

ALASKA LEGISLATURE COMMITTEE PRINTS JULY 1972

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Appeals struck down a statute granting certain legislative committee chairmen the power to disapprove of the allocation of lump sum appropriations to an executive agency. The court acknowledged that the legislature might itself legislate the allocation, or it could delegate the responsibility to an executive agency. It could not, however, delegate the responsibility to one, or more than one, of its members:

"The Legislature might make the segregation itself, but it may not confer administrative powers upon its members without giving them, unconstitutionally, civil appointments to administrative offices. It might by general law confer the power of segregation or approval of segregation upon any one but its own members . . . but the Constitution . . . makes its own members ineligible to such an appointment."

Id. at 822. See also, Stockman v. Leddy, 129 P. 220, 223 (Colo. 1912); Bramlette v. Stringer, 195 S.E. 257, 264 (S.C. 1938). Contra, Opinion of the Justices, 266 A.2d 823 (N.H. 1970).

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

perform a task more efficiently if it did not have to follow article II is essentially irrelevant. Since article II applies, the question of whether efficiency takes primacy over other goals must be taken to have been answered by our constitutional framers. Second, at least according to a recent case study, the legislative veto has been unimpressive in practice. See Bruff & Gellhorn, Congressional Control of Administrative Regulation: A Study of Legislative Vetoes, 90 Harv. L. Rev., 1369 (1977). That study concludes, essentially, that the legislative veto encourages secretive, poorly informed, and politically unaccountable legislative action. Id. at 1409-20. It is consequences such as these that the enactment provisions of our constitution are designed to guard against. See discussion, supra, pp. 7-10.

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

Appellee finds it significant that the Alaska Constitution contains no provision like that in section 7,³⁸ clause 3 of article I of the United States Constitution which authorizes the executive to veto legislative resolutions, and that executive involvement in the enactment of resolutions was not deemed necessary by the framers of the state constitution. This point, however, does not advance Appellee's case. Under the United States Constitution joint³⁹ resolutions are one means by which laws are enacted; they are therefore naturally included among those legislative acts subject to Presidential veto. However, under the state constitution resolutions are not an alternative law enactment process, and therefore there is no need to make them subject to an executive veto.

38. This clause provides:

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

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

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

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

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

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

I

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

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

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

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

The legislative power of the state "is vested in a legislature." It is argued that because of this constitutional provision the power may not be delegated.

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

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

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

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

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

In my opinion, the majority misstates the question presented as being whether the legislature can exercise its legislative power without the usual constitutional safeguards. The real question is whether, having exercised its legislative power, subject to all those safeguards, it y condition the

delegation of regulatory power to an executive agency upon a provision for legislative oversight. I agree with our statement in Boehl that the legislature has that power.

II

The advent of the industrial revolution vastly increased and complicated the tasks of legislatures. Due to limits of time and specialized expertise, legislatures have found it impossible to prescribe laws adequately covering the tremendously varied and intricate forms of social relationships arising out of the proliferation of business, manufacturing, trade, transportation, communication and commercial enterprises.³ Of necessity, legislative authority had to be delegated to administrative agencies. Nevertheless, both in England and in the United States, efforts were initiated to maintain some controls over broad delegations⁴ of authority.

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

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

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

Parliamentary control over administrative rules and regulations . . . is asserted principally through provisions in enabling statutes that rules made under them shall be laid before Parliament. This is customarily combined with a provision in the statute, either that the rule shall not be operative until it is approved by resolution, either of both Houses or of the House of Commons alone . . . , or that, if within forty days a resolution is passed by either House for annulling the rule, the rule is to be void⁵

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

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

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

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

III

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

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

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

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

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

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

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

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

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

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

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

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

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

IV

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

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

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

annulling action is taken at the first session of the legislature
11
following promulgation of the regulation.

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

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

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

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

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

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

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

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

In our view, the specificity with which the constitution deals with the legislative veto powers it does grant leads logically to the conclusion that no other veto power is implied.

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

14. Article X, section 12, provides:

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

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

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

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

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

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

VI

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

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

chapter 143, SLA 1959.¹⁶ The bill was passed by a House
vote of 37 to 1,¹⁷ and by a unanimous Senate vote.¹⁸

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

I am signing into law HOUSE BILL NO. 13, the administrative procedures bill. I wish to call attention to the Attorney General's statement that Section 1, Article VI of Chapter 1 thereof may be unconstitutional in its seeking to impose new duties on local governing bodies.

Because of the bill's separability clause, however, I do not consider this flaw of such seriousness that the bill should not be signed and utilized.¹⁹

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

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

16. 1959 House Journal 52.

17. 1959 House Journal 427.

18. 1959 Senate Journal 708.

19. 1959 Senate Journal 1092.

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

enactment of the United States Constitution is apropos here:

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

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

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

government. Such a practice, affording a practical means

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

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

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

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

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

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

H T R

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STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH 5
JUNEAU, ALASKA 99811
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March 2, 1982

The Honorable Eric G. Sutcliffe
The Honorable Kenneth J. Fanning
Co-Chairmen
House Resources Committee
Room 120 - Capitol Building
Juneau, Alaska

Dear Mr. Sutcliffe and Mr. Fanning:

Re: House Joint Resolution No. 81

House Joint Resolution No. 81, proposing amendments to the constitution of the State of Alaska relating to the creation of a natural resource trust, was introduced in the House on February 8, 1982 and was referred to the House Resources and Judiciary Committees.

For the consideration of the House Resources Committee, I am enclosing copies of Fiscal Notes prepared by Mr. Anselm Staack, Comptroller, Treasury Division, Department of Revenue concerning the House Joint Resolution.

Sincerely,

R. D. Stevenson

Enclosures

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

Joseph K. Donohue
Deputy Commissioner
Department of Revenue

Anselm Staack, Comptroller
Treasury Division
Department of Revenue

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

HJR 81

(REVENUE REDUCTION TO
GENERAL FUND UNRESTRICTED)

FISCAL NOTE (1 of 2)

I. REQUEST

Bill/Resolution No. HJR 81 (2/8/82)
Title Establish Alaska Natural Resources Trust
Requested by House Resources Committee Date 3/1/82

II. FISCAL DETAIL

Agency Affected General Fund Unrestricted
Program Category Affected Revenue Collection and Management
BRU, Program, Or Subprogram(s) Affected Treasury Management
(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						

M I L L I O N S

FUNDING (~~XXXXXXX~~ of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND			(1,608.8)	(1,906.9)	(2,159.9)	(2,511.1)
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME						
PART TIME						
TEMPORARY						

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

Legislation would dedicate revenues to a natural resources trust which is to receive the state's interest in income from natural resources, including royalties, etc., subject to prior amounts dedicated to permanent fund and other previously established claims.

Since the constitutional amendment is necessary to effect transfer of funds to the trust FY 84 is the first year of transfer after election takes place.

SEE OTHER FISCAL NOTES FOR ADMINISTRATIVE COSTS.

Anselm C. Staack

IV. DATE March 1, 1982 PREPARED BY Anselm C. Staack, Treasury Comptroller

AGENCY Dept. of Revenue, Treasury Division

Original: Legislative Finance PHONE 465-2350

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

HJR 81
(FUND INVESTMENT
ADMINISTRATIVE COST)

FISCAL NOTE (2 of 2)

I. REQUEST

Bill/Resolution No. HJR 81 (2/8/82)
Title Establish Alaska Natural Resources Trust
Requested by House Resources Committee Date 3/1/82

II. FISCAL DETAIL

Agency Affected Department of Revenue
Program Category Affected Revenue Collection and Management
BRU, Program, Or Subprogram(s) Affected Treasury Management
(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			92.6	101.9	112.1	123.3
200 TRAVEL			10.0	11.0	12.1	13.3
300 CONTRACTUAL			255.0	280.5	308.6	339.4
400 COMMODITIES			3.0	3.3	3.6	4.0
500 EQUIPMENT			6.0			
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL			366.6	396.7	436.4	480.0

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
Trust Income			366.6	396.7	436.4	480.0

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)
Legislation dedicates revenues to a natural resources trust. THIS FISCAL NOTE ACCOUNTS FOR ADMINISTRATIVE COSTS RELATED TO THE INVESTMENT OF FUND ASSETS ONLY. THIS IS A COMPANION MEASURE NECESSARY TO HB 642. Administrative costs are to implement HB 642. Personal Services is for Investment Officer II (R22,X) to invest and manage assets; Accounting Tech. II (R14,G) for associated trust investment accounting and reporting. Contractual Services: Comm. \$15.0; Print & Adv. \$10.0; Safekeeping and related reporting/accounting \$200.0; Audit \$25.0; Misc. \$5.0 Equipment is for new positions.

Anselm C. Staack

IV. DATE March 1, 1982 PREPARED BY Anselm C. Staack, Treasury Comptroller
AGENCY Dept. of Revenue, Treasury Division
Original: Legislative Finance PHONE 465-2350
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)

S

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UNIVERSITY PLAZA OFFICES WEST, SUITE C • 600 UNIVERSITY AVENUE • FAIRBANKS, ALASKA 99701
PHONE (907) 479-6507



POSITION PAPER
GUARDIANSHIP
February 1981

THE GOVERNOR'S COUNCIL FOR THE HANDICAPPED AND GIFTED SUPPORTS THE PASSAGE OF SENAT BILL 3 "AN ACT RELATING TO GUARDIANS AND CONSERVATORS"

RATIONALE

The Council takes this supportive position for the following reasons (background information follows in more detail):

1. SB 3 bases a determination of incapacity on an individual's functional limitations rather than on a "blanket classification" on the basis of medical diagnosis or existence of a disability (such as mental retardation).
2. SB 3 provides strengthened due process protections to individuals thought to be incapacitated.

The Council feels that strong due process provisions are critical in legislation that deals with persons thought to be incapacitated because of the right of all persons, regardless of handicapping condition, to enjoy full constitutional protection of individual rights.

3. SB 3 provides for partial or limited guardianship as well as full or plenary guardianship so that an individual's rights are modified only in those areas of incapacity.

The Council feels that guardianship orders should only limit the rights of an individual in those areas of functioning where he/she cannot exercise individual choice, and, more importantly, should preserve the right of an individual to exercise free choice in those areas where his/her limitations are not in question. Present state statutes do not allow this "partial guardianship" option.

4. SB 3 strengthens court procedures and provides for a guardianship order and plan which specifically enumerates the responsibilities and powers of the guardian.

The Council feels that strengthening court procedures, providing for very specific guardianship orders, and requiring individualized plans are strong points of SB 3. These requirements serve as additional protections to the individual who receives guardianship services as well as provide guidelines for all parties involved in guardianship hearings and providing guardianship services.

5. SB 3 provides for an "office of public guardian" which has the responsibility to 1) serve as public guardian and 2) be a primary resource to locate private guardians and assist them in the performance of their duties.

The Council believes that the establishment of an "office of public guardian" (not currently existing in the State of Alaska) is important because such an office is needed to be public guardian for individuals who do not have family or friends available to be guardians. The Council further feels that the "office of public guardian's" responsibility to seek out and work with private sector guardians will serve to encourage family/concerned party involvement, and thus limit the caseload for which this office will be responsible in its role as public guardian.

6. SB 3 sets priorities for appointment of private guardians (Sec. 13.25.145(d)).

The Council believes that such a prioritization is necessary and beneficial in four (4) respects: a) it directs the court as to individuals to be sought for appointment as guardians, b) it serves as notice to private parties concerning the order in which they will be considered as potential guardians, c) it allows as much choice as possible by the person determined incapacitated, and d) it lists the public guardian as the last to be considered after all other possible persons have been contacted.

7. SB 3 locates the office of public guardian in the office of public administrator.

The Council feels that this is a good placement because the functions and expertise required of a public guardian are similar to those required of a public administrator. Further, the Council feels that such placement would ensure that there would be no possibility of conflict of interest which could arise if a social service agency providing care to an incapacitated person were acting as the person's guardian.

8. SB 3 includes time limits within which guardianship hearings must be held.

The Council believes that both the petitioner and the respondent should have assurance that hearings will be scheduled and held within a reasonable period of time. For petitions for temporary guardianship there is a need to have the court hearing within a few days so that legal transactions can be finalized and medical services obtained. Regular guardianship hearings should be able to be held within four months of the filing of petition.

9. SB 3 requires that annual reports be submitted by the guardian to the court.

This provides a mechanism for the court to monitor the guardian's discharge of his duties and may alert the court to a need for a change in the guardianship order or a termination in guardianship.

BACKGROUND INFORMATION ON NEED FOR A REVISED GUARDIANSHIP LAW IN ALASKA
(AS PROPOSED IN SB 3)

i. Guardianship Practices and Implications

(Excerpts taken from Guardianship & Conservatorship: Statutory Survey and Model Statute, American Bar Association, 1979.)

"Guardianship is a legal relationship which authorizes one individual to become a substitute decision-maker for another. Its most common form is the "natural guardianship" relationship between parents and their minor children. A guardianship is established by court order when because of age, illness, or disability, a person is determined to be incapable of managing some or all of his or her personal and/or financial affairs. A guardian may be given partial or total authority to determine whether the disabled person will live in the community or an institution, and what type of medical, mental health and other services the disabled person will receive (personal guardianship), and/or partial or total power to manage and control that person's property and income (conservatorship). Correspondingly, the individuals for whom a guardianship has been established may lose the right to decide whether to remain in their own home, to make contracts for goods and services, to go to court to enforce their rights, to hold or convey property, and in some instances to marry, to have children, to vote and to make a will.

The criteria for establishing a guardianship are often broad and vague, permitting the imposition of restrictions on persons who are "different" as well as on those who are disabled. Current procedures often omit the safeguards we have come to expect when restrictions on liberty are imposed or fundamental rights threatened in other contexts. And perhaps most importantly, even today in many jurisdictions, guardianship orders and guardians have failed to recognize that individuals with disabilities are often capable of doing many things for themselves.

(A)...serious difficulty arises because the law usually represents incompetence in simple black and white terms, with the result that most guardianships of the person are looked on as plenary guardianships. The person declared incompetent is deprived of the legal capacity to act in any way on his own behalf. Even though he (or she) may have a guardian appointed to exercise some of his (or her) rights, the emphasis usually is on the deprivation of rights rather than on implementing rights constructively through informed representation. Moreover, the idea that the person himself (or herself) can properly retain and exercise some personal and even property rights, selectively, according to his (or her) individual capacity, is not adequately expressed in most existing statutes pertaining to guardianship.

Over the past two decades, a growing list of organizations and governmental commissions which have examined guardianship have called for

correction of these problems. For example, in 1962, the President's Panel on Mental Retardation stated:

For some, of course, a comprehensive guardianship will be needed. But we urge that, as far as possible, mentally retarded adults be allowed freedom--even freedom to make their mistakes. We suggest the development of limited guardianships of the adult person, with the scope of the guardianship specified in the judicial order.

The 1969 Report of the International League of Societies for the Mentally Handicapped recommended:

The retarded adult should be permitted to act for himself [or herself] in those matters which he [or she] has competence. The limitations of legal capacity inherent in guardianship should not extend to these matters. It follows that a person whose mental retardation is characterized by impairments of social competence which are partial should enjoy a partial guardianship specifically adapted to his [or her] strengths and weaknesses.

The 1975 edition of the Uniform Probate Code makes a clear distinction between guardianship of the person and conservatorship of the estate, and establishes a number of less restrictive alternatives for the protection of the property of a disabled individual (though not the person). It also provides for the execution of durable powers of attorney as a means of obviating the need for a guardianship or conservatorship. Finally, the 1976 Report of the President's Committee on Mental Retardation, urged that:

Statutes and court procedures bearing on competency should be clarified and revised (a) to recognize gradations of competence, (b) to recognize that areas of competency may be quite varied and therefore should be separable in law, (c) to assure full and explicit due process safeguards on any and all areas of competency, and that the scope of any judgment of incompetence is made fully explicit, and (d) to ensure that restrictions of competency be limited to a specific period of time or subject to periodic review."

2. Commentary on Changes Needed in Alaska's Guardianship Laws

Existing state law does not provide for partial guardianship, does not provide sufficient due process protections, and does not tie appointment of a guardian or provision of guardianship services to the specific needs of the incapacitated person, nor does it provide for persons for whom no private guardian can be obtained.

Legislation is needed to correct these problems. It should require a determination of incapacity to be based on the individual's ability to provide for his [her] physical health and safety without focussing on the medical diagnosis of the disability. It should provide for

partial guardianship for those individuals who can meet some but not all of their own needs. Due process protections should be strengthened and ensure that the only legal rights a ward loses when a guardian is ordered are those specifically included in the court's guardianship order. A guardianship plan should be required which will make clear what the guardian's responsibilities and authorities are and thus provide clear direction for the guardian and help the court monitor the guardianship order. By prioritizing who can be a guardian, guidance can be given to those seeking guardians to help ensure that appropriate individuals are routinely contacted to be guardians.

Guardianship and conservatorship are closely tied and provisions need to be made to make conservatorship procedures consistent with guardianship procedures. The special conservator's role should be expanded to make it equivalent to that of a limited guardian.

An office of public guardian is needed. This is extremely important to ensure that individuals are not denied guardians or guardianship services simply because private guardians cannot be found. Guardianship petitions have not been filed for many individuals because there is no agency charged to actively seek out private guardians. In addition to serving as a public guardian, this office should be given the responsibility to seek private guardians. The public guardian should be required to seek other guardians before the court appoints it to be the guardian. This would also ensure that an office of public guardian would not have a burgeoning caseload. Recent experience in the state of Delaware, where such a provision is included in state statute has shown that the public guardian is able to locate private guardians thus reducing the public guardian's caseload and reducing court work which would be required to change guardians.

The public guardian should act as a special resource to the court, social service agencies, the Attorney's General office and to private guardians in guardianship matters. If these guardianship support services are not included in the public guardian's duties, the current problems will continue with the result that the public guardian will be required to serve as the guardian for significantly more individuals than would otherwise be necessary. The current problems are failure to process cases, slow processing of cases, reluctance of individuals to serve as guardians because they are unsure of their duties, unfamiliar with preparing reports, and because they feel they have no readily available agency specializing in guardianship to advise them.

If an office of public guardian as described above is created, the number of persons who will be willing to act as private guardians is expected to increase since the public guardian will continually be searching for private persons to serve as guardians and will provide advice and assistance to lighten the burden anyone serving as a guardian may feel.

The placement of the public guardian office within the state government has been a subject of much discussion. As a result of meetings in October 1978 and a review of the efforts of the Attorney General.

in this area in regards to HB 63 of the Tenth Legislature, two possible locations were proposed: the Office of the Governor or the Court System in connection with the Public Administrator Office. These options were chosen because no other bodies of state government seemed appropriate. HB 63's amendment placed the office in the Department of Health and Social Services. The possible conflicts of interest that could arise resulting from the department being often the main provider of care to incapacitated persons requires that it be placed elsewhere.

The best option in many ways seems to be that the office be combined with that of the public administrator. The public administrator acts both as coroner and administrator of the estates of deceased persons. It is an appointive position for each judicial district, "when authorized by the Supreme Court". AS 22.15.310. The administration of estates is already an area of expertise required by a public administrator and would suggest that the public administrator is the appropriate person to act as a public conservator. Further, at present, the public administrator is already acting as an ad hoc public guardian for several clients at Harborview and individuals at other nursing care facilities. Given this ad hoc procedure, the public guardian office would legitimize this role and provide for a budget that allows the public guardian to truly provide adequate guardianship services.

3. Need for Guardianship Services

The number of individuals expected to require guardianship services equals about half the total number of persons in nursing homes and other residential care facilities. This totals about 335 people. Of these about 28% have private guardians. With active assistance from an office of public guardian, it is estimated that private guardians could be found for 10 to 15 percent of these people. This would result in the public guardian serving as guardian for about 10% or 35 people. Based on annual admission rates of these facilities and if a public guardian were to be needed for 10% of the cases, an additional 50 cases would be generated.

Because many of those in need of guardians are ill or aging the continuing caseload of a public guardian is estimated at between 50 and 90 individuals. Based on figures provided by the agencies it is estimated that 100 individuals will need the assistance of the public guardian to locate private guardians because of the current backlog of cases.

On an annual basis the caseload of the office of public guardian is expected to be:

50-90	public guardianship
100	guardianship resource services
50	location of private guardians

(See attached information gathered from a Council survey of agencies in 1979.)

Recent figures obtained on the Delaware public guardian office show 150 referrals per year to that office with only 10% or 15 becoming wards of the public guardian (Delaware population @ 600,000). The American Bar Association estimates 1/100th of one percent of Delaware's population is served by a public guardian.

4. Funding Needed

Based on court and associated costs and the time currently required for agencies to provide guardianship services, the annual cost of the bill is approximately \$250,000. (See attached fiscal impact information.)

REFERENCES

- AMERICAN BAR ASSOCIATION, GUARDIANSHIP AND CONSERVATORSHIP: STATUTORY SURVEY AND MODEL STATUTE, 1979.
- N. KITTRIE, THE RIGHT TO BE DIFFERENT: DEVIANCE AND ENFORCED THERAPY (1971).
- INTERNATIONAL LEAGUE OF SOCIETIES FOR THE MENTALLY HANDICAPPED (ILSMH), SYMPOSIUM ON GUARDIANSHIP OF THE MENTALLY RETARDED, 11 (1969).
- NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAW (NCCUSL), UNIFORM PROBATE CODE (U.P.C.) Article V (4th Ed. 1975).
- ROTHMAN, THE STATE AS PARENT: SOCIAL POLICY IN THE PROGRESSIVE ERA, IN W. CAYLIN, I. GLASSER, S. MARCUS, & D. ROTHMAN, DOING GOOD: THE LIMITS OF BENEVOLENCE, 67, 70 (1978).
- E.g., THE PRESIDENT'S PANEL ON MENTAL RETARDATION (PPMR), REPORT OF THE TASK FORCE ON LAW (1963); PRESIDENT'S COMMITTEE ON MENTAL RETARDATION (PCMR), REPORT TO THE PRESIDENT -- MENTAL RETARDATION: CENTURY OF DECISION (1976); THE PRESIDENT'S COMMISSION ON MENTAL HEALTH (PCMH), REPORT TO THE PRESIDENT (1978); ILSMH (above); COUNCIL OF THE AMERICAN ASSOCIATION ON MENTAL DEFICIENCY (AAMD), POSITION PAPER ON GUARDIANSHIP FOR MENTALLY RETARDED PERSONS (1973); NATIONAL CENTER FOR SENIOR CITIZENS, MODEL GUARDIANSHIP, CONSERVATORSHIP AND POWER OF ATTORNEY LEGISLATION, IN U.S. SENATE SPECIAL COMMITTEE ON AGING PROTECTIVE SERVICES FOR THE ELDERLY: A WORKING PAPER, 75-110 (1977); GOVERNOR'S COMMISSION FOR REVISION OF THE MENTAL HEALTH CODE OF ILLINOIS, REPORT (1976).
- AMERICAN BAR ASSOCIATION COMMISSION ON THE MENTALLY DISABLED: EXERCISING JUDGEMENT FOR THE DISABLED, REPORT OF AN INQUIRY INTO LIMITED GUARDIANSHIP, PUBLIC GUARDIANSHIP, AND ADULT PROTECTIVE SERVICES IN SIX STATES. (September 1979)

alaska
state
hospital
association

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

REPRESENTING ACUTE, LONG TERM AND OUTPATIENT FACILITIES

President
Sister Barbara Haase
Ketchikan General Hospital
Ketchikan

June 4, 1981

President-Elect
Tom Mungen
Fairbanks Memorial Hospital
Fairbanks

Secretary/Treasurer
Ron Pavellas
Alaska Hospital & Medical
Center
Anchorage

Immediate Past President
Al Camosso
Providence Hospital
Anchorage

Executive Director
Dennis L. DeWitt
Juneau

The Honorable Fred Brown
House of Representatives
Pouch V, State Capitol Bldg.
Juneau, Alaska 99811

Dear Representative Brown:

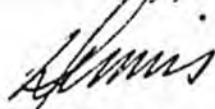
The Alaska State Hospital Association wishes to take this opportunity to indicate its support for CSSE 3 relating to guardians and conservators. The need for the revisions of the law pertaining to guardians and conservators is well documented. This Association, as well as others, has been before the legislature in recent years advocating this measure. We hope that success will be achieved this year.

While we support CSB 3, we believe two amendments (See enclosure) would substantially improve the bill by further protecting the rights of the respondent. Our first suggestion is to specifically limit the duration of a temporary guardianship to 6 months. This would preclude the possibility of an extended guardianship under a temporary guise solely because permanent appointment of a guardian was not pursued.

The second concern is in the area of malicious and frivolous petitions. We believe that the court should be specifically required to dismiss any petition immediately upon determination that such a petition is malicious or frivolous and assess the petitioner all cost incurred by the respondent as a result of the malicious or frivolous petition.

Thank you for your consideration in this matter.

Sincerely,



Dennis L. DeWitt
Executive Director

Enclosure

cc: Members of the House Judiciary Committee
Jack Buck, St. Ann's Nursing Home

Part
No

Amendment Number 1

Section 13.26.140 (e) Temporary Guardians
Page 21 Lines 9-11. Add the following sentence

"In no case, unless renewed by the Court, shall a
temporary guardianship exceed 6 months."

Amendment Number 2

Section 13.26.105 Petition
Page 4 after Line 28 add

"(e) if at any time during the proceedings the court
finds the petition to be frivolous or malicious, the
court shall immediately deny the petition and assess
the petitioner any and all costs incurred by the
respondent as a result of the frivolous or malicious
petition.

Part
No

POSITION PAPER

CS For Senate Bill No. 3 (Finance)

"An Act relating to guardians and conservators; and providing for an effective date."

This bill provides a comprehensive revision of Guardianship statutes. It provides for the special needs of veterans as well as handicapped persons. It provides for partial guardianship orders when the ward does not need a total guardianship. Finally, it creates an office of Public Guardian which will enable more Alaskans who truly need guardians to get them.

The new features of this committee substitute are all appropriate. This bill is greatly needed by handicapped persons, veterans and their families.

POSITION: The Department of Health & Social Services supports this bill.

Recommended By: David Bruce
David Bruce,
Deputy Director
Division of Public Health

Recommended By: Vern Stjerner
Vern Stjerner
Director
Div. of Mental Health

Date: 6/1/81

Approved By: Helen Beirne
Helen Beirne
Commissioner

Date: 6/4/81

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. CS For Senate Bill No. 3 (Finance)
 Title "An Act relating to guardians and conservators..."
 Requested by Helen D. Beirne Date June 1, 1981

II. FISCAL DETAIL
 Agency Affected Health and Social Services
 Program Category Affected Public Health
 BRU, Program, or Subprogram(s) Affected Family Health
 (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 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES	0	0	0	0	0	0
200 TRAVEL	0	0	0	0	0	0
300 CONTRACTUAL	0	0	0	0	0	0
400 COMMODITIES	0	0	0	0	0	0
500 EQUIPMENT	0	0	0	0	0	0
600 LAND & STRUCTURES	0	0	0	0	0	0
700 GRANTS, CLAIMS, ETC.	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

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

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

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

IV. DATE June 1, 1981 PREPARED BY David A. Spence, M.D.
 AGENCY Family Health
 PHONE 465-3100
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named) M&B Approval [Signature] Date 6/1

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 3
 Title An Act Relating to Guardians and Conservators
 Requested by Senate Finance Date 5/20/81

II. FISCAL DETAIL

Agency Affected Alaska Court System
 Program Category Affected Administration of Justice
 BRU, Program, or Subprogram(s) Affected Alaska Court System

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

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES		75.8	151.6	162.2	173.5	185.6
200 TRAVEL		15.0	30.0	32.1	34.3	36.7
300 CONTRACTUAL		45.0	90.0	95.4	102.0	109.1
400 COMMODITIES		1.0	2.0	2.1	2.2	2.3
500 EQUIPMENT		4.0	8.0	8.5	9.1	9.7
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		140.8	281.6	300.3	321.1	343.4

FUNDING (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
GENERAL FUND		140.8	281.6	300.3	321.1	343.4
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
FULL TIME		4.0	4.0	4.0	4.0	4.0
PART TIME						
TEMPORARY						

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

The funds will allow the guardians and conservators program to function at an efficient level with six month funding. The six month funding is necessary to allow for recruitment and placement of the program personnel. In addition, the time will be utilized to develop the program's administrative and functional capacities.

IV. DATE 5/20/81 PREPARED BY *[Signature]*
 AGENCY Legislature
 PHONE 465-4923
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

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Alaska Newspaper Association

May 20, 1981

The Honorable Fred Brown, Chairman
House Judiciary Committee
Pouch V
Juneau, AK 99811

FOUNDING MEMBERS
Incorporated Dec. 6, 1980

ROBERT B. ATWOOD
The Anchorage Times

KATHERINE FANNING
Anchorage Daily News

LOREN STEWART
Cheechako News, Kenai

MAX SWEARINGEN
Peninsula Citizen, Kenai

GLEN COBB
The Frontiersman, Palmer

TOM GIBBONEY
Homer News

JIM C. MARTIN
Alaska Journal of Commerce

G. KENT STURGIS
Fairbanks Daily News-Miner

LEW WILLIAMS
Ketchikan Daily News

CARL SAMPSON
Juneau Empire

TOM SNAPP
All-Alaska Weekly

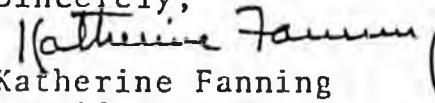
Dear Representative Brown:

The members of the Alaska Newspaper Association are extremely concerned that Senate Bill 6, creating a state-published "Alaska Administrative Journal," would be contrary to the best interest of the public. Although we understand the original intention of the bill is not to create a legal journal that would compete with Alaska's newspapers, such an administrative journal could later be expanded to become a vehicle for legal advertisements. We vigorously oppose Senate Bill 6 for the following reasons:

1. Creating and distributing a state publication to inform the public of matters they currently find in their newspapers puts the government in competition with privately-owned newspapers and would create a monopoly with which legal advertisers must deal.
2. This would extend government's activities, instead of minimizing them. The public has been shown to be opposed to ever-expanding bureaucracy.
3. The public's right to know would be limited. Only state publication subscribers would be informed. This undermines the public's right to be informed of proposed legislation, of meetings, and of opportunities to bid.
4. The proposed publication would come out only every two weeks, as opposed to daily publication in the newspapers. We provide much more timely and frequent opportunities to publish notices.
5. It is doubtful the state could gather the notices, type-set them, proofread them, provide affidavits and billing, paste-up pages, print and mail the publication for less than they're paying newspapers to provide that service--and distribute the notices to many more people.

Why should the government go to the expense of providing a service newspapers can provide better and cheaper?

Sincerely,


Katherine Fanning
President, ANA

cc: House Judiciary Committee
ANA Board of Directors

CSSB 6

Add a new subsection to section 1 to read:

The Alaska Administrative Journal shall not replace or supplant the existing notices required by other provisions of the Alaska statutes, including subsections (a) ~~1-7~~¹⁻⁵ of AS 44.62.175.

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CS for Senate Bill No. 6 (Judiciary)
 Title An Act establishing the Alaska Administrative Journal: effective date:
 Requested by Senate Judiciary Date 3/20/81

II. FISCAL DETAIL

Agency Affected Department of Administration
 Program Category Affected Division of General Services & Supply
 BRU, Program, or Subprogram(s) Affected Division of General Services & Supply
 (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 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES	40.6	157.8	173.6	191.0		
200 TRAVEL		2.5	2.8	3.1		
300 CONTRACTUAL	9.5	186.0	201.6	225.1		
400 COMMODITIES	.3	1.0	1.1	1.2		
500 EQUIPMENT	7.1	7.1	1.0	1.0		
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	57.5	354.4	383.1	421.4		

FUNDING (Thousands of Dollars)

GENERAL FUND	57.5	177.2	191.6	210.7		
FEDERAL FUNDS						
OTHER (Specify Fund Source)						
Program Receipts		177.2	191.5	210.7		

POSITIONS

FULL TIME	5	5	5	5		
PART TIME						
TEMPORARY						

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

Assume that:

1. Estimated journal subscriptions may be equal to Alaska Administrative Code subscriptions (currently 1,000).
2. Journal will require complete reprint twice each month (as opposed to Quarterly updates for the code).
3. Inflation for FY 83 and 84 @ 10%

George Elgee *JC* *RS*

IV. DATE March 24, 1981 PREPARED BY George Elgee, Director
 AGENCY Division of General Services & Supply
 PHONE 465-2250

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named) Fahrenkamp
 Office of the Governor Keith Specking

4. Five new positions and associated costs for FY 82: Total - 190.9

- 1 - Program Coordinator - Range 20A
- 1 - Publication Specialist II - Range 16A
- 1 - Publication Technician - Range 12B
- 1 - Correspondence Secretary II - Range 10B
- 1 - Clerk III - Range 8B

5. FY 82 costs in addition to new positions and associated costs:
Total - 163.5

Estimate: 50 page journal (back to back) x 1,000 copies x 26 issues.

- a) Printing, typesetting to be done by Central Duplicating -
Printing & Typesetting - \$103,650
Postage (New Rate) - 44,330
 - b) Equipment Leases -
Xerox Copier; Typesetter Interface 15,500
6. Start-up costs for last quarter of FY 81 to include personal services, commodities, office space, equipment leases and purchases. No printing or postage charges during FY 81. If no funds are approved for FY 81, equipment funds must be carried to FY 82.
7. Full funding through Program Receipts is not considered feasible, primarily because the cost per subscription might be prohibitively high (1,000 subscriptions + \$354,400 = \$354.40 per subscription for FY 82. Further, the demand for subscriptions is entirely guesswork at this point, no matter what price is attached to them.

Statistics computed from a nationwide survey indicate the following:

- a) Average cost per journal is \$50 per year;
- b) Average distribution (paid versus free subscriptions);
 - 1,184 paid
 - 460 free
- c) Average length of journal is 2,412 pages per year.
- d) Over 75% of states subsidize their journal publication.

Recommend that Alaska attempt to recover 50% of total cost through Program Receipts, with the balance of 50% be funded by the General Fund.

For FY 82, this approach would put the cost per subscription at \$177.00 each, assuming 1,000 subscriptions are bought.

Impact on Central Duplicating - Will require the following new positions and equipment to typeset and print the Alaska Administrative Journal for FY 82:

Personal Services:

1	-	Duplication Machine Op. I - Range 11B	\$25,210
1	-	Clerk I - Range 6B	18,952
1	-	Typesetter Operator - Range 8B	21,151

Equipment:

1	-	Phototypesetting Machine -	32,000
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Comments: Publishing twice a month will require an extremely efficient operation in terms of obtaining all pertinent material from agencies, compiling data, preparing copy for typesetting, coordinating with typesetter and printer, and finally mailing to subscribers.

1	POSITION TITLE Clerk III	RANGE/STEP 8 B	BARG. UNIT. G.G.	LOCATION Juneau	GOV	APPROV.	DISAPP.
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP No.	PCN No.	PRIORITY	FORM 12	PAGE/LINE
						LEG	

3	TYPE OF EXPENDITURE	AMOUNT
	1	2
4	PERSONAL SERVICES: SALARY 1433 mo.	17,196
5	BENEFITS	2,715
6	FICA	1,054
7	HEALTH INS.	1,800
8	TOTAL PERSONAL SERVICES 01	22.8
9	TRAVEL 02	
10	CONTRACTUAL 03	2.7
11	COMMODITIES 04	.2
12	EQUIPMENT 05	.7
13	OTHER	
14	TOTAL COST	26.4

JUSTIFICATION:

Necessary to implement Senate Bill #6 - "An Act Establishing the Alaska Administrative Journal."

This position will provide clerical support as necessary for the production of the Alaska Administrative Journal

Duties to include maintain files of all incoming notices of Administrative Regulations and process Journal for distribution to subscribers in addition to providing general clerical support for Administrative Regulation Staff.

	CODE	FUNDING SOURCE
15		FED RCPTS. 1002
16		GF MATCH. 1003
17		GEN. FUND 1004
18		I-A RCPTS. 1005
19		PGM RCPTS 1006
20		OTHER

21 CONTINUATION
22 ADDITION

FOR E&M USE ONLY

4A KEY NUMBER _____ COLUMN NO. _____

AGENCY Administration PROGRAM Centralized Administrative Services

BRU General Services

13 REQUEST FOR NEW POSITION.

COMPONENT _____

Page _____ of _____

REVISED DATE _____

FY 82

1	POSITION TITLE Correspondence Secretary II			RANGE/STEP 10 B	BARG. UNIT. G.G.	LOCATION Juneau	GOV.	APPROV.	DISAPP.
2	TYPE OF POSITION: PFT	STAFF MONTHS 12	RP No.	PCN No.	PRIORITY	FORM 12 PAGE/LINE	LEG.		
3	TYPE OF EXPENDITURE			JUSTIFICATION:					
	1	2	3						
4	PERSONAL SERVICES:								
	SALARY	1613 mo.	19,356						
5	BENEFITS		3,056						
6	FICA		1,187						
7	HEALTH INS.		1,800						
8	TOTAL PERSONAL SERVICES		25.4						
9	TRAVEL								
10	CONTRACTUAL		7.2						
11	COMMODITIES		.2						
12	EQUIPMENT		1.1						
13	OTHER								
14	TOTAL COST		33.9						
15	CODE	FUNDING SOURCE							
		FED RCPTS. 1002							
		GF MATCH. 1003							
		GEN. FUND 1001		17.0					
		I-A RCPTS. 1005							
		PGM RCPTS 1028		16.9					
		OTHER							
21	CONTINUATION								
22	ADDITION		FOR B&M USE ONLY						
4A	KEY NUMBER		COLUMN NO.						

AGENCY Administration PROGRAM Centralized Administrative Services

BRU General Services

13 REQUEST FOR NEW
POSITION.

COMPONENT _____

Page _____ of _____

REVISED
DATE _____

FY 82

1	POSITION TITLE Program Coordinator			RANGE/STEP 20 A	BARG. UNIT. G.G.	LOCATION Juneau	GOV	APPROV	DISAPP
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP No.	PCN No.	PRIORITY	FORM 12 PAGE/LINE	LEG		
3	TYPE OF EXPENDITURE			AMOUNT		JUSTIFICATION: Necessary to implement Senate Bill #6 - "An Act Establishing the Alaska Administrative Journal." This position will be responsible for the publication and distribution of the proposed Alaska Administrative Journal. Responsibilities to include coordination with all agencies required to publish notices in the Journal as specified in CS for Senate Bill #6 Amended.			
	1	2	3						
4	PERSONAL SERVICES- SALARY 3039 mo.		36,468						
5	BENEFITS		5,758						
6	FICA		2,004						
7	HEALTH INS.		1,800						
8	TOTAL PERSONAL SERVICES		01	46.0					
9	TRAVEL		02	2.5					
10	CONTRACTUAL		03	2.7					
11	COMMODITIES		04	.2					
12	EQUIPMENT		05	1.1					
13	OTHER								
14	TOTAL COST			52.5					
	CODE	FUNDING SOURCE							
15		FED RCPTS. 1002							
16		GF MATCH. 1003							
17		GEN. FUND 1001		26.3					
18		I-A RCPTS. 1005							
19		FGM RCPTS 1008		26.2					
20		OTHER							
21	CONTINUATION		FOR B&M USE ONLY						
22	ADDITION								
4A KEY NUMBER		COLUMN NO.							

AGENCY Administration PROGRAM Centralized Administrative Services

BRU General Services

13 REQUEST FOR NEW
POSITION.

COMPONENT _____

Page _____ of _____

REVISED
DATE _____

FY 82

1	POSITION TITLE Publications Specialist II			RANGE/STEP 16 A	BARG. UNIT. G.G.	LOCATION Juneau	GOV	APPROV	DISAPP						
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP No.	PCN No.	PRIORITY	FORM 12 PAGE/LINE	LEG								
3	TYPE OF EXPENDITURE			AMOUNT		JUSTIFICATION:									
	1	2	3												
4	PERSONAL SERVICES: SALARY 2291		27,492	<p>Necessary to implement Senate Bill #6 - "An Act Establishing the Alaska Administrative Journal."</p> <p>This position will assist the Program Coordinator in publishing the Alaska Administrative Journal.</p> <p>Responsible for the collection, analysis and organization of all notices from agencies into proper format for publishing.</p>											
5	BENEFITS		4,341												
6	FICA		1,685												
7	HEALTH INS.		1,800												
8	TOTAL PERSONAL SERVICES		35.3												
9	TRAVEL														
10	CONTRACTUAL		2.7												
11	COMMODITIES		.2												
12	EQUIPMENT		1.1												
13	OTHER														
14	TOTAL COST		39.3												
15	CODE	FUNDING SOURCE													
16		FED RCPTS. 1002													
17		GF MATCH. 1003													
18		GEN. FUND 1004		19.7											
19		I-A RCPTS. 1005													
20		PGM RCPTS 1008		19.6											
21	CONTINUATION														
22	ADDITION		FOR B&M USE ONLY												
AA KEY NUMBER _____ COLUMN NO. _____															

AGENCY Administration PROGRAM Centralized Administrative Services

BRU General Services

13 REQUEST FOR NEW POSITION.

COMPONENT _____

Page _____ of _____

REVISED DATE _____

FY 82

1	POSITION TITLE Publication Technician			RANGE/STEP 12 B	BARG. UNIT. G.G.	LOCATION Juneau	GOV.	APPROV.	DISAB.				
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP No.	PCN No.	PRIORITY	FORM 12	PAGE/LINE	LEG.					
3	TYPE OF EXPENDITURE			AMOUNT		JUSTIFICATION:							
	1	1	2	3									
4	PERSONAL SERVICES:					<p>Necessary to implement Senate Bill #6 - "An Act Establishing the Alaska Administrative Journal."</p> <p>This position will provide technical and related support in the publishing and final distribution of the Alaska Administrative Journal.</p> <p>Duties to include review and preparation of formats; cost controls of publications; control of distribution.</p>							
	SALARY	1814 mo.	21,768										
5	BENEFITS		3,437										
6	FICA		1,334										
7	HEALTH INS.		1,800										
8	TOTAL PERSONAL SERVICES		91	28.3									
9	TRAVEL		92										
10	CONTRACTUAL		93	7.2									
11	COMMODITIES		94	.2									
12	EQUIPMENT		95	3.1									
13	OTHER												
14	TOTAL COST			38.8									
	CODE	FUNDING SOURCE											
15		FED RCPTS. 1992											
16		GF MATCH. 1000											
17		GEN. FUND 1001		19.4									
18		I-A RCPTS. 1002											
19		PGM RCPTS 1003		19.4									
20		OTHER											
21	CONTINUATION					FOR B&M USE ONLY							
22	ADDITION												
4A KEY NUMBER				COLUMN NO.									

AGENCY Administration PROGRAM Centralized Administrative Services

BRU General Services

13 REQUEST FOR NEW
POSITION.

COMPONENT _____

Page of

REVISED
DATE _____

FY 82

Alaska Journal of Commerce

& Pacific Rim Reporter

715 L Street, Suite 5 • Anchorage, Alaska 99501 • (907) 278-3723

May 26, 1981

Representative Fred Brown
Chairman, House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Dear Rep. Brown:

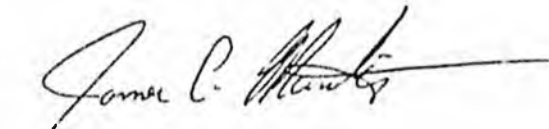
Since any of our staff will be unable to attend the scheduled public hearing on SB6, Thursday, May 28, 1981, we would appreciate the following letter being read into the record during the proceedings of the hearing.

Several of our staff will be in attendance at the Anchorage terminal of the state Teleconference Network to participate and answer any questions raised by the attached letter.

We would further request a complete recording of the hearing and copies of any documentation presented during the hearing.

Thank you for your consideration.

Very truly yours,


James C. Martin
General Manager

Alaska Journal of Commerce

& pacific rim reporter

715 L Street, Suite 5 • Anchorage, Alaska 99501 • (907) 278-3723

May 26, 1981

Representative Fred Brown
Chairman, House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Dear Rep. Brown:

Since our letter of several days ago concerning Senate Bill 6, "Alaska Administrative Journal," we have been informed that the fears and warnings expressed in that letter have been written off as "misinformed."

We disagree and are moved to write this second letter to underscore our continuing and increasing concern for the havoc SB6 will wreak if it is passed.

It is our general contention that very little understanding of the ramifications of the bill is evinced among its sponsors and even less of the cost such a bill would create.

In the first letter we were concerned with the bill supplanting the current system of legal advertising notices. Apparently our concerns were summarily 'junked' because, as one of the bill's supporters said, "nothing in the bill says that."

It remains our concern that the present system would be supplanted. As you well know there is support for amending the bill to do just that. But even if the bill is put into law with no such amendments; it is our belief it will only be a matter of time before the law is later amended to supplant legal advertising. Our concerns listed in the first letter were not misinformed.

Express it any way you desire, the intent of SB6 is to supplant the current system -- both in the areas of rules and regulations and in the public notice process. Recent communications continue to confirm our original fears.

Since the panel charged with taking testimony met only the bare minimum requirements for notice, the Alaska Journal of Commerce made inquiries on its own and would like to pass the results on to you.

Chase Construction, Anchorage, office manager: "We are amply covered by the current system and would see no reason to subscribe. Such a journal would be valuable only if the present system were done away with."

Stack Steel, Anchorage, general manager Chuck Groat: "We currently are well covered by the appropriate bid lists, and see no justification for such a journal. I must admit I don't feel very positive about it (the Journal)."

Hoffman Construction, Anchorage bid supervisor: "We are happy with the present system and would not be a subscriber. If you supplant the present system with such a Journal, every other week would not be current enough; and if you are not supplanting the present system for the journal, there is no need."

Howard Gray & Assoc., Geologists & Engineers, Anchorage, office manager: "This would interfere with private enterprise and has no business being in the state sector. We would have no use for it and certainly wouldn't pay for it. The present system works and if the current system is not supplanted there is no need for such a journal. This seems a duplication of the present system and should be recognized as a 'busy work job' to add more state employes."

Associated General Contractors, Glenn Glenzer, executive director, Anchorage: "It sounds like a state version of 'Tass' to me; the next thing the state will want to do is put out a newspaper. Such a journal interferes with free enterprise. If this journal were to supplant the present system -- which works well -- it would amount to state 'blackmail,' forcing us to buy it."

Hughes, Thorsness, Gantz, Powell & Brundin, attorneys, Anchorage, Dennis O'Brien, office manager: "We have 14 attorneys who would not read it; they don't read the Federal Register or the Administrative Code. If this were really needed, it would have been around a long time ago. We would not subscribe, why should we pay for state information? We would definitely not use it to get new clients; that would be a violation of our ethics code."

National Electrical Contractors Assn., office manager, Anchorage: "We would have no use for it. For the past 12 years we have subscribed to the Administrative Code, largely out of habit. With the exception of putting in new sections and dusting the volumes, no one uses it."

Frontier Oilfield Services, Mr. Scott: "Wouldn't subscribe and would have no use for it."

Nabors Drilling, Nick Seminik, Anchorage: "We would have no need for such a journal and would certainly not pay a subscription price for state information."

Kodiak Oilfield Haulers, Vern McKenzie: "I might subscribe to it personally because I'm interested in that sort of thing; however the subscription price would have to be fixed and not reflective of the number of subscribers. As far as our business is concerned, such a journal would make little or no difference."

ATCO Structures, Mark Osborn, Anchorage: "I do our bids, and we aren't missing anything with the present system. There's no need for something like this (the journal), why do it?"

Herbert Ross, attorney, Anchorage: "I don't see how you could justify the subscription price. If I need that sort of information, I go to the law library and look it up; this is just another way to spend money. The only attorneys who would use it are those in various state departments who would be inputting to it also."

The four major points we draw from the above comments are that SB6 would be:

- a) just another waste of money;
- b) very little interest in subscribing;
- c) the present system works fine; and,
- d) if the present system were supplanted, it would reach less people and would amount to "state blackmail."

We continue to be amazed with the effort -- or lack of it -- that went into researching the cost of such a journal. The financing estimates are patently absurd and incredibly naive of what it really costs to publish such a journal.

Everything we said in our first letter concerning subscriptions and costs (i.e., if the subscription price is too low, it won't cover costs; and if set high enough to cover costs, it would defeat the purpose of reaching large numbers of citizens) remains true.

Naive is not the right word. Deliberately -- culpably -- naive is much more appropriate. There was no effort to ascertain a real cost. You, Rep. Brown, confirmed this when you told us the Finance Committee effort to assess costs was geared to making the bill 'passable,' rather than an honest assessment of costs. Your exact words were: "disregard those cost estimates, they're tainted."

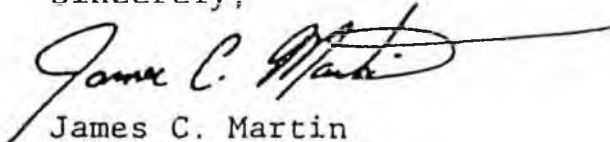
We already know of one individual who intends to privately initiate such a 'journal' for publishing rules and regulations, among other things; just as SB6 proposes. And we also know the legislators supporting SB6 are aware of this individual's efforts.

Our question is this: given the strong conviction that the present system is good and adequate; and, furthermore, given the pending rules and regulations journal by a private firm -- where is the justification or need for an Alaskan Administrative Journal?

Aside from a purely pork barrel/patronage effort to create a few juicy state jobs for friends, padding the already bloated state employment rolls; we see no justification.

We eagerly await your response.

Sincerely,



James C. Martin
General Manager

JCM/bc

Alaska State Legislature

APR 8 1981

BETTYE FAHRENKAMP
ALASKA STATE SENATOR

4016 EVERGREEN
FAIRBANKS, ALASKA 99701

907-479-3550



Senate

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
OFFICE 907-465-3763
HOME 907-789-9182

MEMORANDUM

TO: Representative Fred Brown
Chairman, House Judiciary Committee

FROM: Senator Bettye Fahrenkamp *Bettye*

RE: Background Information on:
SB 6, "Establishing the Alaska Administrative
Journal; and providing for an effective
date."

DATE: April 7, 1981

Purpose

The purpose of this legislation is to place in one publication all the information required to be made public by state agencies. The publication would be available on a subscription basis and would provide a service to the people of the state without increasing the drain on public coffers. The bill, as now written, has the support of the lieutenant governor's office and the Attorney General's office.

The bill would increase the political openness in the state. Alaska is too large to continue the word-of-mouth network of communication that exists when there is no single place in which to gather all notifications.

The bill is intended to emphasize the policy stated in AS 44.62.312. "It is the policy of the state that

- (1) The governmental units mentioned in 310(a) of this chapter exist to aid in the conduct of the people's business;
- (2) It is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly;
- (3) The people of this state do not yield their sovereignty to the agencies which serve them;

(4) The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;

(5) The people's right to remain informed shall be protected so that they may retain control over the instruments they have created."

Analysis

Section 1. New section added to article 3, AS . 2:

Sec. 44.62.175. ADMINISTRATIVE JOURNAL (a) The journal shall be published every two weeks and will include notices of action, text of regulations, state agency meetings, bid invitations, requests for proposals, and executive and administrative orders.

(b) Any notice required under (a) will be sent to the lieutenant governor and to any person requesting a copy for the purposes of publication, unless the regulation has not been drafted, in which case it must be sent at the same time it is submitted to the Department of Law.

(c) The Lieutenant Governor may discontinue publication of the journal if the requirements for the journal are met by a private publication.

(d) The Lieutenant Governor may discontinue publication of the journal if the requirements for the journal are met by a private publication.

(e) No regulation, amendment to a regulation or order of repeal, except emergency regulations or repeals, will take effect unless notice is published in the journal.

(f) A person may not maintain a legal action based on publication, or lack of publication, in the journal.

(g) The Alaska Administrative Journal is referred to as "journal" in this section.

Section 2. AS 44.62.300 is amended:

Sec. 44.62.300. COURT REVIEW. Failure to publish a notice of proposed action in the journal is not grounds for action for declaratory relief in the superior court.

Section 3. Publication shall begin no later the 120 days after the effective date of the bill.

Section 4. The Act takes place immediately.

Discussion

The bill will identify those items of public interest which the public has difficulty obtaining from one source. The intent of the bill, aside from aiding the public, is for the cost of the journal to be offset as much as possible while retaining public access through a reasonable price. This could be a difficulty during the first period of publication and until such time as the journal is widely recognized as an information source.

Alaska Register

402 West Third Avenue
Suite Eight
Anchorage, Alaska 99501
Phone (907) 276-4325

A part of Don Smith's Management Services

April 13, 1981

APR 20 1981

Dear Fred,

My purpose in writing is to let you know my views on CSSB 6 (am Jud.). This bill would require the publication of an Alaska Administrative Journal.

I have been working for the past two years attempting to establish a similar report. My goal was to report on all items of a public nature generated by State Government. We have written or talked to all state agencies and asked to be copied on all public notice matters. Most agencies have been cooperative, however, we are not receiving all material. This has been our major stumbling block.

In general, I support the motives behind the bill. There needs to be a central clearing house for public notice items like proposed regulations, public meeting notice and the like.

I am concerned however that the language regarding publication of the information is oriented towards a state publication. I would like to see the language promote private publications and in the event that no one chooses to enter the field that then the state would produce it's own journal. I definitely plan to publish my reports. I'm simply waiting now for legislation to pass that would mandate the central clearinghouse.

My final concern should CSSB 6 pass is what will I have to do to convince the Commissioner of Administration that my publication is meeting the requirements set forth in AS 44.62.175 (d) of the bill. I would hate to be at the mercy of a commissioner who didn't like the way we designed our reports or the method we used in laying the documents out.

Page Two.

re: CSSB 6 am (jud)

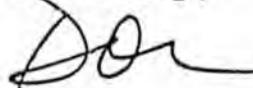
For example, I plan to offer four separate reports each week:

1. THE ALASKA REGISTER. In the Alaska Register you would be kept up to date on new rules and regulations being proposed by the State of Alaska, notice of public meetings, emergency regulations, public notice, requests for proposals, plus much more.
2. THE ALASKA UP/DATE. In the Alaska Up/Date you would receive information on major developments occurring in Alaska. These would range from d2 implementation, oil activities, hydro development, Timber, fisheries, tourism, gas pipeline, petrochemical development, real estate, to name just a few.
3. JUNEAU REVIEW. In Juneau Review you would be kept up to date on significant activities of the Governor, the Legislature (not only during the session - but year round) including information on key legislation and interim committee activities plus highlights on major activities of the various state agencies.
4. ALASKA BID & BUILDING REPORT. In the Alaska Bid & Building Report you will be kept up on projects that are up for bid by state and local governments plus a review of building permits within the major cities of the state.

My publications would be available separately so that a person or company interested only in public notice and the like would only have to subscribe to the Alaska Register. Those that wanted additional data could subscribe to the other reports.

I appreciate your reviewing this matter. I do support the concept of the bill. My main concern is that every effort should be made to encourage a private publication.

Sincerely,



Don Smith

Terry Gardiner

Box 6092, Ketchikan, Alaska 99901 Pouch V, Juneau, Alaska 99811

April 22, 1981

Mr. Don Smith
Alaska Register
402 West Third Avenue
Suite 8
Anchorage, Alaska 99501

Dear Don:

Thanks for your letter of April 13, in regard to CSSB 6 (am Jud.). The bill is currently in the House Judiciary Committee, but has not yet had a hearing. I understand there has been some degree of interest expressed to that committee in regard to the bill, but I don't know in what regard.

I have forwarded your letter to Rep. Fred Brown, chairman of the House Judiciary Committee, for reference by the committee members and staff. I have also asked that the committee contact you if and when a hearing is scheduled on the bill.

Thanks for making me aware of the bill and its potential impact.

Sincerely,

Terry Gardiner
Terry Gardiner

Alaska Register

402 West Third Avenue
Suite Eight
Anchorage, Alaska 99501
Phone (907) 276-4325

A part of Don Smith's Management Services

April 13, 1981

Dear Terry,

My purpose in writing is to let you know my views on CSSB 6 (am Jud.). This bill would require the publication of an Alaska Administrative Journal.

I have been working for the past two years attempting to establish a similar report. My goal was to report on all items of a public nature generated by State Government. We have written or talked to all state agencies and asked to be copied on all public notice matters. Most agencies have been cooperative, however, we are not receiving all material. This has been our major stumbling block.

In general, I support the motives behind the bill. There needs to be a central clearing house for public notice items like proposed regulations, public meeting notice and the like.

I am concerned however that the language regarding publication of the information is oriented towards a state publication. I would like to see the language promote private publications and in the event that no one chooses to enter the field that then the state would produce it's own journal. I definitely plan to publish my reports. I'm simply waiting now for legislation to pass that would mandate the central clearinghouse.

My final concern should CSSB 6 pass is what will I have to do to convince the Commissioner of Administration that my publication is meeting the requirements set forth in AS 44.62.175 (d) of the bill. I would hate to be at the mercy of a commissioner who didn't like the way we designed our reports or the method we used in laying the documents out.

Page Two.

re: CSSB 6 am (jud)

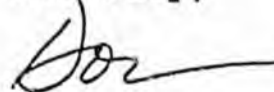
For example, I plan to offer four separate reports each week:

1. THE ALASKA REGISTER. In the Alaska Register you would be kept up to date on new rules and regulations being proposed by the State of Alaska, notice of public meetings, emergency regulations, public notice, requests for proposals, plus much more.
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I appreciate your reviewing this matter. I do support the concept of the bill. My main concern is that every effort should be made to encourage a private publication.

Sincerely,



Don Smith

S

B

29



Alaska State Legislature

House of Representatives

Committee on Resources

Terry Gardiner, Co-Chairman
Fred F. Zharoff, Co-Chairman
465-3715

March 17, 1981

Pouch V
State Capitol
Juneau, Alaska 99811

P R E S S R E L E A S E

The House Resources Committee has approved without dissent a bill that would ban most uses of nuclear materials and wastes in the state, and puts strong controls on the transport, storage, and disposal of non-nuclear hazardous materials.

The bill is a Resources Committee substitute for SB 29 passed by the Senate earlier in the session, which put heavy restrictions on construction of nuclear power plants and nuclear wastes.

The House version added an outright ban on construction of most nuclear facilities, including power plants and disposal facilities for high level nuclear wastes. It also added provisions requested by the Hammond Administration to control disposal of hazardous materials.

In the event of court action invalidating the outright ban of nuclear facilities in the state, the bill has backup provisions which require strict licensing procedures which would require approval of the governor, the municipality, and in the unorganized borough approval of the majority of the registered voters living within 100 miles of the proposed facility site. The legislature would retain final authority over site selection under the bill.

"With such strict procedures, it's doubtful that anybody could get a nuclear siting permit in Alaska, given the attitudes of most legislators," said co-chairman Rep. Terry Gardiner.

who had introduced a similar House bill,
Rep. Brian Rogers, worked closely with the Resources Committee in working out the draft approved, including the provision calling for the ban of most nuclear facilities. Low level radioactive materials would not be covered by the ban, nor would the small quantities of high-level materials used for medical purposes or small-scale research needs. Industrial process testing and security screening also would not be affected under the bill.

The reason backup provisions were placed in the bill is because of federal atomic energy laws which the attorney general's office believes may restrict the state's authority over nuclear issues, since the federal laws reserve these to the federal government. However, Rep. Rogers said the attorney general's opinion was that the provisions still could be put into the bill to establish the state's policy and to put the federal government on notice that Alaska doesn't want the nuclear problem.

Although most energy officials feel that nuclear power would probably not be economic in Alaska, some Alaskans are starting to worry that the Lower 48 might suggest using Alaska as a dumping ground for their nuclear wastes as the problem grows more controversial in those states, Gardiner said. This bill addresses that concern.

The bill also provides strict authority for the Department of Environmental Conservation to restrict the use of hazardous materials and the disposal of hazardous wastes. To protect the users of small quantities of many common materials which could be termed hazardous, two degrees of hazardous wastes are provided for in the bill.

press release
hazardous wastes

page 3

Hazardous wastes and "extremely hazardous wastes" would call for different types of handling and regulation by the state. Some substances -- the main committee example was PCB's -- are so toxic that they should be carefully monitored no matter how small the quantity, the committee decided. Other substances, many of them common, are only hazardous if handled improperly or disposed of in large quantities, and need less control.

In committee, it was brought out that other states have had problems when organized crime found that there was profit to be made in setting up apparently legitimate companies purporting to dispose of hazardous wastes for a fee, taking the money and abandoning the waste facility or illegally dumping the materials where they created a health hazard and cost the public to clean up the problem. The committee was also aware and concerned about situations such as Love Canal and other areas where hazardous wastes were disposed of without precautions, and without the knowledge of nearby residents.

Activities of the federal government, including the military, are specifically excluded from state jurisdiction in the bill, since the state has no authority over the federal government. It does require federal agencies to notify the state prior to shipment through the state, except when national security might be at risk.

###

Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN
VIC FISCHER, VICE-CHAIRMAN
BRAD BRADLEY
DICK ELIASON
DON GILMAN
BOB MULCAHY
ARLISS STURGULEWSKI



Senate

*K. Bruce
Senator Rodley's Office*

POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Committee on Resources

January 28, 1981
1:30 p.m.

Beltz Room
211 Capitol

MEMBERS PRESENT

SENATOR FAHRENKAMP
SENATOR FISCHER
SENATOR BRADLEY
SENATOR GILMAN
SENATOR MULCAHY
SENATOR STURGULEWSKI

MEMBERS ABSENT

SENATOR ELIASON

Hearing on: SB29 "An Act relating to nuclear materials."

Senator Kerttula testified on behalf of the bill. He indicated that a similar bill was worked on last Session and the changes are incorporated in SB29. The bill attempts to avoid future problems. With this bill, the State of Alaska, will have a law prohibiting the dumping of hazardous nuclear waste materials. He also indicated that this legislation forbids the federal government to dump hazardous nuclear waste in the state without the Alaska Legislature's approval.

Deming Cowles, Deputy Commissioner of Environmental Conservation, testified in infavor of SB29. He stated that the Governor has drafted an encompassing waste disposal bill which had this measure in it. The Governor removed this section from his bill once Senator Kerttula introduced SB29.

Tom Hanna, Chief Air and Land Management Section, Department of Environmental Conservation, testified infavor of SB29. He stated that he would like to see some changes in the conflicting language: (1) eliminate language prohibited by the Supreme Court decision; (2) some mechanism to obtain prior local government approval; and, (3) Section 46.03.250 and 46.03.260 should be changed adding the words "low level radiation." In response to a question regarding the difference between low and high level radiation wastes, he indicated that high radiation wastes last over a long period of time and also that there is difficulty in finding disposal sites for such waste. Low level radiation wastes last over a short period of time and that they do not have a great toxic affect. In response to the question should some reference

Senate Resources Committee
January 28, 1981
SB29
Page: .

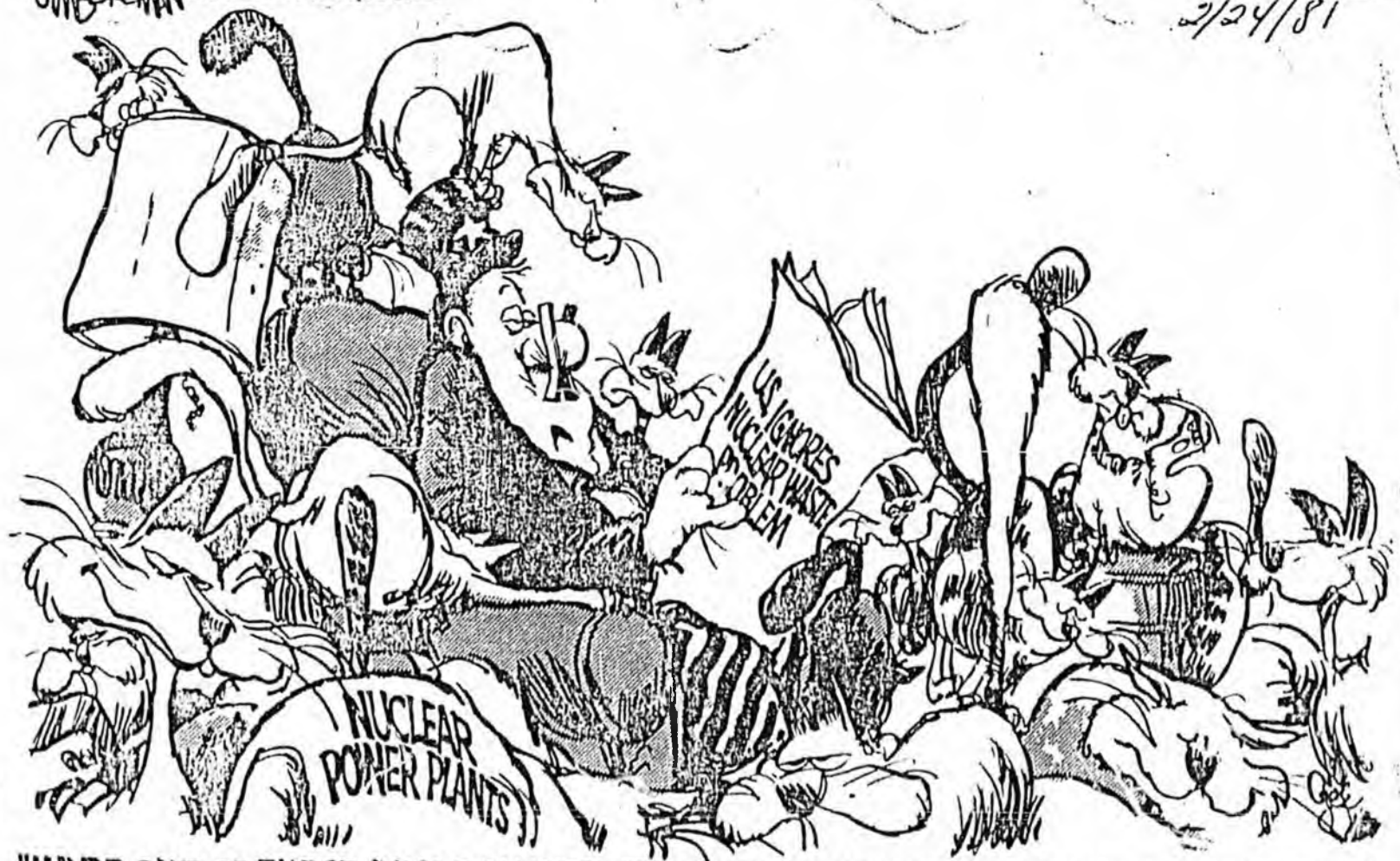
be made to the transportation of hazardous waste, he indicated that a ban on hazardous waste transportation should be added in Section 18.45.025.

Roland Shanks, Alaska Center for the Environment, testified on behalf of the bill. He suggested that possibly an unorganized borough should be allowed to vote on whether to permit the disposal within a certain radius of where they live. He also suggested that in addition to nuclear waste that the Committee might consider adding hazardous waste to the bill.

The bill was passed out of Committee after adding three amendments to the original bill (copy of these amendments attached). Senators Fahrenkamp, Sturgulewski, Bradley and Fischer voted do pass. Senators Mulcahy and Gilman voted no recommendation.

JIM BRENNAN

2/24/81



"MAYBE ONE OF THESE DAYS I OUGHTA START THINKING ABOUT GETTING A LITTER BOX."

SBZ9

Nuke safeguard: a good proposal

2/25/81

Among the worries Alaskans ought not face in this perilous world is the fear of accident resulting from use of nuclear power. Sometimes geographical isolation and sparse population are blessings in disguise; in this case Alaska is fortunate to afford the luxury of insulation from the nuclear power dilemma.

That's why many will applaud the action of the state senate Monday to seek a ban on construction of nuclear reactors and on storage or transportation of nuclear waste in the state.

The ban would not be absolute. Medical and research uses for low-level radioactive materials would be permitted, if state-approved guidelines are maintained. Nuclear projects, moreover, could be undertaken — but only with prior approval of the legislature and the state Department of Environmental Conservation.

But such requirements force the debate into the public forum where it belongs — and before nuclear facilities are in place. Citizens must reserve the right to express their attitudes toward nuclear industry through the political process before the industry arrives.

Americans elsewhere may be forced — against their best instincts, we suspect — to embrace increased use of nuclear power over the next few decades. Surviving the 20th Century in peace and security may require running the terrible risk of letting the nuclear genie out of its bottle, despite the real fears many people feel in the wake of the Three Mile Island disaster.

But Alaska is blessed with tremendous fossil-fuel reserves and hydroelectric power potential — easily enough to serve the state's power needs without need for nuclear power. The senate's action is a commonsense reflection of that fact, and we can only hope the Alaska House of Representatives follows suit without delay.

SB 29

Bill banning nuclear activity passes Senate

2/23/81
JUNEAU (AP)—The Senate voted today to ban nuclear fuel facilities in Alaska, as well as the storage or disposal of high-level nuclear waste, unless specifically authorized by the Legislature.

The legislation (CSSB29), approved by a unanimous vote, also would prohibit transportation of high-level nuclear waste in the state, except when transporting the waste outside Alaska for disposal.

Under the bill, a nuclear fuel production facility or waste disposal facility could not be built in Alaska unless the Legislature specifically designated, by law, a site for the facility. In addition, a facility would be required to obtain a permit from the Department of Environmental Conservation.

The bill also stipulates that regulations adopted by the department

governing issuance of a permit would have to be approved by both the municipality with jurisdiction over the proposed facility and the governor.

The bill differentiates between high-level and low-level nuclear waste. The measure directs DEC to adopt regulations defining low-level radiation and establishing standards for the discharge of low-level radiation and other nuclear waste material which does not constitute a threat to public health and which may be stored or disposed in the state.

The department also would be required, under the bill, to establish procedures for the storage and disposal of radioactive materials used in medicine, education or scientific research, which are not considered high-level waste.

The bill sponsored by Senate President Jalmar Keritula, D-Palmer, now goes to the House.

SB29

Senate passes nuclear ban bill

Our Juneau bureau

JUNEAU — The Alaska Senate voted unanimously Monday to ban construction of nuclear reactors and high-level nuclear waste or storage sites in the state unless the projects are approved in advance by the full legislature.

The bill, which now goes to the state House, also would prohibit transportation of high-level nuclear waste material within Alaska, except for the purpose of disposing of the waste outside the state.

The bill (CSSE29) says a "nuclear fuel production, utilization, reprocessing or disposal facility" can't be built unless the legislature has passed a law designating a site for the facility.

The bill also would require a nuclear facility to obtain a permit from the state Department of Environmental Conservation (DEC). Municipalities containing a potential site and



the governor also would have to approve any such permit, according to the measure, which passed the Senate 18-0.

But under the bill, prior legislative approval wouldn't be necessary for transportation of such low level radioactive material as used in medicine, education or scientific research, providing the materials are stored and disposed of according to state regulations.

The measure would order the DEC to set those standards — defining "nuclear waste material which does not constitute a threat to public health or

2/24/81
safety" and setting procedures for storage and disposal of the low level materials.

Sen. Pat Rodey, D-Anchorage, said he has received as much mail on the nuclear measure as on any other bill, and that he felt there "is much public concern" over dealing with radioactive materials.

Alaska has no commercial nuclear reactors, but Senate President Jay Kerttula, D-Palmer and prime sponsor of the Senate nuclear bill, said state officials are looking into any possible nuclear storage by the military in the state.

The Hanford nuclear disposal site in Washington state currently handles much of the nation's nuclear waste, but under a new Washington law, no more nuclear waste can be sent into that state after July 1 unless a compact is signed between Washington and the state shipping the materials.

Probably taken care of - Nancy Lord - Rogers' aide
SB 29

Rick - Here are some notes to help
you on the X-Ray problem. (SB-29) we
discussed -

Tim Bradner

HOUSE CS FOR CS FOR SENATE BILL-29

As written, House Resources substitute for CSSB-29 would appear to extend DEC permitting authority to industrial, as well as scientific and medical, X-Ray and radiographic operations. Industrial radiographic operators are now regulated by the federal NRC. Under current state law, they are required to notify the Department of Health and Social Services as to location in the state where a radiation source is used in radiography.

There are two different types of systems used in industry, that produce radiation. One system is the X-Ray machine, which produces X-rays. The other system is the use of a radioactive element (usually a manufactured isotope of a metal) that gives off gamma rays, which can then be recorded on a film plate, similar to X-Ray. There is no real difference between X-Rays or Gamma Rays other than the way they are produced (from a small radioactive source rather than a machine) and the wavelength, which itself is a factor of the energy-level of the source. The energy level of gamma rays is fixed and cannot be changed.

BOTH X-RAY AND
GAMMA-RAY
TEST PROCESSES
ARE USED BY
ALASKA OPER-
ATORS.

Most of our radiographic operations are performed using a small source of radiation producing gamma rays; the radiation source can be lowered down pipe or used in other ways more conveniently than an X-Ray machine. In terms of process, the two systems are almost identical, though...a shadow image is captured on film after X-Rays or Gamma Rays have passed through something.

Specific problems:

1. The implied exemption of X-Ray operations on Page 5, line 4 of the Resources Committee substitute works to exempt X-Ray operators only from the effect of subsection (a) on the bottom of the preceding page (Page 4, line 22), which relates to a total ban on nuclear waste disposal. This section does not reach regulatory authority.

2. You should substitute "radiographic" for "X-Ray" in these same sections. Radiographic will encompass the use of gamma ray instruments, which are similar to X-Ray. X-Ray is too narrow a definition.

3. Addition of the same language as mentioned in (1) above, the words "x-ray or photographic process testing" on Page 7, line 15, seems to have the opposite effect of the intended exemption: It seems to definitely bring industrial, scientific and medical radiographic operators under DEC authority. This language should be deleted, to conform to what we thought committee intent was.

4. Page 7, line 19: Substitution of the word "low level radiation" for "radionuclides" serves to expand DEC authority in this area, we think. There is apparently no statutory definition or definition by regulations of radionuclides. The standard scientific meaning, though, involves ~~the emission of~~ radioactive particles with a nucleus. This does not include X-Rays or Gamma Rays, which are electromagnetic radiation. There is no definition in the bill for "low level radiation" (indeed, the department is left to define it by regulation), but it would seem to encompass other kinds of radiation than previously. In theory, this section of the bill would seem to require a DEC permit each time a radiographic test is made.

5. The term "low level radiation" is used in place of "radionuclides" higher on the same page (Page 7, line 9), under the "authority" section.

OPTIONS:

①- "Radiographic" should be substituted for "X-Ray~~s~~".

NOTE: X-RAY OR GAMMA RAY IS SCIENTIFICALLY NOT A "PHOTOGRAPHIC PROCESS"

②- Page 5, line 4 should be amended to read:
"education, x-ray or nondestructive (PHOTOGRAPHIC PROCESS) testing method, security screening..."

THIS WOULD REMOVE RADIOACTIVE SOURCES NOT LEAVING A WASTE (TESTING MATERIALS) FROM THE BILL. IT IS AN OPTION.

③- Page 7, line 20 should be amended to read:
"radiation (RADIONUCLIDES) to the air, water, land or subsurface land which will produce a radioactive waste material of..."

④- Specifically, exempt radiographic operators involved in non-destructive testing.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3600

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 11, 1981

SUBJECT: Nuclear materials and hazardous wastes, draft
HCS CSSB 29 (Resources)

TO: Representative Terry Gardiner
Attn: Bob Speed

FROM: John B. Chenoweth
Legislative Counsel

This bill is drafted on the premise that

(1) nuclear waste disposal in the state may be allowed in specially constructed facilities [sec. 2] or otherwise [sec. 5];

(2) all other nuclear facilities are banned from the state [sec. 1] unless the ban is found unconstitutional or invalid [sec. 18], in which case their construction and operation is permitted under stringent regulation and financial responsibility requirements [secs. 3 - 5].

I could not follow the convolutions in the definitions of "high level nuclear waste" and "low level nuclear waste" which you provided. Please check these carefully.

I also may have botched the distinction between "extremely hazardous wastes" and "hazardous wastes" in AS 46.32. You should check this carefully in context. I am not satisfied with the introduction of these concepts in a title where the administering agency is already to be concerned with "hazardous substances". See AS 46.03.822 and 46.03.826(3). Is there some better way to tie these together?

Please note that there is no provision speaking to the transportation of "hazardous wastes". Is this an oversight? Did I just miss this in your notes?

Representative Terry Gardiner
Page 2
March 11, 1981

As a practical matter -- rather than a drafting concern -- is the requirement of the financial responsibility provisions regarding in perpetuity care of nuclear material one that can be met reasonably?

It is of concern, though I have not taken the time to do research, that the standards applicable to attempting to distinguish "extremely hazardous waste" and "hazardous waste" may be too vague to support the distinctions which the Department of Environmental Conservation shall make under AS 46.32.040, and that prosecutions based on the statute and any regulation adopted under it may be set aside for failure to give adequate notice as a violation of the constitutional protection of due process.

JBC:ljb

Enclosure

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 5, 1981

Rep. Brian D. Rogers
House of Representatives
Pouch V
Juneau, AK 99811

In re: Ban on nuclear power production
and importation of nuclear
materials.

File #J-66-545-81

Dear Representative Rogers:

On February 16, you requested this department's informal opinion on whether a state can, without violating the U. S. Constitution, impose an outright ban on all in-state nuclear power production or the importation of nuclear wastes. The answer is no.

Congress's intent to exercise exclusive power over the construction and operation of nuclear power plants and the radiological hazards associated with nuclear materials is clearly set forth in the Atomic Energy Act of 1954 (AEA), as amended 42 U.S.C. §§ 2011 - 2296 (1970). Section 2021, entitled Cooperation with States, defines the scope of state regulatory authority permitted by Congress. It provides in pertinent part:

(c) No agreement entered into pursuant to subsection (b) of this section [agreements with states] shall provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulations of--

(1) the construction and operation of any production or utilization facility;

(4) the disposal of such other by-product, source, or special nuclear material as the Commission determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission.

Under §2021 it is clear that a state cannot simply ban the production of nuclear power or the interstate transport of nuclear wastes because Congress has preempted the field. Northern States Power Co. v. State of Minnesota, 447 F.2d 1143 (8th Cir. 1971) aff'd per curiam, 405 U.S. 1035 (1972).

In fact, the authority of a state to regulate at all this area is practically nil. States may only "regulate activities for purposes other than a protection against nuclear hazards." 42 U.S.C. 2021(k). In essence, states must treat nuclear power plants as if they were not nuclear power plants. States are foreclosed from enacting statutes or regulations regulating radioactive hazards. Thus, for instance, the court in Northern States Power Co., (supra), held that radioactive releases or effluents are within the NRC's exclusive jurisdiction. And in U.S. v. City of New York, 463 F.Supp. 604 (1978), the court held that the city's "siting" ordinance was unconstitutional as preempted by the AEA.

The full extent of federal preemption is well illustrated by the legislative history of §2021(b) which states that state standards adopted pursuant to an agreement reached

between a governor and the Commissioner of the Nuclear Regulatory Commission (NRC) must be identical with federal standards. Murphy and La Pierre, "Nuclear 'Moratorium' Legislation in the States and the Supremacy Clause: A Case of Express Preemption," 76 Colum. L.R. 392, 400 [hereinafter Murphy and La Pierre]. This article discusses S. Rep. No. 870, 86th Cong., 1st Sess. 9, 11 (1959).

It is difficult to imagine a major non-radiological hazard concern so compelling as to override the federal government's power to regulate foreign and interstate commerce and its war powers. The states may well be in a catch 22 situation.

Under §2021(b), the so-called States Agreement Program, a state may assume regulatory responsibilities for non-radiological hazards such as research, medicine or industrial activities which use only minimal quantities of radioisotopes, natural uranium or special nuclear materials. States currently share with the federal government the regulation of radium, X-ray and fluoroscopic machines, particle accelerators, the mining of radioactive ores, and electronic products like color TVs and microwave ovens. Murphy and La Pierre at 402.

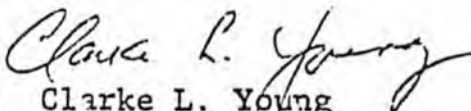
In spite of the above authorities, numerous states have enacted statutes purporting to regulate the following areas: full compensation for damages from a nuclear power plant accident, effective safety systems, adequate provisions for disposal of radioactive wastes, security protection for

plants and the transportation of radioactive materials, plans for evacuation, regulation of effluent discharges, nuclear power plant siting and design, and the monitoring of environmental impacts. Many of these statutes were enacted solely in response to, and express a dissatisfaction with, the federal government's assertion of exclusive jurisdiction in this area. A good argument can be made that almost all of these statutes are either impliedly or expressly preempted by Congress.

Furthermore, regardless of the stated purpose of a statute (i.e., protection of the public's health and safety or protection of the environment from adverse impacts), courts will look behind the law at the underlying purpose for the statute. If the underlying purpose is to frustrate the purpose and objectives of Congress in this area, the statute will be struck down. Pacific Legal Foundation v. State Energy Resources, 472 F.Supp. 191 (1979).

Sincerely,

WILSON L. CONDON
ATTORNEY GENERAL

By: 
Clarke L. Young
Assistant Attorney General

from "A Nuclear Waste Primer"
(League of Women Voters Education Fund)
1980.

The politics of nuclear waste management

As the AEC's experience in Kansas and the more recent history of WIPP plainly demonstrate, there is more to nuclear waste management than solving technical problems. The process by which decisions are arrived at and the degree of trust and mutual regard between levels of government and between citizens and their governments count just as much in determining the outcome of struggles over nuclear waste and, indeed, the future of nuclear power.

There is a natural human tendency for people to want the benefits of nuclear power without suffering the worries or discomforts or risks of coping with the nuclear leftovers. And there is an equally natural tendency on the part of federal officials to want to make decisions without hordes of citizens, or even another set of officials, looking over their shoulders and second-guessing them. But citizens and state and local governments are rightful participants in these decisions. And the principal goal of any political arrangement must be to make it possible for them to play their parts well. It is equally imperative that the net effect of these negotiations and the decisions arising from them be a public perception that risks have been assessed with care and candor and that burdens are being borne equitably.

The state-federal stand-off

While many states are still receptive to the construction of nuclear power plants, few, if any, are interested in furnishing a site for a permanent HLW (and spent fuel) repository. In fact, more than a dozen states, responding to pressure from citizens, have enacted laws that either flatly prohibit or make difficult the establishment within their borders of disposal facilities for either HLW or LIW radioactive

waste. And at least 15 more states, according to NRC, are thinking of following suit.

Why do so many state and local governments want to restrict or prohibit nuclear waste disposal (and even temporary storage)? One major reason is that they believe that the federal government has not made enough progress toward solving the management problems. If these localities are going to have radioactive wastes stored or permanently deposited within their borders, they want assurances that the facilities will be properly managed *now* and *in the future* and will pose no significant risks to citizens.

Adverse experiences with other government projects involving hazardous substances have made states extremely wary of saying yes to nuclear waste facilities. Residents of western states, which have the most favorable conditions for nuclear waste disposal—suitable geology, dry climate and sparse population—are in an especially mutinous mood. These states have been the sites for many hazardous federally sponsored activities—above-ground atomic bomb tests . . . uranium mining . . . milling and tailings disposal . . . nerve gas production, testing and storage. As one Westerner put it, "The government has used the wide open spaces as a dumping ground for almost four decades and has inflicted a lot of wounds on us. Well, we've just had enough."

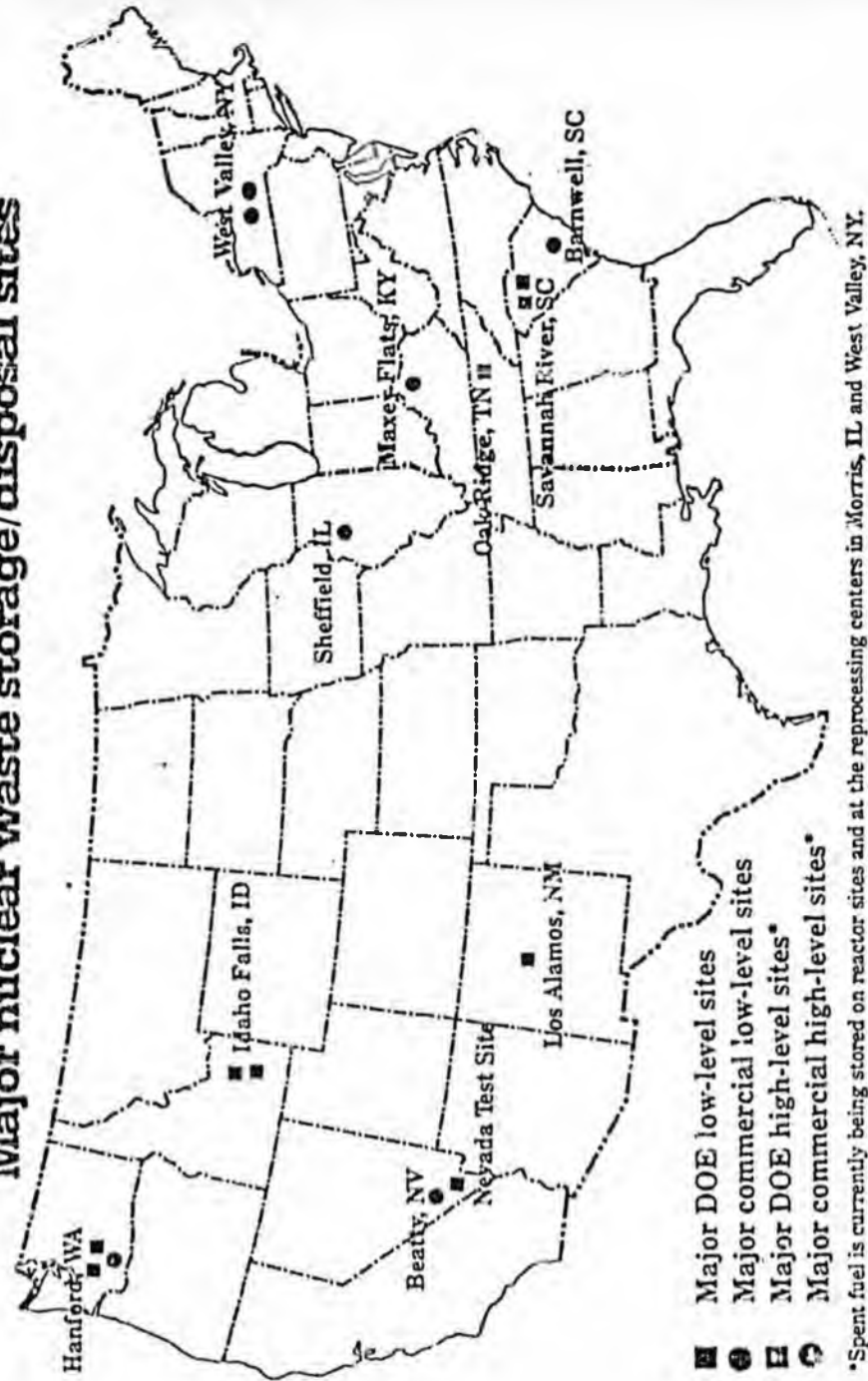
And the impacts of these activities on local populations are just beginning to show up. For instance, recent investigations into the effect of atomic bomb tests conducted in the 1950s revealed that radioactive fallout may have caused an increase in thyroid cancers in southern Utah, Nevada and Arizona during the 1960s. Although these studies are inconclusive, the widespread publicity they received has made people in western states still more uneasy about the prospect of becoming disposal sites for nuclear wastes.

Where, then, can the U.S. government locate a repository? The General Accounting Office (GAO) reported in 1979 that the federal government could obtain land for a repository within any state without getting that state's consent, a finding that calls into question the legality of state laws on the books. A bill has since been introduced in Congress to give states explicit "veto" power over waste facilities. It would require DOE to:

- notify a state of its intent to explore for a radioactive waste disposal site;
- enable state officials and citizens to review technical, environmental and safety questions during the planning process; and
- grant the state the right to refuse the repository after review, through a public referendum or vote of the state legislature.

Proponents of the legislation believe that it will force a thorough and complete examination of all technical and social issues and will be

Major nuclear waste storage/disposal sites



more likely to lead to a federal decision based on these considerations rather than on what is most expedient.

Some members of Congress believe that states don't need this express veto power because they already have a "de facto" veto, since there are many different ways a state can block or delay federal activities. They want, instead, to give states incentives, such as money or tax breaks, for accepting repositories. Western states generally oppose "special incentives," while the central and eastern states like the idea. All states, however, want the federal government to pay "compensation for the direct and indirect costs of repository siting."¹³

A national policy

Recognizing the urgent need to resolve nuclear waste issues, President Carter in 1978 set up the Interagency Review Group (IRG) as a first step toward strengthening and accelerating the federal nuclear waste management program. Its job was to formulate policy recommendations for long-term management of nuclear wastes.

The final IRG report and recommendations, issued in March 1979, formed the basis of the nation's first comprehensive radioactive waste management program, announced by President Carter on February 12, 1980. Key elements, described below, reflect an attempt to give states a voice, but not an overriding voice, in federal siting decisions, to coordinate and speed federal agency actions and to give citizens, as well as lower levels of government, access points for influencing federal decisions.

■ **State Planning Council** The President created, by executive order, a State Planning Council to advise the executive branch and work with Congress in making and implementing decisions on interim waste management and permanent disposal. The council has 18 members including eight governors, five other state and local government officials, a representative from an Indian tribe, and the heads of EPA and the Departments of Energy, Interior and Transportation. Governor Richard Riley of South Carolina was appointed as its first chair. This council is expected to play a key role in helping to work out the political accommodations between "the feds" and state and local officials so that the radioactive waste management program can go forward.

■ **Consultation and concurrence** Under the framework of consultation and concurrence, a host state will have a continuing voice in the siting, design and construction of a permanent HLW repository.

■ **Interim planning strategy** Pending reviews required by the