reviews among agencies, there is an obvious need for coordinated interagency review of development projects in the coastal zone to ensure consistent application of coastal management standards.

Ms. Lewis identifies in her footnote on the last page, a major consideration is that a permit for one particular aspect of a project has to consider all parts of a project in relation to ESCAB. Leads to duplication of effort + lack of coordination among agencies. Or project approach would be better, but would require reworking of the whole Act. This could open DCMP to major revision +/or getting, if not carefully controlled.

I think legislature did intend to have activities looked at carefully. I do think the administrative complexity is not necessary

Title Coastal Zone a/

STATE OF ALASKA

JAY S. HAMMOND, Governor

OFFICE OF THE GOVERNOR

DIVISION OF POLICY DEVELOPMENT AND PLANNING

POUCH AP
JUNEAU, ALASKA 99811
(907) 465-3541 OR 465-3574

April 28, 1980

The Honorable Arliss Sturgulewski
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Senator Sturgulewski:

We have received the attached letter from Representative Gardiner in response to our letter of March 28, 1980, regarding the issue of offsetting a portion of the local match for coastal management grants. Our letter, as you will recall, was triggered by your letter of March 8, 1980, asking the Coastal Policy Council to look into the matter. I have attached all relevant correspondence for your convenience. In his letter Representative Gardiner says that our request arrived too late for active consideration by the legislature this year. We do understand Representative Gardiner's point and regret that the Council was unable to take action at a more convenient time for consideration during the legislature's current activity on the budget. However, the Speaker does indicate that alternative solutions could be found in the state revenue sharing program. Thus far, we have had no response from the Senate on this issue.

Currently, the coastal resource service areas (CRSA) aquire a part, if not all, of their match from monies contributed by the villages located within the service area. Some of this money itself may be a result of the state revenue sharing program. This makes sense, in that the villages are the primary recipients of the benefit of CRSA planning, and have a fair amount of voice in how the planning is conducted and whether to form a CRSA at all.

Representative Gardiner also suggested that the sums we have requested might be accommodated if we could cut some other BRU. Of course the only BRU that we have any control over is the CZM BRU, which currently provides only $200,000 of general fund money. This money is used to match the share of federal funds that OCM uses for itself and for direct contractors to DPDP. To allocate that money for use in offsetting local match requirements would make it impossible for OCM

to operate. The revenue sharing idea is interesting in a number of respects, one of which is that the villages which receive revenue sharing funds would have the opportunity to exercise even greater control over the development of their program through financial means. I would appreciate any thoughts you may have regarding the revenue sharing idea, and whether it might become a part of the revenue sharing bill which recently passed the House. Thank you very much for your continued interest in the program.

Sincerely,

Murray R. Walsh
Coordinator

cc: The Honorable Terry Gardiner
The Honorable Sarah Smith
Frances A. Ulmer
The Honorable Donald Gilman

Alaska State Legislature
House of Representatives

POUCH V
JUNEAU, ALASKA 99811
OFFICIAL BUSINESS

April 7, 1980

Donald Gilman
Frances Ulmer
Co-Chairmen
Alaska Coastal Policy Council
Office of the Governor, DPDP
Pouch AP
Juneau, AK 99811

Dear Mr. Gilman and Ms. Ulmer:

I am aware of the problems outlined in your letter of March 28, regarding the difficulties of many communities in meeting the local match required for receiving federal CZM funds.

Unfortunately, your request of supplemental funding to deal with this problem is a little late to be dealt with during the current legislative session. The Finance Committees of both houses are now wrestling with the difficulties of paring the budget requests to the amount of money available under the Governor's operating budget bid. Possibly the sums you request can be accomodated for FY 81 if we cut some other BRU.

The legislature would consider any proposals you might be able to develop to reallocate money already budgeted to the CZM BRU. The only other alternative I might suggest would have to do with the state revenue sharing program, whereby communities could allocate part of those funds to pay for the matching money required. As you know I'm pushing for increased revenue sharing again this year.

Sincerely,

Terry Gardiner

TG/rh

March 28, 1980

The Honorable Clem Tillion
Alaska State Senate
Pouch Y
Juneau, Alaska 99811

Dear Senator Tillion:

In response to the attached letter from Senator Arliss Sturgulewski, the Alaska Coastal Policy Council met on March 18 and 19 to discuss the issue of local matching shares for federal grants available under the federal Coastal Zone Management program.

As a result of this discussion, the council passed a motion to request additional funds from the legislature for the purpose of offsetting a portion of the local match requirement. As you may know, there has been some difficulty at the local level in meeting the twenty percent local match which is required for local use of federal Coastal Zone Management funds. (In fact, all ACMP participants, including the Office of Coastal Management and the other state agencies, provide a twenty percent match.) This difficulty has been more acute for the Coastal Resource Service Areas which are now forming in the unorganized borough.

After considerable discussion, which included clarification that the districts, both regular and service area, could generate at least 10% of the total costs of developing local coastal management programs, the council voted to request the legislature to allocate monies from the general fund to pay for one-half of the local matching share, or ten percent of the total costs of the local development effort. The council further requests that monies be allocated in a supplemental to the Fiscal Year 1980 budget to offset half the local match for current work programs as well as for subsequent fiscal years.

The total local program effort for Fiscal years 1980 and 1981 is expected to be $2,500,000 per year. Thus, a supplemental of $250,000 would be needed for the current fiscal year and a program increase of $250,000 would be needed for Fiscal Year 81.

Alaska State Legislature

SENATOR
ARLISS STURGULEWSKI

COMMITTEES
CHAIRMAN
Community & Regional Affairs

VICE-CHAIRMAN
Commerce

Health & Social Services

Senate

2957 SHELDON JACKSON
ANCHORAGE, ALASKA 99504
DISTRICT 10-H

While in Juneau
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3712

March 24, 1980

TO: Senator John Sackett
Chairman, Senate Finance

FROM: Senator Arliss Sturgulewski

RE: Coastal Management Local Match

Attached is a copy of my March 8 letter to the Co-chair of the Coastal Policy Council. In this letter I brought to the attention of the Coastal Policy Council, concerns that have been raised over requiring local coastal resource districts to provide 20 percent match for planning assistance funds. As a result of this letter, the Alaska Coastal Policy Council scheduled discussion of the issue at their March 19 meeting.

On March 19, Margo Waring, a member of my staff, attended the meeting in Anchorage and gave a presentation on the 20 percent match requirement for local programs. She requested the council to discuss and make recommendations regarding this subject. I am told that council discussion on this topic was lively and broad ranging. A number of related policy issues were discussed in terms of their relationship with the 20 percent match requirement, including questions of equity between organized and unorganized areas and between those who have already paid at the 20 percent rate and those who might not, if changes were made to the match requirement. Based on these considerations and C/RA's data indicating that there would be no difficulty among coastal resource service districts in meeting a 10 percent match requirement (part cash, part in-kind), the Coastal Policy Council passed a resolution supporting such a policy change. As soon as a copy of the resolution is received it will be forwarded to you. Apparently implementation of the resolution would require approximately $18,500 for FY 1980 and $312,500 for FY 1981.

I would appreciate your consideration of inclusion of local match funds as outlined in this memo. At your convenience, I would be very happy to discuss this matter in further detail.

cc: John Halterman
Lee McAnerney
Murray Walsh
Senator Hohman
Senator Ferguson

March 7, 1980

Don Gilman, Co-Chair
Alaska Coastal Policy Council
c/o Kenai Peninsula Borough
Soldotna, Alaska 99669

Dear Don:

As Chair of the Senate Community and Regional Affairs Committee, I would like to thank you and the other members of the Coastal Policy Council for sharing your perceptions and insights on coastal management concerns with the committee on February 21, 1980.

Of particular interest to us were your observations on the problems of insuring consistency, who is to be consistent with whom and how that consistency will be achieved. I also recognize the significance of the issues for which you have requested an Attorney General's opinion.

During the hearing, it was clear that council members are aware of problems involved with the development and full implementation of district programs in the unorganized areas of the state. Regarding this matter, I am sending you a copy of a letter expressing the Alaska Municipal League's concern for exchange of information and coordination between districts. Perhaps regulations could be drafted which would provide a mechanism for formal notification by districts and concerned parties of their coastal management concerns at some early point in the program development process. The final program could then contain a formal identification of how the concerns were addressed in the development of the district coastal program.

Another issue that was clearly defined during our hearing was the importance of assuring that state agencies fully participate in the district program planning process. All our efforts are needed to make district programs and the Alaska Coastal Management Program a success.

Please be assured of my continuing interest in coastal management and my appreciation of all your efforts.

Sincerely,

Arliss Sturgulewski
Senator, District 10-M

April 10, 1980

Don Gilman, Co-chair
Alaska Coastal Policy Council
Soldotna, Alaska
and
John Haltermann, Co-chair
Alaska Coastal Policy Council
Juneau, Alaska

Dear Messrs. Gilman and Halterman:

Recently Representative Osterback sponsored, through the House Resources Committee, HB 992, An Act relating to the formation of coastal resource service areas; and providing for an effective date. This bill, as I understand it, seeks to solve problems encountered in the Alaska Peninsula/ Aleutian chain in establishing viable coastal resource service districts.

A similar bill may be introduced on the Senate side, by Senator Mulcahy. As Chair of the Senate Community and Regional Affairs Committee, I would appreciate hearing from you regarding this bill--your and the Council's view both of the problem and of this particular solution to that problem.

Thank you for your cooperation.

Sincerely,

Arliss Sturgulewski
Senator, District 10-H

March 24, 1980

TO: Senator John Sackett
Chairman, Senate Finance

FROM: Senator Arliss Sturgulewski

RE: Coastal Management Local Match

Attached is a copy of my March 8 letter to the Co-chair of the Coastal Policy Council. In this letter I brought to the attention of the Coastal Policy Council, concerns that have been raised over requiring local coastal resource districts to provide 20 percent match for planning assistance funds. As a result of this letter, the Alaska Coastal Policy Council scheduled discussion of the issue at their March 19 meeting.

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I would appreciate your consideration of inclusion of local match funds as outlined in this memo. At your convenience, I would be very happy to discuss this matter in further detail.

Enclosure
cc: John Halterman
Lee McAnerney
Murray Walsh