

ALPHABETICALLY

ST 1658
SB 3 - 7

56³
3300 Knik Avenue
Anchorage, Alaska 99503
February 13, 1981

Senator Pat Rodey
Juneau, Alaska

RECEIVED

FEB 23 1981

Dear Senator Rodey:

I am the mother of a mentally retarded seven year old boy. He is loving and loved, and has brought a different kind of understanding into our family.

Although I am fortunate enough to have older siblings who can stay with our David - sometimes when my husband and/or I have meetings, errands, church activities, shopping--even an occasional evening out, it is still necessary for both parents and the siblings to have a breather from the constant feeling of being a supervisor, or the extra arrangements necessary for some activities that must include David.

To this end, we have been fortunate and blessed with the availability of respite care at the Alaska Developmental Center for the Exceptional Child, where David can be taken for an hour or two, or an overnight. This does wonders to lift the spirit and give all the family a true breather.

The Center is a Godsend for the parents of the severely and multiply handicapped who require around the clock attention lifting, feeding, toileting; or the child who is constantly on the move, almost to the exhaustion point of the family; or the profoundly retarded child who can return little to the parent in the way of expression of feelings. Few sitters are available for such children.

To know that there is a place where we can safely and confidently leave our children in order to have just a little freedom from the worry or labor involved in caring for them, is a tremendously uplifting feeling. We are truly grateful that respite care in the Center is available, and is staffed by competent and caring people.

Two board members from the Alaska Developmental Center are coming to Juneau to talk about the Center. I respectfully request that you make just a little time to listen, and to be supportive of them.

Thank you,

Emelyn Moss

(Mrs. James H. Moss, Jr.)

We will need to know
when hearings will be
scheduled on SB 3 (The
Guardianship bill. When
you get word on this, you
might call the Gov's Council
For Handicapped & Gifted
office in Fairbanks. John
(479-6507)
Nuttall your legis. comm. on
The Council will be in Juneau
next Thursday & you might
touch base with him or he

with you.

Pro Chatterton and I come
down from Anch. To do a bit of
lobbying for the Alaska Develop-
mental Center for the Exceptional
Child. We are board members
at A. D. C. & are working to
keep doors from shutting
down for lack of \$. We've talked
with Denworth, Cotton, Sturg,
Commissioner Reiers about it. Could
use your support if or when it
comes for a vote. *Fred Miller*
(I met you at Sp. Ed. Adv. Council meeting)

SENATE JUDICIARY COMMITTEE

Bill Number SB3 Original Sponser(s) ZIEGLER-FARRERKAMP

Title AN ACT RELATING TO GUARDIANS AND CONSERVATORS

Originally Recieved From KETTOLA

Contact ZIEGLER / VAN DUREN Date 1-13-81

Committee Recommendation (MAJORITY) _____

Report Attached yes no) Supporters _____

MINORITY _____

Report Attached yes no) Supporters _____

Object of Bill _____

Committee Amendments _____

Fiscal Impact _____

LAA Legal/Research Contact _____

Research/Information
ON FILE FROM GUY VAN DUREN

Concerned Parties:

Supporting

Opposing

ZIEGLER

Supporting

Opposing

Additional Remarks:

COPY OF BILL TO JOHN ABBOTT ⁷⁹⁶ ^{7/22}
CONTACT "TICOU" IN MOLCANY'S OFFICE WHEN
ANYTHING HAPPENS ON BILL #376
CONTACTED ABBOTT 2-11-81 "GOWE UNTIL MARCH"

Guardians &
Conservators

SENATE BILL NO. 3, by Senator Ziegler/ and Fahrenkamp. Proposes substantial changes to AS 13.26, "Protection of Persons Under Disability and Their Property." Numerous new sections added to Article 3, "Guardians of Incapacitated Persons" relating to the purpose and basis of guardianship, testamentary appointment of guardians, initial court procedures, notice of rights, visitor's reports, evaluations, duties and powers of respondent's attorney, appointment of guardian ad litem, hearing, psychotropic medication influencing wards or respondents at judicial hearings, guardianship order, guardianship implementation report, reporting, costs in guardianship proceedings and emergency powers. Amendments to Article 3 relate to changes in or termination of guardianship (sec. 125), less restrictive alternatives to guardianship services (125(c)), request for change of guardian or death or dismissal of guardian (sec. 125 (d) & (e)), additions to who must be notified in guardianship proceedings (sec. 135), and language deleted which stated that representation of incapacitated person by a guardian ad litem not necessary (sec. 135 (b)). Repeals and re-enacts sections

of Article 3 relating to petition for a finding of incapacity (sec. 105), outlining the contents of the petition, and states that the petition may nominate a guardian and include a request for temporary guardianship if physical health or safety of respondent will be impaired during pendency of guardianship proceeding. (Existing section states that court appointed official or attorney shall have the powers and duties of guardian ad litem). Repeals and re-enacts sec. 140 (Temporary guardians), stating that the petitioner may request the appointment of a temporary guardian if respondent is in need of immediate services to protect him against serious injury. Outlines procedure of hearing regarding temporary guardian. (Existing section provides for court appointment of temporary guardian, and does not set out procedure for hearing). Repeals and re-enacts sec. 145 (Who may be guardian; priorities.), stating that the court may appoint a competent person, the public guardian, or a private association or nonprofit corporation with a guardianship program for incapacitated persons, as guardian of an incapacitated person. Outlines persons the court may not appoint as guardian, as well as persons who have priority for appointment. States priorities established are not binding, and that the court shall select the person, association, or non-profit corporation that is best qualified and willing to serve. (Existing section states: "Any competent person or a suitable institution may be appointed guardian of an incapacitated person.", and outlines priorities). Repeals and re-enacts section 150 (General powers and duties of guardian) and adds new subsection (e), outlining what a guardian may not do in respect to the ward (may not place ward in a mental institution other than through a formal proceeding, may not consent to an abortion, sterilization, withholding of life-saving medical procedures, performance of medical experiments, prohibit ward from registering to vote, or from applying for and obtaining a driver's license).

Less substantial changes to Article 1 (General Provisions) include new definition of "incapacitated person", stating: ". . . means a person whose ability to receive and evaluate information or to communicate decisions is impaired for reasons other than minority to the extent that he lacks the ability to provide for himself the essential requirements for his physical health or safety without court-ordered assistance;". Adds new definitions regarding essential requirements for physical health or safety, partial guardian, full guardian, visitor, guardian and respondent.

Adds new Article 6 entitled "Public Guardians", with sections relating to purpose (states that the legislature recognizes that many Alaskans, for reasons of incapacity or minority are in need of a guardian or conservator, and that it intends to establish the Office of Public Guardian to provide such services). Outlines powers and duties of the public guardian, and adds subsequent sections relating to intervention, delegation of powers and duties, and allocation of costs.

SB 3, (cont'd)

Section relating to transition states that no later than July 1, 1984 all guardianships for incapacitated persons established before January 1, 1982 and in effect until January 1, 1982 shall be reviewed by the court. Provides Act takes effect January 1, 1982.

Introduced January 13 and referred to Judiciary.



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: Billy Berrier
Legislative Affairs

FROM: Kevin K. Bruce
Committee Aide

DATE: February 18, 1981

SUBJECT: S.B. 3

Senator Rodey has asked that your office provide us with a sectional analysis of S.B. 3 "An Act relating to guardians and conservators; and providing for an effective date."

Thank you for your assistance in this matter.

KKB/ods

AMERICAN BAR ASSOCIATION
REPORT TO THE HOUSE OF DELEGATES
COMMISSION ON THE MENTALLY DISABLED

RECOMMENDATION

BE IT RESOLVED, That the American Bar Association calls upon all states to assist persons of diminished mental capacity to live with maximum self-sufficiency in the general community, by enacting laws allowing court appointment of limited or partial guardians, where persons of diminished capacity need some, but not total, assistance in making decisions concerning their personal affairs or estates.

REPORT

This resolution urges all state legislatures to enact laws permitting the appointment of limited or partial guardians, in lieu of total or plenary guardians, where this would assist mentally disabled persons to live successfully in the community. Such laws would recognize the varying adaptive potentials of the elderly, the mentally ill, or persons with developmental disabilities (e.g., mental retardation, epilepsy, cerebral palsy, autism), the habilitative value of guardianships which facilitate independent life in the community, and the desirability of limiting as much as possible infringements on basic civil rights and freedoms. Appointment of limited or partial guardians would enhance the court's ability to deliver guardianship services appropriate for individual needs, and to focus rationally a guardian's attention on the specific needs of a ward.

A significant problem for persons of diminished or limited mental capacity has been the vagueness and inflexibility of customary guardianship proceedings and the deplorable exploitation that has often occurred under traditional all-or-nothing guardianship

systems.¹ Traditional guardianship also has the consequence that a person found to be incompetent is virtually without the power to sue, contract, marry, vote and perform a number of other important legal acts.² The inflexibility of guardianship has been recognized by the Social Security and Veteran's Administrations which have for a number of years required the appointment of special third-party "representative payees" to receive and manage monies due persons with questionable capacity to make certain financial decisions.³ In recent years, a number of states have examined the adequacy of their guardianship laws and have enacted so called "limited" or "partial" guardianship legislation.⁴

NATIONAL POLICY RECOMMENDATIONS

The notion of limited guardianship has received the endorsement of a number of national, blue-ribbon panels and organizations. In 1962, the President's Panel on Mental Retardation recommended in its Report of the Task Force on Law that

¹See, International League of Societies for the Mentally Handicapped San Sebastian Symposium on Guardianship of the Mentally Retarded (1962); Dussault, Guardianship and Limited Guardianship in Washington State: Application for Mentally Retarded Citizens, 13 Gonz L. Rev. 585 (1968); and, Note, Limited Guardianship for the Mentally Retarded 8 N. Mex. Rev. 231 (1978).

²United States Senate Special Committee on Aging, Protective Service for the Elderly - A Working Paper 39-40 (July 1977).

³20 C.F.R. §404.1601 et. seq., and 38 C.F.R. Part 13. See generally The Mentally Disabled and the Law at 261 (rev. ed. S. Brakel and R. Rock eds. 1971).

⁴Conn. Gen. Stat. §45-78(c) (Cum. Supp. 1979); Fla. Stat. Ann. §74.01 (Supp. 1979); Id. Code §56-239 to 242 (Supp. 1979); Ill. Ann. Stat. 110½ §11a-23 (Smith - Hurd Supp. 1979); Ky. Rev. Stat. §387.287 (Supp. 1978); N.C. Gen. Stat. §35-1.6 (Supp. 1977); N.Y. Mental Hyg. Law §77.19 and 77.25 (McKinney 1976 and Supp. 1977); S.C. Code §21-19-10 (1977); Tenn. Code Ann. §34-1201 et seq. (as amended by Pub. ch 499, "Conservatorship Law of 1980"); Tex. Prob Code 5 §130H (1978); Wash. Rev. Code Ann. §11.88.005; §11.88.125 (Supp. 1977); W. Va. Code §44-10A-2 (Supp. 1978); Wisc. Stat. Ann. §880.37 (1978).

. . .as much as possible, mentally retarded adults be allowed freedom -- even freedom to make their own mistakes. We suggest the development of limited guardianships of the adult person, with the scope of the guardianship specified in the judicial order.⁵

The Panel's Task Force Report goes on to recommend that "plenary guardianship should be reserved for those who are judicially determined to be incapable of undertaking routine day-to-day decisions and who are found to be incapable of basic self-management."⁶

The American Association on Mental Deficiency released a position paper in 1973 entitled "Guardianship for Mentally Retarded Persons" in which the following general principle was endorsed:

The boundaries of a specific guardianship should be specified, taking full cognizance of the social competencies and limitations of the individual ward. In other words, the guardian's mandate should be prescriptive in nature permitting the retarded adult to act in his own behalf on all matters in which he is competent.⁷

While not using the term limited guardianship per se, this recommendation embodies the essential aspects of specificity of guardianship control and recognition of individual competencies. In general, the AAMD policy statement urges conservative use of guardianship and maximum feasible participation of retarded persons in decisions which will affect them.

More recently, the President's Commission on Mental Health recommended that

State guardianship laws provide for a system of limited guardianship in which rights are removed, and supervision is provided, for only those activities

⁵The President's Panel on Mental Retardation, Report of the Task Force on Law at 42 (1963).

⁶Id. at 43.

⁷American Association on Mental Deficiency, Position Paper on Guardianship for Mentally Retarded Persons at 17 (1973).

in which a person has demonstrated an incapacity to act competently.⁵

The Commission noted that guardianship "is a highly restrictive method of providing supervision and assistance to mentally disabled persons. . .,"⁹ and that "It is therefore essential that guardianship laws be carefully tailored to avoid any unnecessary restrictions on the rights of individuals."¹⁰

Finally, the President's Committee on Mental Retardation, in its 1976 Report to the President, called for the availability of a personal representative for every mentally retarded person who wishes or requires one. Insofar as this includes appointment of a legal guardian, the Report noted the following:

There is, however, need in many states to improve and refine the laws to preserve to the individual the exercise of those functions of which he is capable.¹¹

COMMUNITY CARE AND LESS RESTRICTIVE FORMS OF GUARDIANSHIP

There has emerged in recent years a national commitment to providing care, treatment, habilitation, and social support for various disabled groups in a community setting. A General Accounting Office report issued in January, 1977 found that since 1963 a number of federal laws and programs have been mandated by the executive, legislative and judicial branches of government to prevent the unnecessary institutionalization of the mentally disabled and to develop alternative programs and services in the community.¹² The depth of this commitment has been reaffirmed by the President's Commission on Mental Health which completed a

⁵The President's Commission on Mental Health, Report to the President at 43 (1978).

⁹Id.

¹⁰Id. at 71.

¹¹President's Committee on Mental Retardation, Report to the President - Mental Retardation: Century of Decision at 93 (1976).

¹²The Comptroller General, Summary Report to the Congress - Returning the Mentally Disabled to the Community: Government Needs to do More at 1 (1977).

year long study of the nation's mental health programs in 1978:

In our judgement, people are usually better off when they are cared for within their communities, near families, friends, and homes. Our assessment of the past twenty years shows that progress has been made toward this end.¹³

The Senate Special Committee on Aging has condemned the destructiveness of institutionalization on the elderly and has urged the use of more effective alternatives:

Most elderly persons would prefer to remain in their homes if at all possible. Many can if appropriate care and assistance are available. In the long run, this can produce savings for our nation because institutionalization is the most expensive form of care.¹⁴

The fact of "deinstitutionalization", which has brought greater numbers of the mentally disabled back into the community, and the accompanying expansion in types of care, habilitation, and treatment services, has placed new strains on existing guardianship mechanisms. Most state guardianship laws still emphasize the total decisionmaking role of the guardian,¹⁵ with the result that the prevailing guardianship structure is in many ways more restrictive of personal freedoms than other forms of individual protection and assistance (such as self-help groups, advocacy agencies, and social work services). Consequently, if the guardian is to make possible the degree of autonomy, dignity and personal integrity necessary for successful reintegration into the community, his role must have clear limits.

LIMITED GUARDIANSHIP AND THE UNIFORM PROBATE CODE

The Uniform Probate Code, approved by the Uniform Law Commissioners and the ABA in 1969, constitutes the most significant comprehensive proposal for guardianship law reform in recent decades. The Code is based upon a general principle of unsupervised

¹³President's Commission on Mental Health, supra note 8 at 17.

¹⁴United States Senate Special Committee on Aging, supra note 2 at iv.

¹⁵American Bar Association Developmental Disabilities State Legislative Project, A Review of Guardianship Legislation 18-21 (August 1979).

estate administration, and takes the innovative step of separating procedures for guardianship of incapacitated persons from those for the protection of the property of persons under disability (conservatorship or protective orders).¹⁶

The Code, adopted in significant part by eleven states,¹⁷ is liberal and detailed as to the administrative and distributive powers of conservators, and gives the court clear authority to enlarge or limit the powers of a conservator. The Code's guardianship provisions set the powers and duties of a guardian to be generally the same as those of a parent, although the court may modify them as may be appropriate. An important step taken by the Code is the elimination of the typical incompetency standard in favor of one based on capacity to make general decisions.

Unfortunately, the Uniform Probate Code is silent on the following key elements of limited guardianship:

- * Assessment of actual mental and adaptive limitations of the person needing assistance or protection.
- * Court finding of lack of capacity to do specific kinds of tasks or to make specific kinds of decisions.
- * Court order of limited guardianship which specifies those legal disabilities to be imposed and grants only those powers the guardian will need in order to act where a legal disability has been specified.

The purpose of such provisions would be consistent with the underlying direction taken by the UPC in establishing a discreet, protective mechanism for managing and preserving the estates of the mentally incapacitated. The idea of limited guardianship would simply require all parties to examine formally at the start the nature and purpose of the appointment of guardian that is sought. Although additional specificity would be required in the petition and order, the use of limited guardianship should not be at odds with the general freedom of the guardian to act independently (once his mandate is clear) that is a cornerstone of the UPC.

¹⁶ See, Uniform Probate Code, Art. 5, Parts 3 and 4.

¹⁷ These are Alaska, Arizona, Colorado, Idaho, Maine, Minnesota, Montana, Nebraska, New Mexico, North Dakota, and Utah.

STATE LIMITED GUARDIANSHIP LAWS

Sixteen states explicitly permit the court to place some limitations on the powers of a guardian.¹⁸ Generally, this is merely discretionary on the part of the court. Of these, twelve states have enacted formal "limited guardianship" laws which require a court to specify the legal disabilities and the restrictions to be placed on a limited guardian's powers.¹⁹ Limited guardianship bills are currently being considered in the legislatures of seven states.²⁰

Existing limited guardianship laws are quite similar in most respects. For instance, petitions for limited guardianship must usually set forth the nature and degree of any disability, the specific protections needed and limitations of rights required, and the term of limited guardianship requested. The court is required to order an outside investigation or evaluation by a physician, multidisciplinary panel, or designated agency, upon which it will base its decision as to whether a limited guardianship is appropriate.

An important characteristic of the court's order of limited guardianship is that incompetence is not presumed except insofar as a specific legal disability has been imposed. Also, the existing laws allow restriction of decisionmaking authority on issues pertaining to both property and personal affairs. The legislative purpose is generally to "encourage the development of maximum self-reliance and independence in the individual"²¹ needing limited guardianship services, and appointment of a limited guardianship is to occur only "as is necessary to promote and protect the well-being of the individual."²² Those states now considering limited guardianship laws are reviewing bills containing comparable provisions.

¹⁸These are Florida, Idaho, Illinois, Kentucky, Maine, Maryland, Michigan, New York, North Carolina, South Carolina, South Dakota, Texas, Virginia, Washington, West Virginia, and Wisconsin.

¹⁹See fn. 4 supra.

²⁰These states are Alaska, Connecticut, Delaware, Florida, Indiana, Oregon, and Pennsylvania.

²¹1977 Tex. Gen. Laws, S.B. 699.

²²Idaho Code §§ 56-239 to 242. (Supp. 1979).

THE FOLLOWING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

WORK ORDER REQUEST FORM

112-0755

KEYWORDS: analysis
guardianship

ASSIGNED TO Barrier

REQUEST FOR: BILL RESOLUTION RESEARCH OTHER Analysis

SUBJECT Guardians and Conservators - SB 3

REQUESTED FOR SJ BY Kevin Bruce EXT. 3717

* DELIVER TO Senator Rodey TAKEN BY Noah

INSTRUCTIONS, EXPLANATIONS Sectional Analysis of SB 3 - relating to
guardians and conservators.

OBTAIN

SPECIAL DRAFTING INSTRUCTIONS ATTACHED

AUTHORIZED TO CONFER WITH _____

RETURN _____

TO REQUESTER

APPROVED: BGZ Director, Legal Services

REVIEWED _____

SPECIAL INSTRUCTIONS TO TYPIST/PROOFREADER

IN _____ DUE _____

TYPED - Draft _____ DATE _____

Final _____ DATE _____

PROOFED _____ DELIVERED _____

DRAFT

FINAL

THE PRECEDING DOCUMENT(S) MAY NOT FILM
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WHY CAN'T THIS AGENCY BE AN INFORMATION
FOCAL POINT - RATHER THAN THE COURT
SYSTEM.

Precedent Questions

• Amy, PARK, ~~---~~

JOHN CMINSKI - ~~Chairman~~ Asst. Gen. Sec.

SL 263 - CULTURAL FACILITIES COMMITTEE

MARCH

WED. TUES 23, 24

MULLEN
FERGUSON

Panel on Having Hearing
Dunkworth

SHIRLEY REYNOLDS | 584-1554

Letters - 583

Anchorage

- ① Dori Newton - Allick
Employment + Training Center of Alaska
- ② Anderson, Paul
Alaska Resources for the Moderately /
Severely Impaired
- ③ Donna Stevens - Nakaieja

Fairbanks

- ① Marsha Schneider
Nat'l. Assoc. of Social Workers - Alaska Chapter

Quincy

Mary Bronson
Lucy Lowell
Donna DeWitt

Cordova

Lucy Lowell, City Mgr.

Bristol Bay

① Kathy Ward
BB Senior Citizens Program

S

B

5

COMMITTEE REPORT
SENATE

FURTHER: None

4/14/81

Date: May 8, 1981

Mr. President:

The Committee on JUDICIARY has had SSSB 5

limiting the effective period of administrative regulations

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

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for SSSB 5 same title
 new title
- and recommends IT PASSED WITH INDIVIDUAL RECOMMENDATION
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

Members serve for the duration of the legislature during which they are appointed. If they are reelected or their term of office extends into the next succeeding legislature, they continue to serve until reappointed or the appointment of their successor. (§ 1 ch 27 SLA 1975)

Sec. 24.20.430. Vacancies. When a vacancy occurs in the membership of the committee, the presiding officer of the house incurring the vacancy shall choose a successor. If the office of the president of the senate or speaker of the house of representatives becomes vacant and a vacancy from the affected house occurs among the membership of the committee, the remaining committee members from the house incurring the vacancy shall appoint a new member. (§ 1 ch 27 SLA 1975)

Sec. 24.20.440. Meetings. The Administrative Regulation Review Committee may meet during sessions of the legislature and during the interim between sessions at such times and places in the state as the chairman may determine. Members may receive, for the minimum time required to get to and from meetings and for the period while attending meetings, the same travel and per diem allowances provided by law for members of the legislature when attending sessions, except that members of the committee receive no per diem during legislative sessions other than the per diem allowance paid to other members of the legislature. (§ 1 ch 27 SLA 1975)

Sec. 24.20.445. Power of suspension. (a) When the legislature is not in session, the Administrative Regulation Review Committee may by an affirmative vote of not less than two-thirds of the members of the committee suspend the effectiveness of the adoption of or amendment to a regulation adopted after adjournment of the previous regular session of the legislature, until 30 days after the legislature reconvenes.

(b) The effectiveness of an adoption or amendment of a regulation is suspended on the date a committee report passing in favor of suspension is filed with the lieutenant governor. If an adoption of or amendment to a regulation is not effective on the date a report is filed with the lieutenant governor, the effectiveness of the adoption or amendment which is the subject of the committee's report is suspended from the date the adoption or amendment would otherwise become effective under AS 44.62.180.

(c) No action under (a) of this section may be undertaken unless all interested parties are afforded an opportunity to be heard at a hearing held upon 15 days' notice to those parties.

(d) The provisions of this section do not apply to emergency regulations. (§§ 1, 2 ch 3 SLA 1978)

Revisor's note (1978). — The language of AS 24.20.445(d) was drawn from sec. 2, ch. 3, SLA 1978 and codified as part of AS 24.20.445.

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Title 24
Legislature

Legis



Alaska State Legislature

Senate

Judiciary Committee

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

May 6, 1981

Arthur H. Peterson
Assistant Attorney General
and Regulations Attorney
State of Alaska
Department of Law
Pouch K - State Capitol
Juneau, Alaska 99811

Dear Art:

Thank you for your additional comments on SB 5 and SSSB 5.

I do intend to have the committee work with the Regulation Review Committee on this proposal to see if some mutually acceptable solution can be adopted.

I appreciate your concerns in this area.

Sincerely,

A handwritten signature in cursive script that reads "Pat".

Senator Patrick M. Rodey
Chairman

PMR/ods

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

May 5, 1981

RECEIVED

MAY 05 1981

Honorable Pat Rodey
Chairman
Senate Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: SB 5 and SSSB 5
(administrative regulations)

Dear Pat:

Since the prime sponsor of this bill, Senator Fahrenkamp, testified after I had completed my opposition testimony yesterday at your committee hearing, I did not get a chance to comment on her reasons for introducing and promoting the bill. She gave three basic reasons: (1) she believes that not all regulations accurately implement the intent of the legislature; (2) she believes that there are too many regulations; and (3) she believes that some regulations exceed the authority granted the adopting agency.

As to intent: first of all, it is usually difficult to determine legislative intent. There are few committee reports, and committee files and tapes have been difficult to use. Secondly, under current provisions in the Administrative Procedure Act, the legislature has plenty of opportunity to participate in the regulation-adopting process, in order to assure that legislative intent is in fact being implemented. Thirdly, if the legislature does not agree with a decision of an executive agency as to what the probable intent of the legislature was when enacting the enabling legislation, the legislature certainly may enact amendatory legislation, establishing guidelines, stating prohibitions, or setting out some limits on the exercise of the agency's authority.

Through all the discussions and hearings on this and related bills over the past few years, I have not been able to determine exactly why any legislator feels that the current system is not adequate to assure the implementation of the legislative intent behind a statute. The legislature controls the language of the enabling legislation. It also controls the content of the legislative journals. It has access to executive agency personnel. AS 44.62.190(a)(6) assures that all individual legislators and the Legislative Affairs Agency are sent advance notice of proposed regulations. And AS 44.-62.220 sets out the right to petition for a change in the regulations. It must also be remembered that not all legislators will agree among themselves as to the intent of a particular statute.

As to quantity: there may well be legislative and public concern that there are too many administrative regulations. But the public is also concerned that there are too many statutes. Most people do not make the technical, legal distinction between statutes and administrative regulations when objecting to the degree of governmental control over their activities. Regulations are a crucial element in helping an agency avoid being arbitrary. Any effort to cut down on the number of administrative regulations should be done on a discriminating basis, not by means of a shotgun approach. Decisions must be made as to which ones are unnecessary. Neither Senate Bill 5 nor the sponsor substitute for Senate Bill 5 makes that sort of necessary discrimination. They both just let Time do the work.

As to authority: any question of the authority given an agency to adopt an administrative regulation is a matter for the courts. The legislature passes the laws, the executive branch executes them, and the judicial branch decides disputes concerning them. Among the disputes involving the laws are those that challenge the validity of an administrative regulation as one exceeding the authority of the adopting agency. A system which usurps the judicial function in this regard is probably invalid. See Chadha v. Immigration and Naturalization Service, 634 F.2d 408 (9th CCA, 1980).

Perhaps your committee would like to recommend that Senate President Kerttula refer SB 5 or its sponsor substitute to the Administrative Regulation Review Committee for analysis in conjunction with other, related proposals.

Honorable Pat Rodey

-3-

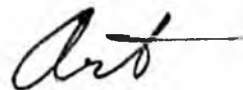
May 5, 1981

Thank you for the opportunity to testify yesterday and for your consideration of these additional comments.

Yours truly,

WILSON L. CONDON
ATTORNEY GENERAL

By:



Arthur H. Peterson
Assistant Attorney General and
Regulations Attorney

AHP:bjl

cc: Keith Specking
Legislative Assistant
Governor's Office

Members serve for the duration of the legislature during which they are appointed. If they are reelected or their term of office extends into the next succeeding legislature, they continue to serve until reappointed or the appointment of their successor. (§ 1 ch 27 SLA 1975)

Sec. 24.20.430. Vacancies. When a vacancy occurs in the membership of the committee, the presiding officer of the house incurring the vacancy shall choose a successor. If the office of the president of the senate or speaker of the house of representatives becomes vacant and a vacancy from the affected house occurs among the membership of the committee, the remaining committee members from the house incurring the vacancy shall appoint a new member. (§ 1 ch 27 SLA 1975)

Sec. 24.20.440. Meetings. The Administrative Regulation Review Committee may meet during sessions of the legislature and during the interim between sessions at such times and places in the state as the chairman may determine. Members may receive, for the minimum time required to get to and from meetings and for the period while attending meetings, the same travel and per diem allowances provided by law for members of the legislature when attending sessions, except that members of the committee receive no per diem during legislative sessions other than the per diem allowance paid to other members of the legislature. (§ 1 ch 27 SLA 1975)

Sec. 24.20.445. Power of suspension. (a) When the legislature is not in session, the Administrative Regulation Review Committee may by an affirmative vote of not less than two-thirds of the members of the committee suspend the effectiveness of the adoption of or amendment to a regulation adopted after adjournment of the previous regular session of the legislature, until 30 days after the legislature reconvenes.

(b) The effectiveness of an adoption or amendment of a regulation is suspended on the date a committee report passing in favor of suspension is filed with the lieutenant governor. If an adoption of or amendment to a regulation is not effective on the date a report is filed with the lieutenant governor, the effectiveness of the adoption or amendment which is the subject of the committee's report is suspended from the date the adoption or amendment would otherwise become effective under AS 44.62.180.

(c) No action under (a) of this section may be undertaken unless all interested parties are afforded an opportunity to be heard at a hearing held upon 15 days' notice to those parties.

(d) The provisions of this section do not apply to emergency regulations. (§§ 1, 2 ch 3 SLA 1978)

Revisor's note (1978). -- The language of AS 24.20.445(d) was drawn from sec. 2, ch. 3, SLA 1978 and codified as part of AS 24.20.445.

Sec. 24.20.450. the committee on the auspices of the

Sec. 24.20.450. Committee has

- (1) to organize
 - (2) to hold
 - (3) to require
 - (4) to give full cooperation
 - (5) to furnish reports
 - (6) to examine properly implemented
 - (7) to make administrative
 - (8) to prepare
- (§ 1 ch 27 SLA 1975)

Article

Section
500. Legislative Benefits
510. Membership
520. Selection of

Sec. 24.20.450. established. as a permanent establishes the analyses of to change the

Sec. 24.20.450. Board of Retirement

- (1) the commission
- (2) the director
- (3) an employee retirement
- (4) an employee under the
- (5) a public background
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- (7) a retirement

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SENATE JUDICIARY COMMITTEE

Bill Number SB 5 Original Sponser(s) FARRERKAMP + BENNETT
Title AN ACT RELATIVE TO THE EFFECTIVENESS OF ADMINISTRATIVE REGULATIONS
Originally Recieved From KEPTULA
Contact _____ Date _____

Committee Recommendation (MAJORITY) _____

Report Attached yes no) Supporters _____

MINORITY _____

Report Attached yes no) Supporters _____

Object of Bill _____

Committee Amendments _____

Fiscal Impact _____

LAA Legal/Research Contact _____ Research/Information _____

Concerned Parties:

Supporting

Opposing

Administrative
Regulations

SENATE BILL NO. 5, by Senators Fahrenkamp and Bennett. Amends procedure for adoption of regulations by stating that a regulation or order of repeal filed by the Lieutenant Governor becomes effective on the "60th legislative day after the date the regulations were submitted to the Administrative Regulation Review Committee. . .", rather than on the 30th day after the date of filing. Repeals committee's power to suspend the "effectiveness of the adoption of or amendment to a regulation adopted after adjournment of the previous regular session of the legislature, until 30 days after the legislature reconvenes. . . ." (statute quoted: AS 24.20.445). Provides emergency regulations adopted under the authority of a law enacted by the First Session of the Twelfth Legislature remain in effect until March 11, 1982, notwithstanding provisions of AS 44.62.260(a), which limits effectiveness to 120 days unless adopting agency complies with publication requirements before or during 120-day period. Does not provide for an effective date.

Introduced: 4/14/81
Referred: Judiciary

1 IN THE SENATE

BY FAHRENKAMP, BENNETT, DANKWORTH,
KERTTULA AND KELLY

2
3 SPONSOR SUBSTITUTE SENATE BILL NO. 5
4 IN THE LEGISLATURE OF THE STATE OF ALASKA
5 TWELFTH LEGISLATURE - FIRST SESSION
6 A BILL

7 For an Act entitled: "An Act limiting the effective period of administra-
8 tive regulations; and providing for an effective date."

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

10 * Section 1. AS 44.62 is amended by adding a new section to article 4
11 to read:

12 Sec. 44.62.295. LIMITATIONS ON EFFECTIVE PERIOD OF REGULATIONS.

13 No regulation adopted by an agency remains in effect beyond the
14 legislative session following adoption of the regulation unless the
15 regulation has been approved by law by that day. An expired regu-
16 lation is not effective for any purpose, but all rights, penalties,
17 forfeitures, or liability which accrued under the regulation before
18 that day continue and the regulation shall be treated as remaining
19 in force for the purpose of sustaining any proper action or prosecu-
20 tion for the enforcement of a right, penalty, forfeiture, or liability
21 which accrued.

22 * Sec. 2. Regulations adopted prior to July 1, 1981, are not subject
23 to the provisions of this Act.

24 * Sec. 3. This Act takes effect July 1, 1981.

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Handwritten notes:
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- BUT DOESN'T LIKE EITHER
- DW. INSURANCE - PROBLEM W/ FED GOV REGS.
- PROTECTION OF FISHERIES
- EMERGENCY ORDERS
- DON COOK
- BOB CUNNINGHAM
- PETERSON
- ACCEPTS SB5
- DW COMMERCIAL FISHERIES
- PROTECTION OF FISHERIES
- EMERGENCY ORDERS

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6

COMMITTEE REPORT
SENATE

1/13/81

FURTHER: Finance

Date: 1-27-81

Mr. President:

The Committee on JUDICIARY has had SB 6
establishing the Alaska Administrative Journal

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

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
- new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

SUMMARY OF SENATE JUDICIARY COMMITTEE HEARING
OF
FEBRUARY 20, 1981

Butrovich Committee Room, State Capitol - Juneau, Alaska

Legislation before Committee:

SB 6 "An Act establishing the Alaska Administrative Journal;
and providing for an effective date."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:35 p.m. The following members were present: Senators Rodey, Ray, Parr, and Hohman. Senator Bennett was absent.

Public presentations were made by:

Danith Anderson
Policy & Program Manager
Administrative Code Coordinator
Office of the Lieutenant Governor

Arthur Peterson
Assistant Attorney General
State Department of Law

Ann Metcalf
Legislative Reporting Service

The witnesses responded to questions from Committee members, specifically with respect to cost, frequency of publication, and whether the Journal could be published by a private enterprise.

Chairman Rodey deferred action on SB 6 until a future hearing date.

Hearing no objection, the meeting was adjourned by Chairman Rodey at 2:45 p.m.



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

SUMMARY OF SENATE JUDICIARY COMMITTEE HEARING
OF
FEBRUARY 18, 1981

Butrovich Committee Room, State Capitol - Juneau, Alaska

Legislation before Committee:

SB 102 "An Act relating to delayed registration of birth and annulling regulations relating to delayed birth certificate; and providing for an effective date."

SB 6 "An Act establishing the Alaska Administrative Journal; and providing for an effective date."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:30 p.m. All Committee members were present (Senators Rodey, Ray, Parr, Hohman, and Bennett).

An overview and history was presented by S.B. 102's sponsor, Senator Ferguson. The Committee then heard public testimony from the following:

Joan Brooks
State Registrar
Bureau of Vital Statistics

Mildred Richards, Supervisor
Delayed Birth Registration
Bureau of Vital Statistics

Robert Clem, Acting Director
State Division of Public Assistance.

Representatives of the Bureau of Vital Statistics voiced opposition to passage of S.B. 102 for the following reasons: (1) certificates prepared as a result of S.B. 102 probably would be rejected as sufficient proof by other agencies, and (2) it may encourage new applications for illegitimate reasons, thereby increasing the potential of fraud.

Following discussion and questions, Chairman Rodey deferred action on S.B. 102 until a future hearing date.

The Committee then heard testimony relating to S.B. 6, with a summary by the Bill's sponsor, Senator Fahrenkamp. Public presentations were made by the following:

Don Smith
Anchorage Businessman

Arthur Peterson
Assistant Attorney General
State Department of Law

The Committee heard specific suggestions from The Attorney General's office, such as the need for consistency in referring to the Journal, consideration of deleting section 2 and changing the phrase "during the week of September 15, 1981," (line 12, page 3) to read, "no later than four calendar months after the date on which this bill becomes effective."

Chairman Rodey deferred action on S.B. 6 until a future hearing date.

Hearing no objections, Chairman Rodey adjourned the meeting at 2:25 p.m.

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Senate Bill No. 6
 Title An Act establishing the Alaska Administrative Journal & providing for an effective
 Requested by Senate Judiciary date _____

Date 2/19/81

II. FISCAL DETAIL

Agency Affected Office of the Governor
 Program Category Affected Office of the Lieutenant Governor
 BRU, Program, or Subprogram(s) Affected Office of the Lieutenant Governor
 (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	16.1	69.7	76.7	84.4		
200 TRAVEL		1.2	1.3	1.4		
300 CONTRACTUAL	29.0	116.0	127.6	140.4		
400 COMMODITIES	.2	.6	.7	.8		
500 EQUIPMENT	1.9	.2	.3	.4		
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	47.2	187.8	206.6	227.4		

FUNDING (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
GENERAL FUND	47.2	0	0	0		
FEDERAL FUNDS						
OTHER (Specify Fund Source)						
PROGRAM RECEIPTS		187.8	206.6	227.4		

POSITIONS

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

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

ASSUME:

- 1) Approximate number of administrative journal subscriptions would equal (or exceed) those subscriptions to the Alaska Administrative Code (AAC)-- currently 1000.
- 2) Start-up costs for the last quarter of FY 81 (if effective start-up occurs after the beginning of FY 82, new equipment needs should be carried forward).

(Continued)

IV. DATE February 19, 1981 PREPARED BY Danith Anderson
 AGENCY Office of the Lieutenant Governor
 Original: Legislative Finance PHONE 465-3520
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

- 3) Inflation for FY 82 @8% and FY 83, FY 84 @10%.
- 4) One new administrative assistant (Personal Services Range 16B) and a Secretary I (Range 10B) would be required to handle the coordination and organization of this publication. Travel to the National Administrative Codes and Registers Conference for the administrative assistant. Contractual Services includes some telephone, postage and first-class mailing costs, printing and binding (based on current contract for printing the AAC), advertising and equipment rentals. Commodities and Equipment are budgeted as basic supplies for newly-created staff support positions.

Program Receipts (through journal subscription) are designed to pay for the entire cost of this publication after initial start-up.

Formulas for contractual services estimate:

- 1) Postage & Mailing (assume 1000 journal subscriptions)

26 mailings/year, average 30 pages (back-to-back) cost =
 .80 1st class mail each. $.80 \times 1000 \times 30 = \$24,000$

- 2) Printing & Binding

26 mailings with typesetting costs based on the current cost of printing the AAC

$\frac{\$49.30/\text{page} \times \text{pages typeset}}{1000 \text{ subscribers}}$

Assume 60 pages typeset (or 30 back-to-back for mailing purposes)

$\frac{\$49.30 \times 60}{1000} = \2.96 each

$\$2.96 \times 1000 \text{ subscribers} \times 26 \text{ issues} = \$76,960$

A M E N D M E N T

Offered in the SENATE

TO: SENATE BILL NO. 6

Page 3, between lines 4 and 5, insert:

(f) The purpose of this section is to provide helpful information in addition to that being provided under other statutes. It is not intended to relieve persons of their obligation to use due diligence in protecting their interests that might be affected by state action related to the types of information specified in (a) of this section. No person acquires a cause of action for damages, based on the publication of information, or the failure to publish every item of information required by (a) of this section, in the journal, or in a private publication if publication of the journal has been discontinued under (d) of this section.

A M E N D M E N T

Offered in the SENATE

TO: SENATE BILL NO. 6

Page 2, lines 7, 19, 25, and 26, and page 3, lines 1, 2, and 3:

Delete: "Alaska Administrative"

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL
JUNEAU, ALASKA 99811

465-3600

February 23, 1981

RECEIVED

FEB 23 1981

The Honorable Patrick Rodey
Chairman
Senate Judiciary Committee
Alaska State Legislature
Pouch Y
Juneau, Alaska 99811

Re: SB 6 (Administrative Journal)

Dear Senator Rodey:

As I have discussed with you, your committee, and your staff, two amendment sheets for this bill are attached. I understand that you plan to prepare a committee substitute (into which these amendments could be incorporated) and then favorably report the bill.

The first amendment deals with the question of liability, and is fairly self explanatory. It is an attempt to protect the state and its people from the exposure to potential liability which this additional governmental function would create. It is possible that courts would hold the state liable for mistakes made by way of inclusion or omission and for alleged damages due to the wording of information included. The journal is not intended to replace any existing systems of distributing the information involved, as required by various statutes. It is just a helpful publication which does not relieve interested persons from their obligation to watch out for their own interests. The Administrative Journal will help them do that, but it should not provide a basis for imposing additional liability on the sta'.

Please note that, if some of the changes which were discussed at your committee meetings last week concerning proposed AS 44.62.175(d) are adopted, then a corresponding change in the last sentence of this amendment should also be made.

The second sheet of amendments merely deletes the words "Alaska Administrative" in several places, for the sake of consistency and simplicity. The initial reference to the journal's full name in line 12 on page one will serve as the antecedent for the succession of references to the journal.

I understand that Senator Fahrenkamp, the sponsor of this bill, is proposing an amendment to delete sec. 2 and to change the phrase "during the week of September 15, 1981," which appears on line 12 of page three, to read "no later than 4 calendar months after the date on which this bill becomes effective." The deletion of sec. 2 would be helpful. The other change is not clear. Does the reference "4 calendar months" mean that if the bill takes effect in, for example, mid-April, then we begin counting with May as the first month -- giving us actually four and one-half months after the effective date? Or does it mean that, if the bill takes effect in mid-April, then we begin counting with April as the first month -- giving us only three and one-half months after the effective date? Also, if there is to be a reference to the effective date of the Act, the standard language for that date would be preferable. To accomplish what I believe to be the senator's intent, I would suggest the following language for her amendment: "no later than 120 days after the effective date of this Act."


I do not know whether the four-month or 120-day period would give the lieutenant governor's office and all other agencies involved enough time to make all of the arrangements necessary for publication of this new journal. I suspect that it would not, but I am not taking a position on the appropriateness of that period.

I would be pleased to continue working with you, your committee, and your staff on this measure.

Yours truly,

WILSON L. CONDON
ATTORNEY GENERAL

By:


Arthur H. Peterson
Assistant Attorney General

WLC:AHP:cjs

cc w/enc.: Honorable Bettye Fahrenkamp
Alaska State Senate

Alaska State Legislature

SENATOR BETTYE FAHRENKAMP
CHAIRMAN, RESOURCES COMMITTEE

4016 EVERGREEN
FAIRBANKS ALASKA 99701

907-479-3550



Senate

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
OFFICE 907-465-3763
RESOURCES COMMITTEE
907-465-3834
HOME 907-789-9182

MEMORANDUM

TO: Senator Pat Rodey, Chairman, Senate Judiciary

FROM: Senator Bettye Fahrenkamp

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

DATE: February 12, 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 44.62:
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 proposal, and executive and administrative orders.
 - b) Any notice required under a) will be sent to the lt. 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 time it is submitted to the Department of Law.
 - c) The lt. governor shall sell subscriptions to the journal at a price to offset the cost of publishing.
 - d) The lt. 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.

Section 2. Amends AS 44.62.200 to add a new subsection to the notice requirements. A summary prepared under this section must be approved by the lt. governor's office.

Section 3. Publication begins September, 1991. and takes effect immediately.

Discussion

The bill will identify those items of public interest which the public has difficulty obtaining from one source. An earlier version of the bill which generally required all proposals, bid notice, public meetings, etc., to be included in the Alaska Administrative Journal was not acceptable to the Department of Law because of the generality. This draft has been prepared with the aid of the Department of Law and the lt. governor's office.

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.

LEGISLATIVE REPORTING SERVICE

ANN GARDINER METCALFE

KIMBERLY M. HELMAR

510 KENNEDY STREET
JUNEAU, ALASKA 99801

(907) 586-6672

January 26, 1981

Senator Entzje Fahrenkamp
Pouch V
Juneau, Ak. 99811

Dear Senator Fahrenkamp:

We would like to express our support for Senate Bill 6, the creation of the Administrative Journal. During the past year we have researched the feasibility of beginning such a publication privately, and we feel that it is, at the present time, an impossibility without the enactment of a law requiring the various departments and divisions of the state to submit, upon request, copies of proposed regulations, requests for proposals, executive orders, etc., to interested parties.

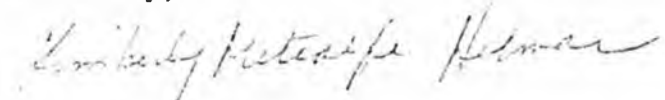
On July 15 of last year we did a mailing to all of the state departments and divisions requesting that our name be put on their mailing list to receive copies of all notices, etc., and the response to the mailing was indicative of the need for some kind of centralization of this process. Most departments complied with our request immediately, but it was apparent that at the divisional level there was confusion as to who was responsible for promulgating regulations, and whether or not the division did indeed generate any at all. Being, as there are over 100 divisions within the state government you can imagine what an organizational effort it would take to get them all to comply with a request from a private publisher, without having a law on the books stating that they must send the information in a timely manner to those so requesting it.

Aside from our initial mailing we followed up with telephone contacts, and have talked several times to Danith Anderson in the Lieutenant Governor's office regarding publication. We have cross-checked that information we do receive with what appears in state newspapers and find that we could not offer our clients such a service without being sure that we are receiving everything.

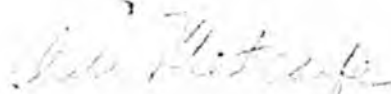
We have had numerous requests from clients currently subscribing to the LEGISLATIVE REPORTING SERVICE for information pertaining to the regulatory

process in Alaska, and we would be interested in providing such a service. We feel that a weekly report on regulatory changes would be a logical expansion for our current business, and that our mailing list of LRS clients would provide a basis for which to begin such a publication. We would enjoy working with you and with the Lieutenant Governor's office on such a project, and we will offer testimony on behalf of the bill if so requested.

Sincerely,



Kimberly Metcalfe Helmer



Ann Gardiner Metcalfe

Introduced: 1/13/81
Referred: Judiciary and Finance

~~BY~~ ~~FAHRENKAMP, BENNETT AND KELLY~~ *JUDICIALED*

1 IN THE SENATE

SSB 6

2 ~~SENATE BILL NO. 6~~

3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing the Alaska Administrative Jour-
7 nal; and providing for an effective date."

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

9 * Section 1. AS 44.62 is amended by adding a new section to article 3 to
10 read:

- 11 Sec. 44.62.175. ADMINISTRATIVE JOURNAL. (a) The lieutenant
12 governor shall publish an Alaska Administrative Journal every two
13 weeks. The journal shall include but is not limited to the following:
14 (1) notices of proposed actions given under AS 44.62.190(a);
15 (2) when it becomes available, the text of regulations for
16 which notice is given under AS 44.62.190(a) if the regulations do not
17 exceed 16 legal-size, typewritten pages; in order to remain within
18 budgetary limits, the lieutenant governor may reduce this page limita-
19 tion;
20 (3) notices of state agency meetings required under AS 44.-
21 62.310(e);
22 (4) notices of solicitations to bid issued under AS 37.05.-
23 230;
24 (5) notices of state agency requests for proposals under
25 AS 37.05.230;
26 (6) executive orders and administrative orders issued by the
27 governor; and
28 (7) written delegations of authority made by the governor or
29 by the head of a principal department under AS 44.17.010.

1 (b) When (1) a state agency gives a notice which is to be pub-
2 lished in the journal under (a)(1) or (3) - (5) of this section, (2)
3 the governor issues an executive or administrative order, or (3) the
4 governor or the head of a principal department makes a written delega-
5 tion of authority under AS 44.17.010, a copy of the notice, order, or
6 delegation shall also be sent at the same time to the lieutenant gover-
7 nor for publication in the [Alaska Administrative] Journal and to every
8 person who has filed a request for a copy of the notices, orders or
9 delegations with the state agency and has indicated that he wishes to
10 receive it for the purpose of publishing it. If the notice sent to the
11 person is for a proposed regulation, an amendment to a regulation or a
12 repeal of a regulation, the state agency shall also furnish a copy of
13 the proposed regulation, amendment, or order of repeal, except that if
14 the regulation has not yet been drafted in its entirety, a copy need
15 not be furnished at the time notice is given but a copy must be fur-
16 nished at the same time as one is furnished to the Department of Law
17 under AS 44.62.190(a)(5).

18 (c) The lieutenant governor shall sell subscriptions to the
19 [Alaska Administrative] Journal at a price reasonably calculated to
20 offset the cost of its publication and distribution.

21 (d) If the lieutenant governor determines that the journal's
22 purpose of providing an all-inclusive medium for publishing public
23 notice of proposed agency actions for which public notice is required
24 by law is being met by private publication and is likely to continue to
25 be so met, he shall discontinue publication of the [Alaska Administra-
26 tive] Journal.

27 (e) A regulation, amendment to a regulation, or order of repeal,
28 except an emergency regulation or order of repeal, adopted under AS 44.-
29 62.250, may not take effect unless notice of the proposed action has

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been published either in the [Alaska Administrative] Journal as pre-
scribed by this section, or, if publication of the [Alaska Adminis-
trative] Journal has been discontinued under (d) of this section, in a
private publication.

* Sec. 2. AS 44.62.200 is amended by adding a new subsection to read:

(c) The summary specified in (a)(3) of this section must be ap-
proved by the lieutenant governor as adequate for publication in the
~~Alaska Administrative~~ Journal before notice is given under AS 44.62.-
190.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.10.-
070(c), except that the lieutenant governor shall begin publication of the
Alaska Administrative Journal [during the week of September 15, 1981.]
NO LATER THAN 120 DAYS AFTER THE EFFECTIVE DATE OF
THIS ACT.

(f) No person acquires a cause
of action for damages, based on the publication of infor-
mation, or the failure to publish every item of information
required by (a) of this section, in the journal, or in a
private publication if publication of the journal has
been discontinued under (d) of this section.

Introduced: 1/13/81
Referred: Judiciary and Finance

BY FAHRENKAMP, BENNETT AND
KELLY

1 IN THE SENATE

2 SENATE BILL NO. 6

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing the Alaska Administrative Jour-
7 nal; and providing for an effective date."

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

9 * Section 1. AS 44.62 is amended by adding a new section to article 3 to
10 read:

11 *Long* Sec. 44.62.175. ADMINISTRATIVE JOURNAL. (a) The lieutenant
12 governor shall ^{publish} ~~publish~~ an Alaska Administrative Journal every two
13 weeks. The journal shall include but is not limited to the following:

- 14 (1) notices of proposed actions given under AS 44.62.190(a);
15 (2) when it becomes available, the text of regulations for
16 which notice is given under AS 44.62.190(a) if the regulations do not
17 exceed 16 legal-size, typewritten pages; in order to remain within
18 budgetary limits, the lieutenant governor may reduce this page limita-
19 tion;
20 (3) notices of state agency meetings required under AS 44.-
21 62.310(e);
22 (4) notices of solicitations to bid issued under AS 37.05.-
23 230;
24 (5) notices of state agency requests for proposals under
25 AS 37.05.230;
26 (6) executive orders and administrative orders issued by the
27 governor; and
28 (7) written delegations of authority made by the governor or
29 by the head of a principal department under AS 44.17.010.

1 (b) When (1) a state agency gives a notice which is to be pub-
2 lished in the journal under (a)(1) or (3) - (5) of this section, (2)
3 the governor issues an executive or administrative order, or (3) the
4 governor or the head of a principal department makes a written delega-
5 tion of authority under AS 44.17.10, a copy of the notice, order, or
6 delegation shall also be sent at the same time to the lieutenant gover-
7 nor for publication in the Alaska Administrative Journal and to every
8 person who has filed a request for a copy of the notices, orders or
9 delegations with the state agency and has indicated that he wishes to
10 receive it for the purpose of publishing it. If the notice sent to the
11 person is for a proposed regulation, an amendment to a regulation or a
12 repeal of a regulation, the state agency shall also furnish a copy of
13 the proposed regulation, amendment, or order of repeal, except that if
14 the regulation has not yet been drafted in its entirety, a copy need
15 not be furnished at the time notice is given but a copy must be fur-
16 nished at the same time as one is furnished to the Department of Law
17 under AS 44.62.190(a)(5).

18 (c) The lieutenant governor shall sell subscriptions to the
19 Alaska Administrative Journal at a price reasonably calculated to
20 offset the cost of its publication and distribution.

21 (d) If the lieutenant governor determines that the journal's
22 purpose of providing an all-inclusive medium for publishing public
23 notice of proposed agency actions for which public notice is required
24 by law is being met by private publication and is likely to continue to
25 be so met, he shall discontinue publication of the Alaska Administra-
26 tive Journal.

27 (e) A regulation, amendment to a regulation, or order of repeal,
28 except an emergency regulation or order of repeal, adopted under AS 44.-
29 62.250, may not take effect unless notice of the proposed action has

1 been published either in the Alaska Administrative Journal as pre-
2 scribed by this section, or, if publication of the Alaska Adminis-
3 trative Journal has been discontinued under (d) of this section, in a
4 private publication.

5 * Sec. 2. AS 44.62.200 is amended by adding a new subsection to read:

6 (c) The summary specified in (a)(3) of this section must be ap-
7 proved by the lieutenant governor as adequate for publication in the
8 Alaska Administrative Journal before notice is given under AS 44.62.-
9 190.

10 * Sec. 3. This Act takes effect immediately in accordance with AS 01.10.-
11 070(c), except that the lieutenant governor shall begin publication of the
12 Alaska Administrative Journal during the week of September 15, 1981.
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A M E N D M E N T

OFFERED IN THE SENATE:

By: Fahrenkamp

To: Senate Judiciary SENATE BILL No. 6

HOUSE BILL No. _____

PAGE: 3

LINE: 5

Delete all of Sec'ion 2 (Lines 5 through 9)

A M E N D M E N T

OFFERED IN THE SENATE:

By: Fahrenkamp

To: Senate Judiciary Com SENATE BILL No. 6

HOUSE BILL No. _____

PAGE: 1

LINE: 23

After, "AS 37.05.230", delete ";", add ", AS 18.55.255,
AS 18.55.320, AS 19.10.190, AS 19.40.020, AS 35.15.030,
AS 37.05.315(d), AS 38.05.120, AS 43.40.010, and AS 46.11.030;"

AMENDMENT

OFFERED IN THE SENATE:

By: Fahrenkamp

To: Senate Judiciary SENATE BILL No. 6

HOUSE BILL No. _____

PAGE: 3

LINE: 12

After, "Journal", delete "during the week of September 15, 1981."
Insert after "Journal" the words "no later than 4 calendar
months after the date on which this bill becomes effective."

SENATE AMENDMENT

By Fahrenkamp

To: Senate Judiciary Committee SENATE BILL No. 6

To: _____ HOUSE BILL No. _____

PAGE: 1 LINE: 23

After, "AS 37.05.23", delete ";", add ", AS 18.55.255,
AS 18.55.320, AS 19.10.190, AS 19.40.020, AS 35.15.030,
AS 37.05.315(d), AS 38.05.120, AS 43.40.010, and AS 46.11.030;"

Cited in *Mukluk Freight Lines v. Nabors Alas. Drilling, Inc.*, Sup. Ct. Op. No. 967 (File No. 1870), 516 P.2d 408 (1973).

Sec. 44.62.190. Notice of proposed action. (a) At least 30 days before the adoption, amendment, or repeal of a regulation, notice of the proposed action shall be

(1) published in the newspaper of general circulation, or trade or industry publication, which the state agency prescribes;

(2) mailed to every person who has filed a request for notice of proposed action with the state agency;

(3) if the agency is within a department, mailed or delivered to the commissioner of the department;

(4) when appropriate in the judgment of the agency, (A) mailed to a person or group of persons whom the agency believes is interested in the proposed action, and (B) published in the additional form and manner the state agency prescribes;

(5) furnished the Department of Law together with a copy of the proposed regulation, amendment, or order of repeal for the department's use in preparing the opinion required after adoption and before filing by AS 44.62.060;

(6) furnished to all incumbent State of Alaska legislators and the Legislative Affairs Agency.

(b) If the form or manner of notice is prescribed by statute, in addition to the requirements of filing and mailing notice under this chapter, the notice shall be published, posted, mailed, filed or otherwise publicized as prescribed by the statute.

(c) The failure to mail notice to a person as provided in this section does not invalidate an action taken by an agency under AS 44.62.180 — 44.62.290. (§ 5 art IV (ch 1) ch 143 SLA 1959; am § 2 ch 149 SLA 1962; am § 1 ch 3 SLA 1968; am § 16 ch 143 SLA 1968; am § 4 ch 64 SLA 1978)

Effect of amendment. — The 1978 amendment substituted "state of Alaska legislators and the Legislative Affairs Agency" for "state legislators" in paragraph (6) of subsection (a).

The rule-making function of an administrative agency frequently resembles the legislative process of passing a statute. Each entity determines the need for a particular enactment in light of chosen policies; each has procedures for the expression of views upon the merits of the proposal; and each, after consideration of the relevant policies and arguments, decides whether to adopt the proposed enactment. When administrative rule making is based upon clear authority from the legislature to formulate policy in the adoption of

regulations, the rule-making activity takes on a quasi-legislative aspect. Under proper standards, such delegations of legislative power to administer agencies are constitutional. *Kelly v. Zamarella*, Sup. Ct. Op. No. 705 (File No. 1253, 1256), 486 P.2d 906 (1971).

Regulations adopted by the Commissioner of Natural Resources are subject to the rule-making provisions of the Administrative Procedure Act (AS 44.62) and must be adopted according to the procedures set forth therein. Among the required procedures for adoption of regulations are notice of the proposed adoption, a public hearing in which any interested person may submit statements to the agency, filing of the regulation, if adopted, with the secretary of state, and

publication. *Kelly v. Zamarella*, Sup. Ct. Op. No. 705 (File No. 1253, 1256) 486 P.2d 906 (1971).

Requirements and notice. — There are few text discussions of the notice and the sufficient proceedings for adoption of regulations. 1959 Op. Atty Gen., No. 1253.

Lengthy regulation summarized. — Where a regulation on one subject is too long, the best policy would be to summarize the content and purpose of the regulation. 1959 Op. Atty Gen., No. 1253.

But short regulation full. — If only a very short regulation is proposed then ordinarily it is practicable to set forth the full text. 1959 Op. Atty Gen., No. 1253.

Procedure upon promulgation of many regulations of varying importance. — Where a great many regulations are promulgated which are of varying importance, such as fish and game regulations, the best thing to do would be to list the subjects to be regulated in addition to any other regulations which are promulgated. Informative to the public, industry concerned (such as existing regulations of the department or to the industry) and a brief summary of significant changes which are being effected in the existing body of regulations. In such case it is indicated that copies of the regulations can be obtained from the agency in order to indicate to the public affected by the regulations an opportunity to familiarize themselves with the regulations and to submit their views on the regulations. This should constitute a substitute for the Administrative Procedure Act and would serve the purpose of the Administrative Procedure Act. 1959 Op. Atty Gen., No. 1253.

And when a summary of the number of proposed regulations is used it would be desirable to have the departments and agencies responsible to follow the same practice and to give notice of the regulations to be promulgated by listing the subjects to which the proposed regulations apply. 1959 Op. Atty Gen., No. 1253.

THESE ADDITIONAL STATUTE REFERENCES NEED TO BE INCLUDED
IN THE ADMINISTRATIVE JOURNAL IN ORDER TO ALLOW THE JOURNAL
TO BE AN ALL-INCLUSIVE MEDIUM FOR PUBLIC KNOWLEDGE OF AGENCY
ACTIONS. THESE STATUTE REFERENCES REFER TO THE FOLLOWING
AGENCY ACTIONS:

AS 18.55.255	ALASKA HOUSING AUTHORITY - Land Sales
AS 19.55.320	ALASKA HOUSING AUTHORITY - Sale of Surplus Property
AS 19.10.190	DEPARTMENT OF HIGHWAYS(DOT/PF) Advertizing, bid, contracts
AS 19.40.020	DEPARTMENT OF HIGHWAYS (DOT/PF) Yukon-Arctic Highway - Request for bids
AS 35.15.030	PUBLIC WORKS (DOT/PF) - Advertising, bids, contracts
AS 37.05.315(d)	DEPARTMENT OF ADMINISTRATION Appropriation for grants, proposals
AS 38.05.120	DEPARTMENT OF NATURAL RESOURCES Timber and Materials sales
AS 43.40.010	DEPARTMENT OF REVENUE Motor fuel tax; construction projects bids
AS 46.11.030	CONSERVATION OF ENERGY AND MATERIALS Energy auditors - competitive bids

SENATE JUDICIARY COMMITTEE

Bill Number 586 Original Sponser(s) _____

Title ACT ESTABLISHING THE ALASKA ADMINISTRATIVE REGISTER JOURNAL AND

PROVIDING FOR AN EFFECTIVE DATE Originally Received From KERTTULA

Contact "ROBIN"/FAHRENKUMPT Date 1-13-81

Committee Recommendation (MAJORITY) _____

Report Attached yes no) Supporters _____

MINORITY _____

Report Attached yes no) Supporters _____

Object of Bill _____

Committee Amendments _____

Fiscal Impact _____

IAA Legal/Research Contact _____ Research/Information _____

Concerned Parties:	
Supporting	Opposing

Supporting

Opposing

Additional Remarks:

HOLD FOR ABA DRAFT ON H.P.H

CONTACTED: ALEC PETERSON
AG (3656)

~~DAVID ANDERSON~~ J.C. BRADSHAW
KT. Gov's FOR
(3521) DEBBIE BAILY

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K—STATE CAPITOL
JUNEAU, ALASKA 99811

465-3600

February 23, 1981

RECEIVED

FEB 23 1981

The Honorable Patrick Rodey
Chairman
Senate Judiciary Committee
Alaska State Legislature
Pouch Y
Juneau, Alaska 99811

Re: SB 6 (Administrative Journal)

Dear Senator Rodey:

As I have discussed with you, your committee, and your staff, two amendment sheets for this bill are attached. I understand that you plan to prepare a committee substitute (into which these amendments could be incorporated) and then favorably report the bill.

The first amendment deals with the question of liability, and is fairly self explanatory. It is an attempt to protect the state and its people from the exposure to potential liability which this additional governmental function would create. It is possible that courts would hold the state liable for mistakes made by way of inclusion or omission and for alleged damages due to the wording of information included. The journal is not intended to replace any existing systems of distributing the information involved, as required by various statutes. It is just a helpful publication which does not relieve interested persons from their obligation to watch out for their own interests. The Administrative Journal will help them do that, but it should not provide a basis for imposing additional liability on the state.

Please note that, if some of the changes which were discussed at your committee meetings last week concerning proposed AS 44.62.175(d) are adopted, then a corresponding change in the last sentence of this amendment should also be made.

The second sheet of amendments merely deletes the words "Alaska Administrative" in several places, for the sake of consistency and simplicity. The initial reference to the journal's full name in line 12 on page one will serve as the antecedent for the succession of references to the journal.

I understand that Senator Fahrenkamp, the sponsor of this bill, is proposing an amendment to delete sec. 2 and to change the phrase "during the week of September 15, 1981," which appears on line 12 of page three, to read "no later than 4 calendar months after the date on which this bill becomes effective." The deletion of sec. 2 would be helpful. The other change is not clear. Does the reference "4 calendar months" mean that if the bill takes effect in, for example, mid-April, then we begin counting with May as the first month -- giving us actually four and one-half months after the effective date? Or does it mean that, if the bill takes effect in mid-April, then we begin counting with April as the first month -- giving us only three and one-half months after the effective date? Also, if there is to be a reference to the effective date of the Act, the standard language for that date would be preferable. To accomplish what I believe to be the senator's intent, I would suggest the following language for her amendment: "no later than 120 days after the effective date of this Act."

I do not know whether the four-month or 120-day period would give the lieutenant governor's office and all other agencies involved enough time to make all of the arrangements necessary for publication of this new journal. I suspect that it would not, but I am not taking a position on the appropriateness of that period.

I would be pleased to continue working with you, your committee, and your staff on this measure.

Yours truly,

WILSON L. CONDON
ATTORNEY GENERAL

By:


Arthur H. Peterson
Assistant Attorney General

WLC:AHP:cjs

cc w/enc.: Honorable Bettye Fahrenkamp
Alaska State Senate

A M E N D M E N T

Offered in the SENATE

TO: SENATE BILL NO. 6

Page 3, between lines 4 and 5, insert:

(f) The purpose of this section is to provide [helpful] information in addition to that being provided under other statutes. [It is not intended to relieve persons of their obligation to use due diligence in protecting their interests that might be affected by state action related to the types of information specified in (a) of this section.] No person acquires a cause of action for damages, based on the publication of information, or the failure to publish every item of information required by (a) of this section, in the journal, or in a private publication if publication of the journal has been discontinued under (d) of this section.

A M E N D M E N T

Offered in the SENATE

TO: SENATE BILL NO. 6

Page 2, lines 7, 19, 25, and 26, and page 3, lines 1, 2, and 3:

Delete: "Alaska Administrative"

That the Central District Democratic Committee urges our legislative delegation in Juneau to establish a State of Alaska monthly periodical listing all State of Alaska contracts, bids, requests for proposals, etc. with pertinent information concerning such contracts, bids, requests for proposals and that this same monthly periodical list all contracts, bids, requests for proposals, etc. that have been let, with information as to the winning firm/individual, dollar amounts of the contract and other pertinent information. Further that this publication be made available to the general public at a reasonable subscription fee.

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CS for Sponsor Substitute for Senate Bill 355
 Title An Act establishing an administrative journal
 Requested by Senate Finance Committee Date 3/11/80

II. FISCAL DETAIL

Agency Affected Office of the Governor
 Program Category Affected Office of the Lieutenant Governor
 BRU, Program, or Subprogram(s) Affected Office of the Lieutenant Governor

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

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES	8.4	35.5	39.1	43.0		
200 TRAVEL		1.2	1.3	1.4		
300 CONTRACTUAL	24.9	99.7	109.7	120.7		
400 COMMODITIES	.2	.4	.4	.5		
500 EQUIPMENT	1.1	.3	.3	.4		
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	34.6	137.1	150.8	166.0		

FUNDING (Thousands of Dollars)

GENERAL FUND	34.6	0	0	0		
FEDERAL FUNDS						
OTHER (Specify Fund Source)						
Program Receipts	-	137.1	150.8	166.0		

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

- 1) Approximate number of administrative register subscriptions would equal (or exceed) those subscriptions to the Alaska Administrative Code (AAC)--currently 1000.
 - 2) Start-up costs for the last quarter of FY 80 (if effective date occurs after the beginning of FY 81, new equipment needs should be carried forward).
 - 3) Inflation for FY 81 @7% and FY 82 @10%.
- One new administrative assistant (Personal Services Range 16B) would be required to handle the coordination and organization of this publication. Travel for the National Administrative Codes and Registers Conference. Contractual Services includes some telephone, postage and first-class mailing costs, printing and binding (based on current contract for printing the AAC), advertising and equipment rentals. Commodities and Equipment are budgeted as basic supplies for a newly-created staff support position.

IV. DATE March 12, 1980 PREPARED BY John C. Sackett
 AGENCY Senate Finance Committee
 PHONE 465-3753

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

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Senate Bill No. 355 *Journal*
 Title An Act establishing an administrative register
 Requested by Senate State Affairs Date 1/23/80

II. FISCAL DETAIL

Agency Affected Office of the Governor
 Program Category Affected Office of the Lieutenant Governor
 BRU, Program, or Subprogram(s) Affected Office of the Lieutenant Governor
 (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 79	FY 80	FY 81	FY 82	FY 83	FY 84
100 PERSONAL SERVICES		6.2	27.6	30.4	33.4	
200 TRAVEL		.8	3.5	3.9	4.3	
300 CONTRACTUAL		20.4	87.4	96.1	105.7	
400 COMMODITIES		.2	.4	.5	.6	
500 EQUIPMENT		1.1	.3	.3	.4	
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		28.7	119.2	131.2	144.4	

FUNDING (Thousands of Dollars)

GENERAL FUND		28.7	119.2	131.2	144.4
FEDERAL FUNDS					
OTHER (Specify Fund Source)					

POSITIONS

FULL TIME		1	1	1	1
PART TIME					
TEMPORARY					

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

ASSUME:

- 1) Approximate number of administrative register subscriptions would equal (or exceed) those subscriptions to the Alaska Administrative Code (AAC)--currently 1000.
- 2) Start-up costs for the last quarter of FY80 (if effective date occurs after the beginning of FY81, equipment needs should be carried forward).
- 3) Inflation for FY81 @7% and FY82, FY83 @10%.

One new administrative assistant (Personal Services at a Range 14B with some overtime) would be required to handle the coordination and organization of this publication. Minimum amount of travel for hearings and the annual Administrative Codes and Registers Conference. Contractual Services includes some telephone, postage and mailing costs, printing and binding (based on current contract for printing the AAC), advertising (continued on next page)

IV. DATE January 29, 1980 PREPARED BY Danith Anderson
 AGENCY Office of the Lieutenant Governor

Original: Legislative Finance PHONE 465-3520
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

III. ANALYSIS (continued)

and equipment rentals. Commodities and Equipment are budgeted as basic supplies for a newly-created staff support position.

③ NOTE: This fiscal note does not reflect any subscription fees to be collected for the administrative register but it should be realized that a fair percentage of the cost of publication (printing and mailing) would be returned to the General Fund through the price of subscriptions as determined by the lieutenant governor.

- ① Travel - don't feel its necessary. Perhaps w/ exception of ~~sub~~ once every other year convention of other "register" states
- ② Contractual included 3rd class postage estimate. This is impossible. Must be timely, so 1st class.
- ③ Expect subscriptions to pay for majority of production, if not all. Assuming 25 front-to-back pages.
- ④ Why Adm. Asst 14B?
- ⑤ Can we help by getting list of interested folks prior to effective date - or ...?

State-run journal wins no acclaim

State intrusions into the publishing business strike a troublesome blow at the health of newspapers across Alaska — newspapers whose vigorous, independent voices well serve us all. That's why a proposal before the legislature to create an "Alaska Administrative Journal" — ostensibly designed to package state information in a bi-weekly publication — should be tabled permanently as this confused legislative session draws to a close.

The only rationale to support the proposal is a sense that state residents could benefit by the supposed convenience of a single assemblage of proposed state actions, opportunities to bid, notices of public meetings, administrative actions and executive orders. But that rationale fades to mere gloss when compared to the disadvantages occasioned by state entry into an enterprise that is properly and efficiently carried out by dozens of independent organizations around the state.

The fact is that creation of a journal of this sort would present privately run newspapers with state competition for both readership and revenues derived from legal advertising. Such advertising arises from public notice requirements, and is a major revenue source for many newspapers — particularly the smallest ones — across the state.

More than that, the proposed journal actually is more likely to limit than to enhance the public's right to know about state actions and contracts — because both the concentration of information in a single state source and the threat to the financial health of Alaska newspapers would narrow the availability of public information.

The legislation as now written would maintain current requirements for legal advertisement in local publications. But there would be no safeguard, once the proposed journal was in place and a force of its own, to prevent subsequent legislatures from removing those requirements. If that occurred, notice of state actions and opportunities suddenly would be accessible mainly to those contractors, lawyers and other professionals with the savvy to subscribe to the state-published journal.

This proposal is a step in the wrong direction. Alaska's independent newspapers serve an important function — to readers, to advertisers, to the state as a whole. Government intrusion into the province of newspapers could only injure an industry that has proven itself to be effective and efficient in the exercise of its role.

Wed., 2/18/61

SIGN UP

Name

SEN. FERGUSON

102

JOAN BROOKS

MILDRED RICHARDS - DELAYED REG. PERSON

BOB (Name?)

SB 6

SEN. THORNTON

AMENDMENT TO BILL

DON SMITH

ENDORSE CONCEPT

WANTS PRIVATE COMPANY TO JOURNAL

ART PETERSON - A.G.

Public - SUBD - PROVIDE TO LIBRARY
NOT SO COMPREHENSIVE - COST

LIABILITY OF STATE

AK AD JOURNAL - JOURNAL

ROADBLOCK BY LIE GOV'S OFFICE
(SEC 2)

Sec 3

DETERMINE - SPECIFIC WORK

SB102 Amendment - 3 person AFFIDAVIT

BRUCE BETHEND + Bill Cummings
BUS TO:

Sm - WEEKLY PUBLICATION OF RESEARCH
ITEMS "TO ADJUSTED
SERVICE PUBLIC"

FARR "VOLUME REAVENT TO FREQUENT"

Sm - ADDENDUM / SUPPLEMENT

Sm MEXICO - IN PROGRESS
PROBLEM WITH NOTIFICATION

S

B

7

James N. Reeves, Esq.
FAULKNER, BANFIELD, DOOGAN
& HOLMES
425 G Street, Suite 510
Anchorage, AK 99501
(907) 274-0666

Attorneys for Petitioners

IN THE SUPREME COURT FOR THE STATE OF ALASKA

FRED S. HONSINGER, et al.)	
)	
Petitioners,)	
)	
vs.)	Superior Court
)	
STATE OF ALASKA, et al.,)	No. 1JU-73-210 CIV.
)	
Respondents.)	Supreme Court No.
)	
)	

PETITION FOR REVIEW

JAMES N. REEVES, ESQ.
Faulkner, Banfield, Doogan
& Holmes
425 "G" Street, Suite 510
Anchorage, AK 99501
(907) 274-0666

Attorneys for Petitioners

Filed this ___ day of November, 1980
in the Supreme Court for the State
of Alaska.

ROBERT BACON
CLERK OF THE SUPREME COURT

By: _____
Deputy Clerk

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STATEMENT OF JURISDICTION

Petitioners seek review under Rules 23 and 24 of the Alaska Rules of Appellate Procedure of an Order dated September 29, 1980, entered by the Honorable Thomas B. Stewart, Presiding Judge of the Alaska Superior Court, First Judicial District. The Order was accompanied by a separate Memorandum of Decision. (The Order and Memorandum of Decision are attached hereto as Appendices F and G.)

The Order granted a motion by the State of Alaska (defendant below and respondent herein) to "establish the law of the case" regarding the applicability of the law of accretion where submerged lands gradually and imperceptibly become uplands through the natural process referred to as "glacio-isostatic uplift." The State's purpose in filing the motion was to determine in advance of trial whether the plaintiffs could be denied the benefit of the general accretion rule if the State proved that the accreted lands in dispute became exposed above the line of mean high tide by glacio-isostatic uplift, rather than by retrocession of the sea, alluvial deposition or some other natural process. The effect of the Order, unless reversed on this interlocutory appeal, will be to trigger a lengthy and expensive trial to resolve these complicated factual questions regarding the natural causes which accounted for the lands in dispute.

A motion for reconsideration of the Court's Order was timely filed pursuant to Rule 77(n) of the Alaska Rules of Civil Procedure. Since no action was taken on that motion by the Court, it was therefore denied sub silentio by operation of Rule 77(n) on October 30, 1980. The Alaska Supreme Court has jurisdiction over this Petition for Review under and by virtue of Rules 23 and 24 of the Alaska Rules of Appellate Review.

INTRODUCTION; REASONS WHY INTERLOCUTORY REVIEW SHOULD BE GRANTED

This quiet title action was filed in 1973 by the owners of homestead lands in Juneau to resolve a controversy which had

arisen with the State of Alaska over the ownership of certain uplands situated between the original seaward boundary of the homestead lands and the present line of mean high water. It is undisputed that the petitioners own the upland homestead parcel.

After years of preliminary skirmishing, the parties entered into a stipulation to the effect that "if the property in dispute in this action was formed by the process of accretion, it would inure to the littoral owner." Stipulation dated May 5, 1979, ¶ 3. (Appendix A). Paragraph 4 of the Stipulation recites the State's contentions that:

[T]he land at issue in this proceeding was formed entirely, or substantially, by the geological phenomenon of isostatic rebound [referred to by the Court as "glacio-isostatic uplift"] and that, unlike accreted lands, lands formed entirely, or substantially, by isostatic rebound do not inure to the benefit of the shoreline owner.

If the State's legal contention regarding this supposed exception to the general rule of accretion were rejected, then no fact question would be presented, no trial would be held, and judgment would be entered quieting title in favor of the petitioners. The effect of the Court's ruling in favor of the State is to require that there be a trial to determine if possible how the disputed land came into being. The State will seek to prove through scientific data and expert testimony that the disputed land emerged from the sea in place by the process of glacio-isostatic uplift; the plaintiffs will seek to rebut that contention. It can be predicted that the trial of this fact question will be extremely expensive for both parties, and time-consuming for the Court.

Review now could eliminate the need for a trial. On the other hand, if review is postponed then whatever the result of the trial, an appeal and a cross-appeal are almost certain. It is extremely unlikely that a trial could eliminate the need for this Court to review the Superior Court's recent ruling.

In his Memorandum of Decision, Judge Stewart stated that "the issue is essentially one of first impression, with

potential in its resolution for relatively wide-ranging economic and social impact in a glaciated, tidal region such as this northern portion of Southeastern Alaska." Appendix G, p. 2. The State refers to this case as "a precedent of extraordinary magnitude. . . affecting title to perhaps millions of acres of newly emerged lands." Appendix E, p. 2. There can be absolutely no doubt that this issue will require resolution by the Alaska Supreme Court, if not in this case then in another. No economy in the use of judicial resources would be effected by deferring review in this case until appeal from final judgment.

Under Rule 23(d) of the Alaska Rules of Appellate Procedure, interlocutory review is to be granted where the issue presented by the lower court's order "involves a controlling question of law," and "an immediate and present review of such order or decision may materially advance the ultimate termination of the litigation." This criterion is clearly met in the instant case. "Undue or extraordinary hardship will result from the requirement that petitioner participate in a trial" and "injustice will or might result unless an immediate review of the decision below is granted." City of Fairbanks v. Schaible, 352 P.2d 129, 131 (Ak. 1960).

FACTUAL BACKGROUND

This case calls into play the rules of law which apply where land increases in area, gradually and imperceptibly, along the margin of a water body. Such an increase is commonly referred to as "accretion." See, 65 C.J.S., "Navigable Waters," § 81(a), p. 250, and authorities cited therein at footnote 36. Accretion occurs in one of two distinct ways: either (1) new land is created by the deposit of soil or sand where none existed before, or else (2) fast land (i.e., land in place) which has been submerged becomes exposed above the line of mean high water. These two processes -- the creation of new land ("accretion," in the more limited meaning of that term) or the exposure of land theretofore submerged ("reliction") -- are subject to the same

rule concerning title.^{1/} The new land becomes the property of the adjoining littoral owner so long as its exposure or creation is gradual and imperceptible. This rule applies irrespective of whether the land is exposed by reliction or is created by accretion. See, Bonelli Cattle Co. v. Arizona, 414 U.S. 313, 325 (1973); 65 C.J.S., "Navigable Waters," § 82(1) and cases cited therein; 5A Thompson on Real Property, §§ 2560, 2563.

There are many different natural processes or occurrences which, independently or in concert, can cause accretion or reliction. Accretion can occur as the result of wave or tidal action eroding the material on a shoreline and moving the resultant sand or silt to another location, by the transport of silt or glacial outwash by river from upland areas to coastal areas, or by other means. It can occur on a tiny scale (as with an eroding creekbed) or on a grand scale (as with the Mississippi River delta). Reliction is also variously caused. It can be the result of the gradual retirement or retrocession of a water body adjoining a stationary land mass, or it can be caused by the gradual emergence of that land mass in relation to a stationary water body.

This is believed to be the first case in which a court has suggested that the applicability of the law of accretion and reliction should depend upon the particular hydrologic or geologic process involved. Thus, the case marks the first occasion upon which litigants who agree that the addition of the new land was gradual and imperceptible have been required to marshal evidence concerning these complex physical science questions.

"Glacio-isostatic uplift" may be defined as the gradual rise of the earth's crust which occurs when the downward pressure exerted by a glacial ice mass diminishes. It is based upon the

^{1/} The former phenomenon is always referred to as accretion. The latter phenomenon is sometimes distinguished from the former by the term reliction. In Schafer v. Schnabel, 494 P.2d 802, 806 (Ak. 1972), this Court used the term "accretion" in the more limited sense to refer to new lands created by the deposit of alluvium, as distinguished from the exposure of fast lands by reliction.

theory of "isostasy," which posits that all portions of the earth's crust rest upon a viscous mantle in a state of equilibrium. A change in mass at any given location produces a corresponding change in the pressure exerted at that location upon the viscous mantle which supports it, with the result that the equilibrium is adjusted. This in turn causes various portions of the crust to emerge or subside. This phenomenon of localized emergence or subsidence of the earth's crust in response to local changes in pressure exerted by the earth's crust upon the mantle is called "isostatic adjustment." Areas of the earth's land mass are almost always either emerging or subsiding, gradually and imperceptibly, due to this process of isostatic adjustment.

Eustatic change is a companion phenomenon, involving the fluctuation of the absolute sea level due to changes in the number of molecules in the sea, or to volumetric expansion or contraction due to an increase in the temperature of the sea, or to local change caused by a net flow of sea water from one region to another. Eustatic change and isostatic change occur simultaneously in a gradual and imperceptible manner, together, effecting changes in the relative sea level throughout the world.

Because of these processes, the relative sea level along the earth's coast lines will never be static. Isostatic and eustatic changes, sometimes complementary and sometimes offsetting, are constant on both global and local scales. The complex interaction of these geological processes, accompanied by the ambiguous nature of so much of the physical evidence from which their incidence is inferred, makes it virtually impossible for scientists to determine to any reasonable level of certainty what absolute changes in the position of the land mass or of the sea level have occurred or precisely which natural processes are responsible for those changes.^{2/}

^{2/} A lengthy discussion of these physical processes and their interrelationships is contained in the "Plaintiffs' Memorandum in Opposition to State's Motion to Establish Law of the Case" dated October 5, 1979, filed in the Superior Court. This discussion contains substantial references to the literature on the subject. See Appendix D, pp. 5-10.

ARGUMENT

I.

TITLE TO LANDS ACCRETED DUE TO GLACIO-ISOSTATIC UPLIFT
IS GOVERNED BY THE GENERAL RULE APPLICABLE
TO ALL ACCRETION AND RELICTION.

The State's argument rests on two legs. First, it argues that the policies which have historically been cited in support of the general rule of accretion do not apply where the new land is created by glacio-isostatic uplift. Second, it argues that contemporary political support for the retention of the coastal margin in public ownership warrants abrogating the general accretion rule in the case of glacio-isostatic uplift.

The Superior Court properly regarded this question as one of first impression. It noted that the issue was susceptible to resolution in favor of the littoral owners "on substantial grounds" (Appendix G, p. 3), and it tacitly acknowledged that a ruling in the State's favor would in effect constitute judicial legislation. Appendix G, p. 5. It addressed the State's argument as a policy question: Would it be "better" for these new lands to be owned by the private littoral owner or by the public at large? Basing its holding upon the mistaken premise that a ruling against the littoral owner would result in retention of all uplift accretion lands in public ownership, the Court ruled in favor of the State.

- A. Applicability of general accretion principles in reliction cases does not depend upon the specific natural cause of the reliction.

The actuating physical cause of a reliction has never been taken into account in determining whether the littoral owner takes title to the new land. In Bonelli Cattle Co. v. Arizona, 414 U.S. 313 (1973), for example, land previously submerged under the Colorado River had emerged as a result of a federal rechanneling project. The adjacent private landowner claimed the new land under the doctrine of reliction, but the State refused to recognize that claim because the physical agency which caused the reliction was not a natural alteration of the river's course.

The Supreme Court confirmed prior holdings to the effect that accretion due to artificial causes passes to the littoral owner in the same manner as if it were naturally caused. 414 U.S. at 327. To the same effect is Coastal Industrial Water Authority v. York, 532 S.W. 2d 949, 952 (Texas 1976), involving the analogous issue of who owns land which has become submerged due to gradual subsidence . . . result of non-natural causes such as the removal of underground water. Citing the Bonelli case, the Texas Supreme Court stated:

We place no significance upon the relation between artificial and natural causes of this phenomenon. . . . There is no reason to apply a different rule for the effects of subsidence simply because of the activities of cities and industries over which these landowners have no control.

Thus, the criterion for determining whether or not title passes to the littoral owner in a reliction case is not the kind of physical action which creates the new land or causes it to emerge; the criterion is simply whether its creation was "gradual and imperceptible." Courts have consistently recognized the littoral owner's title to new lands emerged along the sea-coast irrespective of the particular natural process by which those lands came into being. Whether the new land became exposed due to a drop in the absolute surface level of the water body or due to a rise in the absolute surface level of the land mass is irrelevant. Reliction has always been regarded as "the gradual withdrawal of the water from the land by the lowering of its surface level from any cause." Ziemba v. Zeller, 86 N.W. 2d 190, 193 (Neb. 1957) (emphasis added); Garrett v. State, 289 A.2d 542, 545 (N.J. 1972). For centuries all newly emerged lands have been subject to the same rule of accretion, under which title inures to the littoral owner if they came into being "gradually and imperceptibly." Until this case, it has never been felt necessary to determine by trial which particular natural process (or combination thereof) was the specific physical cause of the

gradual and imperceptible change.^{3/}

- B. The policies underlying the general accretion rule, whereby title inures to the littoral owner, apply with equal force in the case of glacio-isostatic uplift.

Courts have recognized three policies as the underpinnings of the general rule that accreted lands belong to the littoral owner. These policies apply with equal or greater force to uplift accretion lands.

Retention of access. For most parcels abutting upon a water body, the riparian character of the parcel is its "essential attribute" and most valuable feature. Bonelli Cattle Co. v. Arizona, supra; Schafer v. Schnabel, supra, p. 807; 56 Am. Jur., "Waters," § 478, p. 895. This is particularly true in the case of coastal lands in Alaska because there is often no inland transportation infrastructure. The rule giving title to new land to the littoral owner reflects a judgment that when the owner's equities are balanced against those of the public at large, preservation of the riparian character of the owner's property weighs more heavily in the balance. The logic of this policy applies with equal force whether the newly exposed land is the product of deposition of alluvion, withdrawal or subsidence of the adjoining water body, or land emergence caused by tectonic forces.^{4/}

^{3/} The impetus for the State's assertion of a claim to the lands whose title is disputed in this case appears to be a stray footnote in the Alaska Supreme Court's decision of Schafer v. Schnabel, 494 P.2d 802, 806, n. 16:

Reliction involves an increase in the amount of exposed land beside a body of water, but properly refers only to situations where the water itself has receded.

No authority was cited by the Court for this dictum, and an examination of the briefs filed by the parties in Schafer discloses that this issue was never raised by the parties. In fact, the law is clearly contrary to this suggestion contained in the Schafer footnote.

^{4/} In this respect, it can be seen that the Court's criticism of the "preservation of access" policy as a rationale for the accretion rule (Appendix G, p. 4) does not support its holding; if the policy carries any weight at all as a basis for the general rule of accretion, it certainly should carry at least as much weight as a basis for applying the accretion rule in the specific case of uplift accretion lands.

Countervailing risk of loss. A second policy consideration is the "risk of loss/benefit of gain" rationale, or what the U.S. Supreme Court referred to in Banks v. Oden, 69 U.S. 818, 821 (1865), as the "principle of natural justice." This holds that the littoral owner, being forced to bear the risk that he may lose his property to the adjoining water body by erosion, rise in the water level or tectonic subsidence or depression, should therefore be entitled to enjoy any offsetting gain due to such processes. Waynor v. Diboff, 9 Ak. Rpts. 230 (D. Ak. 1937).

The State has vigorously argued that this policy does not logically apply to isostatic adjustment because it is not reciprocal, in the sense that there is no realistic possibility that any littoral owner would ever lose land to the sea as a result of this process. The scientific literature, however, is to the contrary. Isostatic adjustment produces subsidence as well as emergence. Other tectonic and eustatic changes interact with isostatic uplift and depression to either amplify or neutralize their effects. It is plainly incorrect to assert that the process cannot go both ways,^{5/} and the Superior Court properly accorded very little weight to the argument.

The State also argued that the "risk of loss, benefit of gain" rationale has no application in the case of glacio-isostatic uplift because that process is, uniquely among processes causing reliction, region-wide rather than local in character. The Superior Court properly disregarded this argument. The fact of the matter is that tectonic changes and glacio-isostatic

^{5/} The State's argument on this point proceeds from the additional assumption that, in determining whether reliction "goes both ways," each possible physical cause of a change in the absolute position of the land mass or the absolute sea level should be separated out for independent consideration. For example, it notes that isostatic uplift only causes land to emerge, but does not acknowledge that isostatic adjustment causes both emergence and subsidence of the land mass. By this specious reasoning the State conveniently overlooks the fact that one process may be linked to another counteracting process, as glacio-isostatic uplift is usually accompanied by an offsetting eustatic rise. In fact, these dynamic processes are nearly all occurring simultaneously, and reliction is the product of their interaction.