ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 8672

1631 HJ HJR 22 - HJR 77

The function of the Court is headed & accounted by the Gov. His aides will reflect the performance of the Gov. & Gov. is responsible for all.

(9) Richard Maitland – Calif. –
Represent the public interest ?

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811

April 1, 1981

Ms. Andrea Wollock
National Conference of State Legislatures
1125 17th Street, Suite 1500
Denver, Colorado 80202

Dear Andrea:

I have enclosed some materials for copying and distribution to the participants in the April 15, 1981, interstate teleconference on attorneys general.

The materials include:

- HJR 22 and HJR 23: the two pieces of legislation now before this committee. Note that HJR 23, by the committee, is the version supported by the majority party in the Alaska State House while HJR 22 is supported by the minority

- a memo describing the situation of the fifty states

- a memo from Burke Riley, a delegate to the 1955-1956 Alaska Constitutional Convention, on the issue

- an excerpt from a book about the proceedings of the Alaska Constitutional Convention concerning the executive branch

- an excerpt of the minutes of the Alaska Constitutional Convention including discussion of the office of attorney general

- five copies of the Alaska Constitution; please note that Article III, The Executive, omits any specific mention of the attorney general. Section 25 of Article III provides that the heads of all departments (including the Department of Law) are appointed by the governor.

I hope that this is not too much material to distribute to the participants. If it is, you may not want to distribute the excerpts from the convention minutes.

Please contact me or Mike Ford by telephone (907-465-3782) if there is anything more we can do in preparation for the teleconference.

Thanks for your help and cooperation.

Sincerely,

Peter Froehlich

Peter B. Froehlich

Enclosures

HJR

41

March 22, 1982

H.J.R. 41 — defers appropriation

B. Bernier —

Bellmon — O.K.

marked Phillips ⇒ to admin

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HJR 41
Title Proposing an amendment to the Constitution of the State of Alaska
Requested by Repr. Barnes, House Judiciary Date March 22, 1982
defining the term "appropriation."

II. FISCAL DETAIL
Agency Affected Department of Law
Program Category Affected General Government
BRU, Program, Or Subprogram(s) Affected Legal Services
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL	Ø	Ø	Ø	Ø	Ø	Ø

FUNDING (Thousands of Dollars)

GENERAL FUND	Ø	Ø	Ø	Ø	Ø	Ø
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME	Ø	Ø	Ø	Ø	Ø	Ø
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

No fiscal impact.

Richard I. Pegues

IV. DATE March 22, 1982 PREPARED BY Richard I. Pegues, Director, Admin. Serv
AGENCY Department of Law
PHONE 465-3672

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

33-001 (Rev. 12/81)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE HJR 41

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HJR 41 (3/26/81)
Title Relating To The Term "Appropriation"
Requested by House Judiciary Committee Date 3/22/82

II. FISCAL DETAIL
Agency Affected General Fund Unrestricted Revenue
Program Category Affected
BRU, Program, Or Subprogram(s) Affected
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars) S E E A N A L Y S I S S E C T I O N

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL						

FUNDING (Thousands of Dollars) S E E A N A L Y S I S S E C T I O N

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

This Constitutional amendment would remove the disposition of land or tangible property of the state fror being subject to legislative appropriation.

All state land and tangible property has some asset value and income producing value. Therefore, the monetary equivalent of the land, in effect, would be allowed to be distributed without legislative appropriation; including future potential income. Significant fiscal impact to potential state revenues exist but are indeterminate (unquantifiable at this time) due to the nature, type, extent and potential uses to which the land or property could be put.

A. Staack

IV. DATE March 22, 1982 PREPARED BY Anselm C. Staack, Treasury Comptroller
AGENCY Dept. of Revenue, Treasury Division
PHONE 465-2350

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

33-001 (Rev. 12/81)

ALASKA STATE LEGISLATURE - HOUSE OF REPRESENTATIVES

IN SESSION:

POUCH V
JUNEAU, ALASKA 99811
TELEPHONE: (907) 465-3777

P.O. BOX 4-1539
ANCHORAGE, ALASKA 99509
TELEPHONE: (907) 277-6219

REP. M. F. "MIKE" BEIRNE

MEMBER OF:
FIFTH STATE LEGISLATURE
NINTH STATE LEGISLATURE
TENTH STATE LEGISLATURE
ELEVENTH STATE LEGISLATURE
TWELFTH STATE LEGISLATURE

COMMITTEES:
HEALTH, EDUCATION
AND SOCIAL SERVICES, CHAIRMAN
AND LEGISLATIVE COUNCIL

TO: ALL HOUSE MEMBERS

FROM: REP. MIKE BEIRNE

DATE: Feb. 12, 1982

One of my major priorities this session is HJR 41. It is most important that the people of Alaska be allowed some control over the disposal of state lands, particularly since an incredibly large percentage of our land is in state, rather than private, ownership. This resolution has engendered excellant bi-partisan backing, as reflected by our co-sponsors. If you desire knowledge reflecting popular support, recall the Beirne Homestead Initiative vote. This bill will remedy the constitutional problem which caused the Alaska Supreme Court to overrule the peoples' mandate.

I earnestly seek your support for this measure. Please call my office at 3777 and let me know if you can support this legislation. If you have any questions, please contact Jody Sutherland, my Administrative Assistant.

Thank you.

...d in Walters v. Cease, Sup. Ct. ... 182 (File No. 447), 388 P.2d 263 ...; Abrams v. State, Sup. Ct. Op. No. ... (File No. 2407), 534 P.2d 91 (1975). ...ed in Thomas v. Bailey, Sup. Ct. Op. ... (File No. 4204), P.2d ...

II. APPROPRIATIONS.

The language of this section ...hibits initiatives for the purpose of ...making appropriations. Thomas v. ..., Sup. Ct. Op. No. 1835 (File Nos. ..., 4220), 595 P.2d 1 (1979).

General wording of appropriation ...clusion. — Though most state ...nstitutions with referendum and ...tive provisions have some limitation ...ding to appropriations, Alaska's ...propriation limitation is worded more ...rrowly than that of most other states. ... v. Bailey, Sup. Ct. Op. No. 1835 ...File Nos. 4204, 4220), 595 P.2d 1 (1979).

By the term "appropriations," this ... prohibits an initiative whose ...mary object is to require the outflow of ...te assets in the form of land as well as ... Thomas v. Bailey, Sup. Ct. Op. No. ... (File Nos. 4204, 4220), 595 P.2d 1 ...

"Appropriations" includes statutes that ... a specific amount of lands and ... it be given away in the manner ...ed by a 1978 initiative, entitled "The ... Homestead Act," which gave away ... resident of three or more years who ...nduct a survey, file two papers, ... a nominal filing fee public assets ... form of state land, and which ... no obligations on the applicant ... he or she received the land. Thomas ..., Sup. Ct. Op. No. 1835 (File Nos. ..., 4220), 595 P.2d 1 (1979).

... Homestead Act held ...propriations initiative. — The law ... by a 1978 initiative entitled "The ... Homestead Act" was, for purposes ... this section, a law making an ... and, therefore, an ... subject for initiative. Thomas ..., Sup. Ct. Op. No. 1835 (File Nos. ..., 4220), 595 P.2d 1 (1979).

... initiative entitled "The Alaska ... Act" would have substantially ... the state government of valuable ... just as surely as an initiative ... to residents of specified years ... sums of money. In the same manner, ... an appropriation and hence ... be enacted by initiative. Thomas ..., Sup. Ct. Op. No. 1835 (File Nos. ..., 4220), 595 P.2d 1 (1979).

The fact that a survey might be costly ...d not change the essential nature of a 1978 initiative entitled "The Alaska Homestead Act" as an appropriations initiative. The applicant would have paid the surveyor, no compensation or service was rendered to the state. The stated purpose and effect of the initiative on the state treasury would still be an expenditure of state assets in the form of public lands. Thomas v. Bailey, Sup. Ct. Op. No. 1835 (File Nos. 4204, 4220), 595 P.2d 1 (1979).

Authorizing school service areas to submit their budgets to the people by referendum would violate this section. 1961 Op. Att'y Gen., No. 24.

III. LOCAL OR SPECIAL LEGISLATION.

This section expressly exempts "local or special legislation" from both the initiative and the referendum. Wolf v. Alaska State Hous. Auth., Sup. Ct. Op. No. 937 (File No. 1708), 514 P.2d 233 (1973).

This section specifically precludes use of the initiative to enact "local or special legislation." Boucher v. Engstrom, Sup. Ct. Op. No. 1097 (File No. 2232), 528 P.2d 456 (1974).

What constitutes local or special legislation. — See Boucher v. Engstrom, Sup. Ct. Op. No. 1097 (File No. 2232), 528 P.2d 456 (1974).

Description of local legislation in Walters v. Cease, Sup. Ct. Op. No. 235 (File No. 518), 394 P.2d 670 (1964), disapproved. — See Boucher v. Engstrom, Sup. Ct. Op. No. 1097 (File No. 2232), 528 P.2d 456 (1974).

A law does not cease to be general because it operates only in certain subdivisions of the state. Boucher v. Engstrom, Sup. Ct. Op. No. 1097 (File No. 2232), 528 P.2d 456 (1974).

Critical element is whether rational basis for classification exists. — Legislation, whether enacted by the legislature or by the initiative, need not operate evenly on all parts of the state to avoid being classified as local or special. The critical element is whether there is a rational basis for the particular classification. Boucher v. Engstrom, Sup. Ct. Op. No. 1097 (File No. 2232), 528 P.2d 456 (1974).

The classification must bear a reasonable and proper relationship to the purposes of the act and the problem sought to be remedied. Boucher v. Engstrom, Sup. Ct. Op. No. 1097 (File No. 2232), 528 P.2d 456 (1974).

3 - 15-83

HJR 41

Berries —

problem w/ appropriation

is conclusion that intent

of law ~~[illegible]~~ was be

custom to fill mg.

Introduced: 3/26/81
Referred: Judiciary and Finance

BY BEIRNE, FREEMAN, MALONE, HAYES, CATO, RANDOLPH, MOSS, BARNES, HALFORD, FANNING, MONTGOMERY, O'CONNELL AND BETTISWORTH

IN THE HOUSE

HOUSE JOINT RESOLUTION NO. 41

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - FIRST SESSION

Proposing an amendment to the Constitution of the State of Alaska defining the term "appropriation."

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

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

SECTION 14. APPROPRIATION DEFINED. As used in this constitution the term "appropriation" or variations of the term means an authorization to withdraw money from the treasury for a specified purpose. It does not include disposition of land or other tangible property.

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

To convey land or an interest in land

HJR

48

3-30-82

Lang

Stern - need bail statute

5 mins to

3-31-82 HJR48

1955 pop. 221K people Represented Sen

still have one of the smallest legislatures

present pop - 401,851 - ?

Alaskans feeling more removed from their elected officials. -

"People" Magazine complex of Ak politicians

By 1990 census all of Northern Ak. may be rep by one senator

O'Connell - many resolutions - 5-0 means from committee

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HOUSE JOINT RESOLUTION NO. 48
Title Proposing an amendment to the Constitution of the State of Alaska increasing the size of the legislature Date 3/31/82
Requested by: House Judiciary Committee

II. FISCAL DETAIL
Agency Affected Legislative Affairs Agency
Program Category Affected General Government
BRU, Program, Or Subprogram(s) Affected Legislature
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES			2,378.2			
200 TRAVEL			521.8			
300 CONTRACTUAL			513.6			
400 COMMODITIES			27.4			
500 EQUIPMENT			19.6			
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL			3,460.6			

FUNDING (Thousands of Dollars)

GENERAL FUND			3,460.6			
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME			70			
PART TIME			-0-			
TEMPORARY			63			

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

See Attachment #1.

IV. DATE 3/31/82 PREPARED BY Wally Harrison, Director
AGENCY Legislative Affairs Agency
PHONE 465-3850

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)

HOUSE JOINT RESOLUTION NO. 48 ATTACHMENT #1

III. ANALYSIS

Legislators' Salaries		
Personal Services	$ 298.2	
Travel	165.0	
Contractual	120.0	
TOTAL	$ 1,083.2	$ 1,083.2
Session Expenses		
Personal Services	$ 1,410.6	
Travel	356.8	
Contractual	159.6	
Commodities	27.4	
TOTAL	$ 1,954.4	$ 1,954.4
Office Space		
Personal Services	$ 169.4	
Travel	-0-	
*Contractual	234.0	
Commodities	-0-	
Equipment	-0-	
TOTAL	$ 403.4	$ 403.4
Equipment	$ 196.0	
TOTAL	$ 196.0	$ 196.0
GRAND TOTAL		$ 3,460.0

*Remodeling--air-conditioning; electrical; mechanical.

Note: There would also be some quantitative fiscal impact on the L.A.A. of an undeterminable amount at this time, i.e., Legal Services and Administrative Services support.

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. House Joint Resolution No. 48 - "Proposing an amendment to
Title the Constitution of the State of Alaska increasing the size of the legislature
Requested by House Judiciary Date 3/23/82

II. FISCAL DETAIL
Agency Affected Office of the Governor
Program Category Affected Division of Elections
BRU, Program, Or Subprogram(s) Affected Division of Elections
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL		-0-				

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

The Division of Elections has already planned for the inclusion of constitutional amendments on the general election ballot. This resolution, therefore, has no additional fiscal impact.

Danith D. Arnoldt

IV. DATE 3/26/82 PREPARED BY Danith D. Arnoldt, Deputy Director
AGENCY Office of the Gov.-Div. of Elections
PHONE 586-6181

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)

HJR 66

(SEE HB 618)

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH S
JUNEAU, ALASKA 99811

February 3, 1982

The Honorable Ramona L. Barnes
Chairwoman
House Judiciary Committee
Room 122 - Capitol Building
Juneau, AK 99811

Dear Ms. Barnes:

RE: Sponsor Substitute for House Joint Resolution #66

Sponsor Substitute for House Joint Resolution #66, proposing amendments to the Constitution of the State of Alaska relating to dedication of proceeds of a severance tax on oil or gas production, was introduced in the House on January 27, 1982 and was referred to the House Judiciary Committee.

For the consideration of the House Judiciary Committee, I am enclosing a copy of a Fiscal Note prepared by Mr. John Larson, Economist, Research Section of the Department of Revenue concerning the proposed legislation.

Sincerely,

R. D. Stevenson

R . D. Stevenson
Special Assistant

Enclosure

cc: Joseph K. Donohue
Deputy Commissioner
Department of Revenue

Vincent Wright, Chief
Research Section
Department of Revenue

04-D2LH

TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. House Joint Resolution No. 66

Title Proposing Constitutional Amendment-Dedication of Oil & Gas Severance Tax Revenues

Requested by House Judiciary Committee Date 2/1/82

II. FISCAL DETAIL

Agency Affected

Program Category Affected

BRU, Program, Or Subprogram(s) Affected

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL						

FUNDING (~~Thousands~~ Millions of Dollars)

GENERAL FUND	(327.2)	(336.3)	(404.0)	(471.5)	(538.1)	(610.2)
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

The above projections are shown as a reduction in general fund revenues as the amounts indicated would be dedicated to organized boroughs and cities in the State for municipal purposes.

The projections indicate the amount of oil and gas severance tax which would be collected during the FY 82 to FY 87 period in excess of 12% of gross value at the point of production. During the period only oil production from the Sadlerochit reservoir at Prudhoe Bay would be taxed at an effective rate significantly in excess of 12% of gross value at the point of production.

IV. DATE Feb. 1, 1982 PREPARED BY John Larson

AGEN Department of Revenue, Research Section

PHONE 465-2174

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

HJR

67

Original sponsor: Rules Committee by request

Offered: 1/22/82
Referred: Rules

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 575 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to culpable mental states prescribed as elements of criminal assaults."

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

* Section 1. AS 11.41.200(a)(1) is amended to read:

(1) he recklessly causes [WITH INTENT TO CAUSE] serious physical injury to another person [, HE CAUSES PHYSICAL INJURY TO ANY PERSON] by means of a dangerous instrument;

* Sec. 2. AS 11.41.210(a)(2) is amended to read:

(2) [WITH INTENT TO CAUSE PHYSICAL INJURY TO ANOTHER PERSON,] he recklessly causes serious physical injury to any person. [; OR]

* Sec. 3. AS 11.41.220(a) is amended to read:

(a) A person commits the crime of assault in the third degree if he recklessly

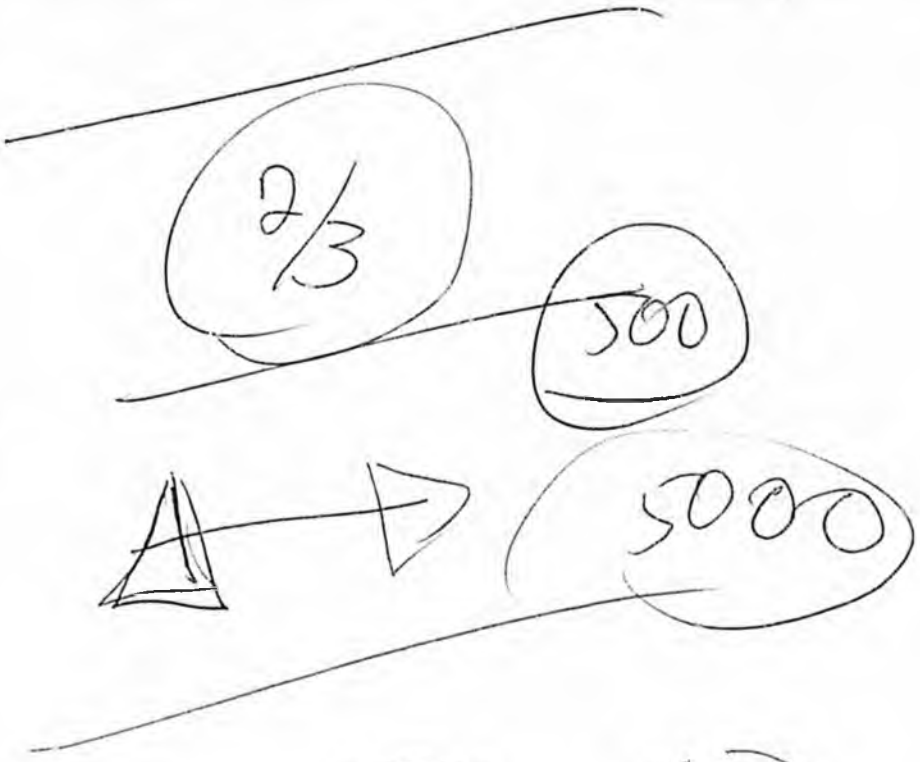
(1) places another person in fear of imminent serious physical injury by means of a dangerous instrument; or

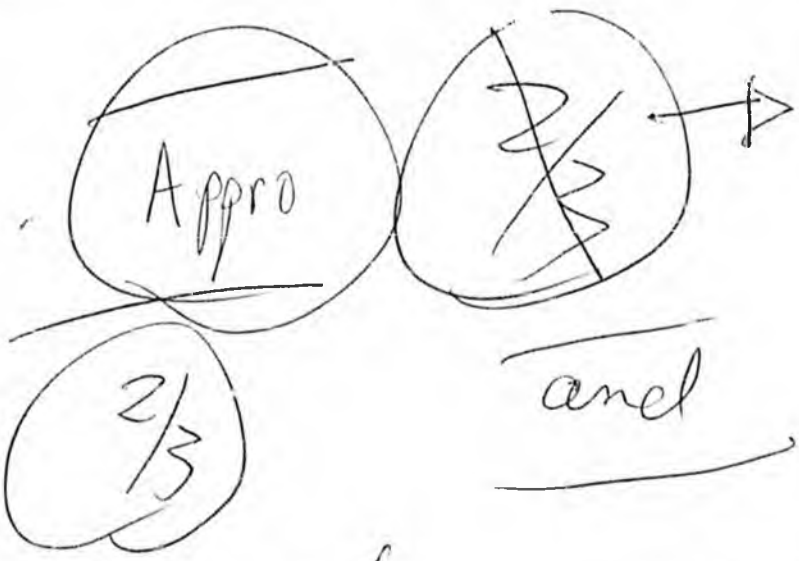
(2) causes physical injury to another person by means of a dangerous instrument.

* Sec. 4. AS 11.41.230(a)(3) is amended to read:

(3) by words or other conduct he recklessly [INTENTIONALLY] places another person in fear of imminent physical injury.

* Sec. 5. AS 11.41.210(a)(3) is repealed.





and Gal

① Changes combination - #500

② Hydro →

③ Building - direct to cap →

④ Large projects to appeal stakeholder

Berrier
5/25/82

Original sponsors: Metcalfe, Barnes and Hayes

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE JOINT RESOLUTION NO. 67 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - SECOND SESSION

Proposing amendments to the Constitution of the State of Alaska relating to the creation of an Alaska capital investment fund.

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

* Section 1. Article IX, sec. 7, Constitution of the State of Alaska, is amended to read:

SECTION 7. DEDICATED FUNDS. The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in sections [SECTION] 15 and 16 of this article or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

* Sec. 2. Article IX, Constitution of the State of Alaska, is amended by adding a new section to read:

SECTION 16. ALASKA CAPITAL INVESTMENT FUND. At least twenty-five percent of all mineral lease rentals, royalties, royalty sales proceeds, federal mineral revenue sharing payments and bonuses received by the State shall be placed in an Alaska capital investment fund. The fund may be invested in capital improvements [that are owned by the State and] that will return to the Alaska capital investment fund the amount of the investment and a rate of return. An investment in a capital improvement owned by the State may be made only if the amount invested in each capital improvement and the rate of return on the investment are autho-

① Within the State
② Separate bill - one project - a separate appropriation bill
③ Appropriations
④

Balance - liquidity

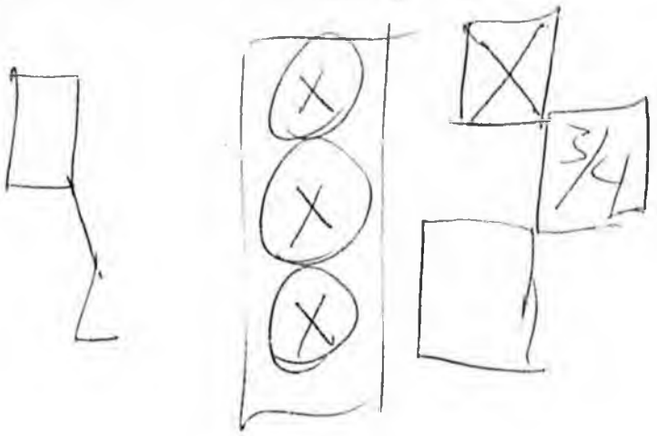
rized by law and ratified by a majority of the voters who vote on the question. Money remaining in the Alaska capital investment fund shall be invested as provided by law at ~~a rate of return~~ competitive market rates equal to the market ~~rate of return for similar investments of the same maturity.~~ The income from the Alaska capital investment fund shall be deposited in the general fund unless otherwise provided by law.

* Sec. 3. The amendments proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

(1) for which there is a market

of economic emergency

If declaration by 2/3 leg vote can appropriate for operating



HJR

69

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH S
JUNEAU, ALASKA 99811
PHONE: (907) 465-2300

March 9, 1982

The Honorable Ray H. Metcalfe
Chairman
House State Affairs Committee
Room 102 - Capitol Building
Juneau, Alaska

Dear Mr. Metcalfe:

Re: House Joint Resolution No. 69

House Joint Resolution No. 69, proposing an amendment to the Constitution of the State of Alaska relating to the Alaska permanent fund, was introduced in the House on January 11, 1982 and was referred to the House State Affairs and Judiciary Committees.

For the consideration of the House State Affairs Committe, I am enclosing copies of Fiscal Notes prepared by Mr. Anselm Staack, Treasury Comptroller and Mr. Robert W. Elliott, Research Analyst, Research Section of the Department of Revenue concerning the subject Resolution.

Sincerely,

R. D. Stevenson
Special Assistant

Enclosures

cc: The Honorable Ramona L. Barnes
Chairwoman
House Judiciary Committee

Joseph K. Donohue
Deputy Commissioner
Department of Revenue

Anselm Staack
Treasury Comptroller
Department of Revenue

Robert W. Elliott
Research Analyst
Department of Revenue

THE LEGISLATURE OF THE STATE OF ALASKA HJR 69
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HJR 69 (1/11/82)
Title Constitutional Amendment - Alaska Permanent Fund
Requested by House State Affairs Committee Date 3/2/82

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

EXPENDITURES (Thousands of Dollars) SEE ANALYSIS SECTION

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL						

FUNDING (Thousands of Dollars) SEE ANALYSIS SECTION

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS SEE ANALYSIS SECTION

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

Original Alaska Permanent Fund dedication limit set at 25% (language removes the "at least twenty-five" percent contribution). Provides additional specific language that constitutionally allows additional appropriations to the fund and additional dedicated percentages of royalties, etc., which also can only be used for income producing investments within the State of Alaska.

Potentional effects exist for additional administrative costs dependent on types of investments made; however, not determinable at this time.

Anselm C. Staack

IV. DATE March 2, 1982 PREPARED BY Anselm C. Staack, Treasury Comptroller
AGENCY Department of Revenue, Treasury Division
PHONE 465-2350

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HJR 69
Title Constitutional Amendment relating to the Permanent Fund
Requested by House State Affairs Committee Date 2/8/82

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

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL						

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

No change in revenues.

IV. DATE 2/8/82 PREPARED BY Robert W. Elliott
AGENCY Department of Revenue
PHONE 465-2173

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)

STATE OF ALASKA
DEPARTMENT OF REVENUE
OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH S
JUNEAU, ALASKA 99811
PHONE: (907) 465-2300

April 14, 1982

The Honorable Ramona L. Barnes
Chairwoman
House Judiciary Committee
Room 122 - Capitol Building
Juneau, Alaska

Re: CS for House Joint Resolution
No. 69 (State Affairs)

Dear Ms. Barnes:

CS for House Joint Resolution No. 69 (State Affairs), proposing an amendment to the Constitution of the State of Alaska relating to the Alaska permanent fund, was referred on March 26, 1982 by the House State Affairs Committee to the House Judiciary Committee.

For the consideration of the House Judiciary Committee, I am enclosing a copy of a Fiscal Note prepared by Mr. Robert W. Elliott, Research Analyst, Department of Revenue concerning the Committee Substitute.

Sincerely,

R. D. Stevenson
Special Assistant

Enclosure

cc: Joseph K. Donohue
Deputy Commissioner
Department of Revenue

Robert W. Elliott
Research Analyst
Department of Revenue

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution Number: CSHJR 69 (State Affairs)
Title: Relating to the Alaska Permanent Fund.
Requested by: House Judiciary Committee Date: 04/06/82

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

EXPENDITURES (Thousands o. Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 COMMODITIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LAND & STRUCTURES	-	-	-	-	-	-
700 GRANTS,CLAIMS,ETC	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

FUNDING (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER (Specify Source)						
AK Permanent Fund	-	0	0	0	-	-

POSITIONS

FULL TIME	-	-	-	-	-	-
PART TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

No revenue impact unless additional amounts are appropriated or additional percentages are dedicated.

IV. DATE: 04/06/82 PREPARED BY: Robert W. Elliott
AGENCY: Revenue
PHONE: 465-2173

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)

HJR

71

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH S
JUNEAU, ALASKA 99811
PHONE: (907) 465-2300

January 26, 1982

The Honorable Ray H. Metcalfe
Chairman
House State Affairs Committee
Room 102 - Capitol Building
Juneau, AK 99811

Re: House Joint Resolution No. 71

Dear Representative Metcalfe:

House Joint Resolution No. 71, proposing an amendment to the Constitution of the State of Alaska relating to incurring general obligation indebtedness for veterans housing, was introduced in the House on January 12, 1982, and was referred to the House State Affairs, Judiciary and Finance Committees.

For the consideration of the House State Affairs Committee, I am enclosing a copy of a Fiscal Note prepared by Thomas K. Williams, Commissioner, Department of Revenue concerning the proposed legislation.

Sincerely,

R. D. Stevenson
Special Assistant

RDS:mll
Enclosure

cc: The Honorable Ramona L. Barnes
Chairwoman
House Judiciary Committee

The Honorable Al Adams
Chairman
House Finance Committee

Thomas K. Williams
Commissioner of Revenue
Department of Revenue

Joseph K. Donohue
Deputy Commissioner, Taxation
Department of Revenue

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HJR 71
Title Constitutional Amendment for G.O. bonds for veterans housing
Requested by House State Affairs Committee Date

II. FISCAL DETAIL
Agency Affected Revenue/State Bond Committee
Program Category Affected General Government
BRU, Program, Or Subprogram(s) Affected
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL	None	Unknown	Unknown	Unknown	Unknown	Unknown

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

This proposed amendment to the State Constitution seeks to take advantage of existing provisions in the Internal Revenue Code which allow tax-exempt bonds to be issued to finance housing for veterans, provided those bonds are either general obligation bonds of a state or are guaranteed by the general obligation (or full faith and credit) of a state. Unlike tax-exempt bonds which AHFC may currently issue (which don't have the guarantee of the State's full faith and credit), the bonds under the proposed amendment would not be subject to the same strict eligibility requirements that are imposed under the federal tax law for the AHFC tax-exempt bonds. In addition, the authority for AHFC to issue tax-exempt bonds at all will expire after 1983 unless Congress acts to extend this deadline; there would be no such expiration problem for the veterans bonds under the proposed amendment.

Continued on next page

IV. DATE January 26, 1982 PREPARED BY Thomas L. Phillips
AGENCY Revenue
PHONE 465-2300

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)

The reason for this provision in the Internal Revenue Code favoring veterans housing when financed by bonds secured by the full faith and credit of a state is that the author of the 1980 legislation which so curtailed AHFC's tax-exempt program was Representative Al Ullman of Oregon. Oregon's constitution specifically authorized the State of Oregon to issue its general obligation bonds to finance veterans housing. As one can see from my description of the difference between AHFC-type programs and Oregon's veterans program, Mr. Ullman was quite successful in protecting the special interests of his home constituency.

Unfortunately for the security of Oregon's veterans program, Mr. Ullman was not re-elected to Congress is 1980, and consequently a representative from another state (Mr. Rostenkowski of Illinois) is Chairman of the House Ways and Means Committee (where all tax legislation would originate). With Mr. Ullman gone, there is much less assurance that the federal tax laws won't be changed to limit or cut off the tax-exempt status of state general obligation bonds for veterans housing, especially as the Reagan Administration is looking at cutting off certain tax-exempt bond programs as a means of gaining additional income taxes and reducing the projected federal deficits.

Despite these uncertainties over its future, the federal tax law currently allows state general obligation bonds for veterans housing to be tax-exempt. Assuming that this law is not changed, an amendment to the Constitution of the State of Alaska authorizing the issuance of such bonds would allow veterans to get mortgages financed based on tax-exempt rates and thereby reduce the amount of State subsidies needed for housing statewide through AHFC.

There are two ways to go in amending the State Constitution to set up a veterans housing bond program. One is to have the State itself issue general obligation bonds. The other is to have a different entity like AHFC actually issue the bonds, which would then be guaranteed by a pledge of the full faith and credit of the State of Alaska. Under this second approach the voters would have to ratify and approve a specified amount of bonds to be so guaranteed, just as (under the first alternative) they would have to ratify and approve the amount of general obligation bonds that the State would directly issue for veterans housing. In other words, from the perspective of having the people vote on the amount to which the full faith and credit of the State would be pledged in support of the financing of veterans housing, both approaches are essentially the same.

From the perspective of the State's continued credit rating, however, the difference between the two approaches would be significant. Under the first approach the bonds that are issued are direct obligations

of the State, while under the second they would be contingent obligations -- that is, AHFC would first have to be unable to meet the debt service of the bonds on its own before there would be a call placed against the resources of the State (of course, if such a call were made, it would be a paramount demand upon the State's resources, the same as with the State's own general obligation bonds). The difference boils down to this -- under the first approach the payment of the debt service on the veterans housing bonds is a paramount demand on the State's resources each and every time an installment of the debt service comes due, and the State would have to come up with the money to meet that debt service payment regardless of any cash flow problems it might temporarily be experiencing at the due date; whereas, under the second approach, AHFC would first have to be unable to meet the debt service on the veterans housing bonds before the State would be subject to the paramount demand upon its resources. With AHFC acting as a buffer between the bondholders and the State under the second approach, it provides an additional measure of assurance that the debt service on the veterans housing bonds will be paid in full and on time. This assurance becomes greater, the more AHFC's own programs and financial strength remain sound.

The disadvantage of the first approach (which is to have the State issue general obligation bonds directly) is best illustrated by the example of Oregon. Oregon financed veterans housing through general obligation bonds issued in its own name. As the program continued over the years, Oregon issued millions and millions of dollars of its own general obligation bonds for veterans housing and millions more for regular capital projects. Eventually its credit rating started to slip, making it more and more expensive for Oregon to finance either the veterans mortgages or its capital projects. Today both Oregon's credit rating and its capacity to borrow are materially impaired as the result of its veterans housing bond program.

The constitutional amendment as proposed in HJR 71 would follow the same approach as Oregon used. I believe (as does the State Bond Committee's Financial Advisor) that if the State of Alaska is going to pledge its full faith and credit for bonds issued to finance veterans housing and thereby take advantage of a present feature of the Internal Revenue Code, the better way to do this is with an instrumentality of the State like AHFC serving as the actual issuer of the bonds and with the State pledging its full faith and credit to guarantee those bonds. Ultimately, we should be able to issue more bonds with a better credit rating and at lower interest rates.

I would therefore recommend for the Committee's consideration the following change to HJR 71 -- delete lines 12 - 19 and substitute the following:

SECTION 8. STATE DEBT. No state debt shall be contracted [UNLESS AUTHORIZED BY LAW] for capital improvements nor shall the full faith and credit of the State be pledged to guarantee bonds issued by the State or an instrumentality of the State to finance housing for veterans, unless authorized by law and ratified by a majority of the qualified voters of the State who vote on the question. The State may, as provided by law and without ratification, contract debt for the purpose of repelling invasion, suppressing insurrection, defending the State in war, meeting natural disasters, or redeeming indebtedness outstanding at the time this constitution becomes effective.

This language would allow the second approach to be taken instead of going the way Oregon did, but at the same time it would allow the State to issue general obligation bonds in its own name, without having to re-amend the State Consititution to do so, in the event AHFC (or whatever instrumentality is set up to issue the veterans housing bonds) for some reason proves to be unsatisfactory.

3-16-82

Coder –

Ulmer bill – elim. State's ability to sell bonds for housing –

12.71 —— 60 Bond 12.71%

as compared to 20 yrs. T. Bill – about 12%.

AHFC last sale – 18 1/2%

Savings to State to do it like this

$133 m – '82 subsidy of AHFC bonds.

Fred Brown – "do pass if there is no other remedy":
Shouldn't chg. Const. every time Fed govt changes law.

Phillips – – any other problems?

Burchhardt → women's movt. don't like special preference for veterans – I don't have this kind of advantage →

Coder – it does give an advantage to veterans, but not at the expense of non-veterans. –

Tom Williams – Also, AHFC – likes the bill – per IRS Code – then bonds are tax free if for veterans – Ulmer not returned to Congress – too bad we have to amend the Constitution – could be as much as 6% savings on bond costs. –

AHFC board supports it → recommend it through an agency of state.

Prevents erosion of state's credit rating

Phillips — What percent of loans to vets? — See annual report —

If now in const. I interest rate would be on 1st 90K - 9%. 12.7 + 3/4 %. on 13%. over $90K

no problem w) SA substantially language.

Phillips — mm. CSHJR71 (Sen.)

Anderson — fixed rate?

Williams — how would be a negative fixed rate.

Anderson — Advantage is to the State, not the veterans — less $ needed to subsidize this. —

Freeman — why would a veteran come in and enter. leg. & talk in favor of it. —

Voss. — if const passed — we would be issuing tax exempt bonds — yet's interest rate goes down to 7%. —

The fixed rate

HJR

77

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M

February 28, 1980

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

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

FROM: Billy G. Berrier
Director
Division of Legal Services

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

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

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

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

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

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

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

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

Essentially the areas affected fall into two classes

(1) regulations and legislative oversight of regulations; and

(2) other areas of law where concurrent resolutions are used to provide legislative oversight.

On regulations the majority opinion states broadly:

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

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

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

The connection and logic totally escape me.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The majority opinion went on the say:

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

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

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

These include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BGB:jdn

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

March 9, 1982

The Honorable Ramona Barnes
Chairman
House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: HJR 77 (constitutional amendment re annulment of regulations)

Dear Representative Barnes:

This will confirm my remarks, both written and oral, offered at yesterday's meeting of the House Judiciary Committee. My written remarks consisted of my March 13, 1980 letter to Senator Arliss Sturgulewski, on the Eleventh State Legislature's CSHJR 82 am. At your request, I furnished a copy of that letter to your committee.

That 1980 resolution contains a proposed constitutional amendment identical to the one in this year's HJR 77. The voters rejected that one 82,010 to 58,808. That is a very substantial margin, and I believe that the voters knew what they were doing.

Basically, the Department of Law opposes the resolution for the reasons summarized in my letter to Senator Sturgulewski. However, we would urge that, if the legislature

In addition, it should be noted that, in connection with the effective-date language (line 15), if an annulment becomes effective on the date an annulling resolution is approved (presumably, by the second house) then conduct of a person relying on a regulation in the morning would be inappropriate later in the day. At what time on that date would the annulment take effect? Compare AS 01.10.070(c), regarding legislative Acts.

I appreciate having the opportunity to comment on this matter. Thank you.

Very truly,

WILSON L. CONDON
ATTORNEY GENERAL

By: Art Peterson
Arthur H. Peterson
Assistant Attorney General

AHP:dlm

cc: Hon. Richard Randolph
House of Representatives
Alaska State Legislature

March 16, 1982
HJR 77

Petersen —— reg. are a leg. - type of function -

ex: function to execute the ~~statute~~

Freeman — power to regulate come entirely from legislature.

Barnes - doesn't need the 30 days. —

sbr

→ 1st amd. failed 3 to 3

~~Ap~~ Phillips: 2nd amendment — failed 3-3

Anderson — concerned over sep. of powers doctrine — Petersen — yes — there could be such a problem. —

Barnes: Until 1980 this was exactly the procedure that was used by Ok legislature.

3-11-82 HJR 77

Joyce Meyer - for R.D.C.

in favor of ~~HB 77~~ HJR 77

RDC will try to help

educate the public on

3.8-82

2
public hrgs.

Randolph

Ont Peterson — was on 1980 ballot - 2nd choice?
looking the vote
58,480 for.
87,000 against

Concentration of powers in the leg. branch
leg. should not write regulations . . .

no veto in resolution — —→
no rep. working on rep days.
no vote recording. —

the gov. will veto a regulation —— does it on a
case by case basis
Randolph's plans not well founded. —

If you do pass the resolution — add these
amendments:
Phillips → 1. Effective date plus — line 15
—— at least 30 days notice required.

2 line 16 — "both houses" - 2/3's vote.

line 17 add "Every such resolution
shall be confined to one subject. —— Yeas
& nays should be entered in the journal.

one subject rule — accountability —
avoids "log rolling"
(concern: if this be written done by
limiting it to single regulation)

Randolph (opposes & Peterson)

leg. has higher residuality than
leg. process.

30 day — not needed —
leg can supply other dat

2/3's — inappropriate

no subject + vote lottery — put in
rule, not constitution - - -

?? bill set aside —

AHP
by TW

March 13, 1980

The Honorable Arliss Sturgulewski
Senator
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: CSHJR 82 am (constitutional amendment re annulment of regulations)

Dear Senator Sturgulewski:

As we discussed briefly yesterday, here are some comments regarding this resolution.

Although the adoption of administrative regulations by an administrative agency is considered a "quasi-legislative function," it is usually the executive branch's execution or implementation of a statute. This resolution, by providing for legislative annulment, by means of a concurrent resolution, of an administrative regulation, provides for the legislature to make what could be considered executive-branch decisions -- executing the program created by statute. This concentration of power in the legislative branch does not appear to reflect a sound policy in the face of the separation-of-powers doctrine as expressed in the Federalist Papers and other writings. That doctrine, of course, involves a blending or sharing of powers. The purpose is to avoid the tyranny of a concentration of power.

Presumably, the legislature will want to pass this resolution and adopt the policy expressed in it. If so, it might be worth while to consider certain amendments to it. In the A.L.I.V.E. Voluntary case, decided by the Alaska Supreme Court a couple of weeks ago, the court made clear that annulling a regulation was an act of law-making. Regulations have the effect of law, and their repeal, amendment, or annulment changes the law. The proposed constitutional amendment in this resolution does not

provide any of the other protections that the constitution makes applicable to regular law-making. For example, the single subject rule of art. II, sec. 13 would not be applicable; the requirement of separate readings on separate days under art. II, sec. 14 would not be applicable; the requirement that the ayes and nays on final passage be recorded in the journal, under art. II, sec. 14, would not be applicable; and, of course, the provisions on gubernatorial veto, under art. II, secs. 15 and 16, would not be applicable.

Those provisions provide for public accountability, public notice, and an opportunity for the public to prepare for the application of new law. Regulations adopted under the Alaska Administrative Procedure Act require public notice, opportunity for public comment, legal review by the Department of Law, and a deferred effective date. Under this resolution, neither the constitutional protections nor the corresponding Administrative Procedure Act protections would be applicable to the annulment of an administrative regulation.

Presumably, the legislature regards the opportunity for gubernatorial veto to be the most objectionable aspect. But how can the legislature object to accountability and public notice? Here is some suggested language to add to CSEJR 82 am:

> Page 1, line 15: Delete the word "on" and insert in its place "30 days after."
>
> Page 1, line 16: After the word "unless" insert ", by a two-thirds vote of each house,".
>
> Page 1, line 17: After the period add two new sentences "Every such resolution shall be confined to one subject. The yeas and nays on final passage shall be entered in the journal."

Those amendments would address some of the basic concerns. Neither the House Judiciary Committee nor the Senate Judiciary Committee, before which I appeared, cared much for the suggestions. One member pointed out that some of those procedural protections could be specified in the Uniform Rules of the Legislature. That certainly is better than nothing, but, obviously, the protection is greater if specified in the constitution.

I have done this very quickly, am dictating it, and will not have a chance to review the draft before leaving town. Consequently, it might not be as polished as I would like it to be. I have given my secretary instructions to sign this letter on my behalf so that you will have it as soon as possible.

Thanks for your consideration of the points raised in our discussion and in this letter.

Yours truly,

AVRUM M. GROSS
ATTORNEY GENERAL

By:
Arthur H. Peterson
Assistant Attorney General

AHP:md

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HJR 77
Title Proposing an Amendment to the Constitution of the State
Requested by Repr. Barnes, House Judiciary Committee Date March 1, 1982
of Alaska relating to annulment of regulations by the Legislature.

II. FISCAL DETAIL
Agency Affected Department of Law
Program Category Affected General Government
BRU, Program, Or Subprogram(s) Affected Legal Services
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL		Ø	Ø	Ø	Ø	Ø

FUNDING (Thousands of Dollars)

GENERAL FUND		Ø	Ø	Ø	Ø	Ø
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME		Ø	Ø	Ø	Ø	Ø
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

While the Department of Law opposes this resolution, we will limit our comments here to fiscal matters. This proposed amendment to the state's constitution, if adopted in the 1982 general election, will probably not have a direct fiscal impact on the department's operations. The department is statutorily responsible for reviewing all regulations for legality and form to insure consistency with the appropriate enabling legislation. The department also drafts regulations on behalf of other departments and assists other departments in drafting regulations that deal with highly complex matters acquiring the attention of an attorney. Obviously, some of the time spent in these efforts will have been lost whenever a regulation has been annulled. Larger departments, which have the responsibility for carrying out major state programs, and who routinely draft numerous program operating regulations inhouse, will probably experience an even greater loss of staff time.

Richard I. Pegues

IV. DATE March 3, 1982 PREPARED BY Richard I. Pegues, Director, Admin, Svcs.
AGENCY Department of Law
PHONE 465-3672

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

001 (Rev. 12/81)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HJR 77
Title Proposing a constitutional amendment-Annulment of Regulations.
Requested by House Judiciary Committee Date 2/25/82

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

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL		-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

IV. DATE 3/1/82 PREPARED BY Richard P. Barrier
AGENCY Alaska Court System
PHONE 264-0545

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

33-001 (Rev. 12/81)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HJR 77
Title Amend Constitution to allow annulment of regulations by the Legislature
Requested by House Judiciary Committee Date March 1, 1982

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

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

HJR 77 has no fiscal impact on the Department of Administration.

IV. DATE March 1, 1982 PREPARED BY Robert L. Rehfeld
AGENCY Administration
PHONE 465-2200

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named) House Judiciary Committee
33-001 (Rev. 12/81) Office of the Governor: Keith Specking

alaska state hospital association

319 Seward St., Juneau, Alaska 99801 • (907) 586-1790

REPRESENTING ACUTE, LONG TERM AND OUTPATIENT FACILITIES

January 27, 1982

The Honorable Ramona L. Barnes
State Capitol
Pouch V
Juneau, AK 99811

Dear Representative Barnes:

SUBJECT: HJR 77

The Alaska State Hospital Association wishes to indicate its support for HJR 77.

In our industry, regulation has become a way of life. Both we and the regulators know the difficulty in overturning regulations under the current process. HJR 77 would provide an additional means for seeking relief from unnecessary regulations. Even more important, however, is the restraint which will be caused as regulators become aware that the legislature is looking over their shoulders and, indeed, will annul regulations which are inconstant with or in excess of legislative intent.

Sincerely,

Dennis L. DeWitt
President

DLD:jp

THE SUPREME COURT OF THE STATE OF ALASKA

STATE OF ALASKA, AND DEPARTMENT OF REVENUE, Appellants,	)	File No. 3670
v.	)	O P I N I O N
A.L.I.V.E. VOLUNTARY, Appellee.	)	[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") are allowed,[2] 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)("The 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.

it contravened article I, section 1 of the United States Constitution, which vests the legislative power of the United States in a bi-cameral Congress, article I, section 7, which grants veto power to the President, and the principle of separation of powers. The Court of Claims, en banc, in a four-to-three decision, upheld the statute.

Atkins is not strong authority in this case, for the following reasons. First, the majority took pains to confine its opinion to the narrow issue before it, emphasizing that Congress' special role in the establishment of judicial salaries shaped its reasoning and conclusion. Id. at 1058-60, 1063, 1065, 1068. Moreover, the United States Constitution does not contain detailed directions for legislative action similar to those set forth in the Alaska Constitution, discussed supra, pp. 7-10. Thus the Court of Claims was able to say, speaking of article I, section 1 of the United States Constitution:[30] "[T]he clause does not itself, as a textual matter, mechanically direct the manner in which Congress must exercise the legislative power." Id. at 1062. Such a statement could not be made with reference to Article II of the Alaska Constitution. Further, the court stressed

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30. U.S. Const. art. I, § 1 provides:

> All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

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.[35] 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.

mittee,[36] or a single legislator. Using the theory, propounded by the Amici, that a veto is merely a condition there is no principled distinction between these cases. It is therefore worth observing that most authorities have rejected the validity of laws conferring either affirmative or negatory legislative powers on individual legislators or legislative committees.

In State ex rel. Judge v. Legislative Finance Committee, 543 P.2d 1317 (Mont. 1975), at issue was a statute empowering an interim legislative committee to approve budget amendments. The statute was held invalid. The court pointed out that the power to approve budget amendments could be exercised by the entire legislature in making an appropriation, or by an executive agency acting on a proper delegation from the legislature, but the legislature could not delegate the power to so act to one of its subdivisions. Id. at 1321.[37] The same reasoning was employed in People v. Tremaine, 168 N.E. 817 (N.Y. 1929), where the Court of

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36. In fact, under AS 24.20.445(a), the Administrative Regulation Review Committee, a permanent joint committee of the legislature, is granted the power to suspend the operation of any regulation adopted after adjournment of the legislature until thirty days after the legislature reconvenes.

37. The people of Alaska recently rejected a constitutional amendment which, like the law struck down in Montana, was designed to vest the power to approve budget revisions in an interim legislative committee. See Alaska Const. art. II, § 11 (proposed amend. 1978 Supp.).