ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 8672

2554 SJ HJR 5 - HJR 66

2554

9
SUMMARY OF STATE LAWS

Legislative Review of Administrative Regulations

ALASKA — (AS §24.20.400 & §44.62.320) The Alaska Legislature in 1975 created the Administrative Regulation Review Committee as a permanent interim committee of the legislature composed of three members each from the house and senate. The committee is empowered to examine all administrative regulations to determine if they properly implement legislative intent. Prior to 1978, the committee could recommend annulment of a regulation to the legislature, which in turn, had to adopt a concurrent resolution to do so. A 1978 law passed over the governor's veto empowered the committee to suspend objectionable regulations until 30 days after the next session begins. During the 30-day period, the legislature must annul the regulation through the passage of a concurrent resolution or it goes into effect.

ARIZONA — (Ariz. Rev. St. 41-511.05) Rules and regulations promulgated by the State Parks Board are the only ones which require legislative review and approval. All other agencies file regulations with the Attorney General and Secretary of State to put them into effect. State Parks Board regulations may be disapproved by concurrent resolution of the legislature for up to one year after they take effect.

ARKANSAS — (Ark. St. 6-608 et seq) All proposed, revised, or amended rules and regulations must be filed with the Legislative Council. Rules are reviewed to determine whether they are consistent with legislative intent or if they exceed statutory authority. The function of the Legislative Council review is advisory. If a proposed rule is determined to be improper, the Legislative Council files a statement with the agency concerned and submits recommendations to the legislature. This review procedure was adopted in 1973.

COLORADO — (Colo. Rev. St. 24-4-103, Subsec 8, para d) Under a law passed in 1976, the Committee on Legal Services, a bipartisan joint committee of four mem-

bers from each house, reviews all new rules during the interim for "legality and constitutionality." During the session, the standing committees of each house review all new rules. After hearing staff recommendations and agency testimony, the committee can vote to amend or repeal the rule and then submit a bill to the full legislature. There are no time constraints for any stage of the procedures. The governor vetoed a bill passed in the 1977 session which would have made the Committee on Legal Services the review committee for all proposed regulations, during both the session and the interim. It also provided for time constraints for agency filing of regulations with the committee, fiscal notes for regulations with a fiscal impact, and review of pre-existing regulations over five years. On April 10, 1978 the veto was overturned by the Colorado Supreme Court on a technicality, and the bill became law.

CONNECTICUT — (Conn. Gen. St. 4-170 et seq) The Legislative Regulations Review Committee is bipartisan and composed of eight representatives and six senators. It reviews all proposed regulations of state departments and agencies and may hold public hearings thereon. The committee may give notice of approval or disapproval within 60 days (failure to act within 60 days constitutes approval). If the committee gives notice of disapproval, no agency may take action to implement the disapproved regulation. The committee reports annually to the general assembly on all disapproved regulations which, after study by an appropriate committee, may vote to sustain or reverse the disapproval. Any committee disapproval of a regulation implementing a federally subsidized or assisted program must be sustained by the general assembly or it is deemed reversed. The committee attempts to resolve questioned regulations with the agency responsible, but has disapproved several regulations each year. A 1977 law provides for a five-day period for prior review of proposed emergency regulations by the committee.

FLORIDA — (Fla. Stat. Sec 11.60) Florida's Administrative Procedures Act was rewritten in 1975 and a Joint Administrative Procedures Committee created. This committee has three specific functions: to review proposed rules as they are adopted; to maintain a continuous review of statutory authority underlying each rule and note when that authority is changed by either the legislature or the courts; to review administrative matters in general as they relate to the APA. The committee makes a legislative observation on each rule but does not have the power to suspend a rule. If an objection is made by the committee to a rule, the agency is requested to withdraw or modify it. In most cases, agencies have been found willing to respond affirmatively to legislative objections. Of the first 840 rules reviewed in 1976, 79% were found to contain some error and 6.3% of these were found to exceed statutory authority. A 1975 amendment to the APA requires an "economic impact statement" to accompany each proposed rule estimating the costs of the rule to those affected by it. The committee has a staff of 13. A constitutional amendment giving the legislature power to suspend rules was rejected in a 1976 referendum.

GEORGIA — (Ga. Stat. 3A-104(c), (f)) A 1977 law provides for legislative review of regulations by standing committees predesignated by the speaker and senate president for each agency. Regulations must be submitted by the agencies 20 days

prior to their effectiveness. If the committee objects to a regulation, it may introduce a resolution repealing or modifying the regulation at the next session. The resolution must be acted upon within 30 days after the beginning of the session in the house of origin and within five days in the other house. Constitutional two-thirds majority approval in both houses is necessary for the rule to be repealed or modified. If the resolution passes by less than a 2/3 constitutional majority, it must go to the governor, who may sign or veto the resolution. The legislature cannot override a veto of such a resolution.

IDAHO — (Idaho Code Sec. 67-5217, 67-5218) All rules authorized or promulgated by any state agency are to be submitted to the legislature in regular session for reference to the appropriate standing committees. Any committee or member of the legislature may propose a concurrent resolution rejecting, amending, or modifying any rule thought to be in violation of the statutory authority or legislative intent of the statute under which the rule was made.

ILLINOIS — (Ill. Rev. Stat., Chap. 127, §1001 et seq) The bipartisan Joint Committee on Administrative Rules reviews all proposed regulations and makes recommendations to the agency to modify or withdraw the rule. While the agency is not bound to accept the committee's recommendations, it must respond to them. Failure to respond constitutes withdrawal. The committee can introduce a bill to modify or nullify a rule to which it has objected.

IOWA — (Iowa Code Ann. Sec. 17A.8) A new Administrative Rules Review Committee was created in 1975, although authority for regulation review had previously existed. The new committee is composed of three members from each house and meets monthly. It is authorized to selectively review promulgated rules, but is currently reviewing all promulgated rules. The review committee may file objections to rules based on the fact they are unreasonable, arbitrary, capricious or beyond the scope of agency authority. Such objections transfer the burden of proof to the issuing agency in any legal challenge to the rule. An agency unable to sustain this burden of proof in a legal challenge may be liable for all court costs of the challenge. The Rules Review Committee may also refer a rule for consideration to the appropriate legislative standing committee at the next regular session.

KANSAS — (K.S.A. 1978 Supplement 77-415 et seq) The revisor of statutes submits a copy of all rules and regulations filed during the previous year to the Joint Committee on Administrative Rules and Regulations (JCARR) at the beginning of each legislative session. The legislature may pass a bill modifying or rejecting an existing regulation or it may pass a resolution rejecting a proposed regulation or a proposed amendment to a regulation. During the interim, agencies may adopt temporary regulations after obtaining the approval of the Temporary Rules and Regulations Board, which is composed of the Chairman of the JCARR, the Secretary of State and the Attorney General, or their designees.

KENTUCKY — (K.R.S. 13.087) The Administrative-Regulations Review Subcommittee (three members) reviews all proposed regulations as to whether they conform to statutory authority and to the legislative intent of the statutes. If nonconforming, a regulation is returned to the agency with the legislative objections. If an agency does not revise the regulation, it is then presented to the appropriate legislative standing committee or joint interim committee for a second review as to statutory authority and legislative intent. If this committee raises objections, it is again returned to the agency for reconsideration, but the legislature does not have power to suspend a rule and the agency is only required to give "affirmative consideration" to legislative objections and is not bound to modify the rule. A 1974 act provided that all existing regulations be rescinded unless repromulgated by the agencies within one year.

LOUISIANA — (LRS 49-968 et seq) The legislature in 1976 passed a law providing that all rules proposed by agencies be submitted to a specified house and senate committee simultaneously upon their filing with the Department of the State Register. The committee may then hold a public hearing and issue a report to the agency expressing approval or disapproval of the rule. Although the committee report is printed in the State Register, the agency is not bound to accept it. A 1977 bill vetoed by the governor would have given the committees the power to stop a rule from going into effect by raising objections within 15 days after it is filed with the committee. The legislature would not have been required to act, but could have overridden the committee's objection by passage of a concurrent resolution. A 1978 law provides that if a committee finds a rule unacceptable, the committee will submit a report to the Governor. The Governor has five days to disapprove the committee report; if he does not, the agency must change or modify the rule.

MAINE — (5MRSA c. 308 §2501 et seq) A law enacted by the 1977 session provides that agencies submit all current rules to the legislature by January 15, 1978 for review by the appropriate standing committees. These committees must hold public hearings and recommend to the legislature an expiration schedule for all rules. A committee may recommend immediate expiration of a current rule. The legislature must then pass bills to implement these expiration schedules. All new rules which go into effect after January 1, 1978 automatically expire five years after their effectiveness unless the legislature passes a bill terminating their effectiveness in less than five years.

MARYLAND — (Md. Ann. Code 1977, Art 40, §40A) The Standing Committee on Administrative, Executive, and Legislative Review (five senators, five delegates) reviews regulations as they are published in the Maryland Register. The committee has no power to suspend or veto proposed regulations, but its views are often persuasive with agencies when it raises questions about proposed regulations.

MICHIGAN — (Mich. St. Ann. 24.201 - 24.315, Act No. 108, Public Acts of 1977) The Joint Committee on Administrative Rules (three senators, five representatives) has a 60-day period in which to approve or disapprove all proposed rules. Under a 1977 law passed over the governor's veto and effective on January 1,

1978, if the committee disapproves a rule or fails to approve it within 60 days, the rule cannot be adopted by the agency unless the legislature overrules the committee action within 60 days. The state supreme court has refused to consider a request by the governor for an advisory opinion on the constitutionality of this law. In addition, opinions of the attorney general have questioned the constitutionality of legislative disapproval of rules by concurrent resolution, rather than by bill. Legislative power to review and suspend regulation during the interim is authorized in Article IV, section 37 of the state constitution. Michigan has more than 50 years experience with some type of legislative oversight of administrative regulations.

MINNESOTA — (Minn. St. 3.965) The Legislative Commission to Review Administrative Rules, composed of five members of each house, may hold public hearings to investigate complaints concerning rules and, on the basis of testimony received, suspend any rule. In practice, however, the committee reviews all proposed rules. If a rule is suspended by the committee, such action must be sustained by the legislature at its next session. Before the committee suspends any rule, it shall submit it to the appropriate standing committees for their review and recommendation. Emergency rules are effective for only 90 days, during which time they must be repromulgated under the regular procedure in order to remain in effect beyond that time.

MISSOURI — (Sec 536.037, RSMo) Under a 1976 law, the legislature created the Joint Committee on Administrative Rules. The committee reviews all proposed rules published in the Missouri Register, but its review is advisory only. A proposed constitutional amendment authorizing legislative rejection of agency rules was submitted to the electorate by the legislature and was defeated in August, 1976. During the 1977 session, the legislature attached to many bills a provision that all agency rules promulgated under the respective bills expired in two years unless approved by a concurrent resolution of the legislature. An additional provision attached to many bills mandated either the expiration of the rules promulgated under the authority of the respective bills, the repeal of the promulgating power, or both, on November 30, 1981.

MONTANA — (Sec. 2-4-401 et seq, MCA 1978) An Administrative Code Committee was established in 1975 to review all proposed rules. This committee makes recommendations for action by the agencies to the legislature which, by joint resolution, can repeal or compel the amendment or adoption of a rule. Legislation enacted in 1977 mandates that all bills authorizing agencies to promulgate rules include a statement of legislative intent. The new law (SB 37) also shifts the burden of proof to the agency in any subsequent legal action challenging the rule as having been adopted in an "arbitrary and capricious disregard" of the purpose of the authorizing statute. Another 1977 law (SB 120) allows the committee to poll the members of the legislature by mail during the interim to determine whether a proposed rule is consistent with legislative intent.

NEBRASKA — (Neb. Rev. St. Section 84-901 et seq) The Administrative Rules and Regulations Review Committee reviews proposed rules and recommends to the

legislatures appropriate action. The legislature may repeal, change, alter, amend, or modify the original law granting the authority to promulgate rules or general program authority. Under a new law, effective January 3, 1979, the committee has the authority to suspend rules if they do not reflect legislative intent or are contrary to the state's Administrative Procedure Act.

NEVADA — (Chap. 233B. 101 et seq NRS) Under a 1977 law, all proposed regulations are submitted to the Nevada Legislative Commission, which must review them at its next monthly meeting. If the commission objects to a regulation, it is returned to the agency, which must resubmit either the same regulation or an amended version to the commission. The regulation is forwarded to the speaker and the senate president for referral to the appropriate standing committee. The legislature can enact legislation amending the statute under which the objectionable regulation was promulgated.

NEW HAMPSHIRE — (NHRSA Sec. 541 A) In 1977, the legislature enacted a law creating a Joint Committee on Review of Agencies and Programs. The committee will have the power to sunset agencies and review their existing rules. In addition, the law provides the standing committees the power to review rules prior to their effective date and may send the rules back to the agency if the rules are not in the proper format.

NEW YORK — (NYSA, Legislative Law, Art. 5-B, Secs. 86-88) A 1978 law formally created the Administrative Regulations Review Commission. The Commission, originally created by joint resolution in 1977, is composed of three senate and three assembly members. Agencies must file their proposed rules with the commission at least 21 days prior to effectiveness. The commission has the power to examine agency rules as to their statutory authority, their compliance with legislative intent, their impact on the economy and government operations, their impact on affected parties. In addition, the commission may hold hearings and has been granted subpoena power.

NORTH CAROLINA — (G.S. 120-30.19 et seq) A 1977 law created the Administrative Rules Review Committee as a permanent committee of the Legislative Research Commission (LRC). All rules adopted by agencies are filed with the director of the LRC, who refers them to the review committee. The committee has up to 60 days to review these rules and may file objections. The agency must respond within 60 days of receipt of the committee's report. Agencies are not bound to comply with the committee's objection, and if they don't, the rule goes to the full LRC for review. The LRC can make recommendations for legislative action to the General Assembly if the agency fails to comply with any commission objections. The law also provides for selective review of all preexisting regulations. It is effective on October 1, 1977 and expires June 30, 1979.

OHIO — (Sec. 101.35, 111.15, 119.01, & 119.03 of Rev. Code) A 1977 law created the Joint Committee on Agency Rules Review with seven members from each

houses. All proposed rules must be submitted to the committee 60 days prior to adoption. If during that time, the committee disapproves a rule, a concurrent resolution to that effect is introduced. The legislature must adopt the resolution within 60 days to nullify the rule. A new rule promulgated during the interim may go into effect, but the committee and the legislature may disapprove the rule by concurrent resolution within the first 60 days of the next regular session. The committee may meet during the interim and may suspend objectionable rules by a two-thirds vote of its members. The suspension must be sustained by the legislature by concurrent resolution within 60 days of the convening of the next regular session.

OKLAHOMA — (75 O.S. Supp. 1977 Sec. 308) Prior to 1976 the law provided that any administrative rule or regulation could be disapproved by the legislature by joint resolution. In 1976, this was amended providing for disapproval by either house by simple resolution, rather than requiring the consent of both. Review of proposed rules and regulations is conducted by the Division of Legal Services under the direction of the Legislative Council.

OREGON — (ORS 171.705 to 171.713) The Legislative Counsel Committee reviews all proposed rules and reports to the legislature. There is no formal procedure for further legislative action beyond this informational review. Rules are reviewed to determine whether they conform with the intent and scope of enabling legislation, have been adopted in accordance with all legal procedures, and are consistent with constitutional provisions. The committee may recommend changes in the statute authorizing the rule-making powers.

SOUTH CAROLINA — (Act No. 176 of 1977) The legislature in 1977 passed legislation amending and clarifying a 1976 law creating the state register and providing for legislative review and approval of agency rules. Under the new law, the Legislative Council supervises the printing of the state register, in which are printed all proposed and promulgated rules. Proposed agency rules are reviewed by the appropriate standing committee in each house. These rules cannot go into effect until 90 days after receipt by the legislature. The legislature may adopt a joint resolution during that time either approving or disapproving the rule. The 90-day review period continues to run as long as the legislature is in session. After *sine die* adjournment, the 90-day period ceases to run until the convening of the next regular session. Emergency rules can be promulgated for 90-day periods only when the legislature is not in session.

SOUTH DAKOTA — (SDCL 1-26-1.1, 1.2) The Interim Rules Review Committee reviews all proposed rules and makes recommendations to agencies and to the legislature on any suggested amendments to the Administrative Procedures Act. By a 5/6 vote of the six-member committee, a proposed rule can be suspended until 30 days after the next legislative session convenes. Unless the committee suspension is sustained by the legislature through passage of a bill within this 30-day period, the rule may take effect. All proposed rules submitted to the committee must have attached to it a fiscal note, prepared by the agency and reviewed

by the Bureau of Finance and Management. The fiscal note must include the fiscal impact on state government, the assumptions made in preparing the statement and the source of statistics used.

TENNESSEE — (Tenn. Code Ann. 4-535) Agency rules are referred in the House to the Government Operations Committee and in the Senate to the appropriate standing committee for review. The reviewing committee of either house may suspend the effectiveness of any agency rule or the amendment or repeal of an agency rule. Such suspension is effective until rescinded by the committee or by joint resolution of the General Assembly. Any suspension must be preceded by 15 days notice to the agency of any contemplated action. Suspension is effective upon written notice from the committee chairman to the Secretary of State. (The Attorney General of Tennessee has advised the Governor that this procedure is unconstitutional and that any suspension of a rule can only be accomplished by passage of a bill by a majority of both houses and approval by the Governor.)

TEXAS — (Chap. 321, Acts of 65th Legislature, 1977) Under a 1977 law enacted by the legislature, agencies must forward to the presiding officers of each house copies of all proposed rules at the same time they are filed with the secretary of state. The proposed rules are then referred to the appropriate standing committees for review. The legislature has a minimum of 30 days to review prior to the rules taking effect. The committees can send statements supporting or objecting to proposed rules to the agency during that time, but its powers are advisory. Standing committees don't meet very often, if at all, during the 19-month interim between biennial sessions.

VERMONT — (3 V.S.A. 817-820) The General Assembly of Vermont in 1976 created an eight-member joint committee on administrative rules. This committee reviews any proposed rule and may recommend its amendment or withdrawal upon a finding that the proposed rule is arbitrary, beyond the authority delegated to the agency, or contrary to legislative intent. Committee recommendations are submitted to the next session of the General Assembly. Objectionable rules may be repealed by joint resolution of the General Assembly.

WEST VIRGINA — (Code of W. Va. Art.3, Chap 29a) The 1976 session created the Legislative Rule-making Review committee composed of six members from each house. All proposed rules must be submitted to the committee, which has six months to review them. If the committee disapproves a rule, the agency cannot take any "action to implement such disapproved rule or regulation" The legislature may, by resolution, reverse the committee's disapproval, but the rule remains suspended unless the legislature acts. Regulations implementing federally-subsidized programs may be disapproved by the committee, but unless the legislature sustains the disapproval by the end of the regular session, the rule goes into effect.

WISCONSIN — (W.S.A. 13.56) The Joint Committee for Review of Administrative

Rules (five senators, five representatives) reviews rules and may suspend them until the next session. Any suspension must be ratified by the legislature by passing a bill at the next session. The committee also reports biennially to the legislature and has the authority to direct an agency to promulgate a statement of policy or an interpretation of a rule under the Administrative Procedures Act.

WYOMING — Wyo. Stat. Sec. 28-82 to 28-89. Under this 1977 law, all existing rules and all future proposed rules must be filed with the Legislative Service Office (LSO). The LSO reviews the rules and reports to the Legislative Management Council. If the LSO has found a rule objectionable and the council agrees, the disapproved rule goes to the governor, who may agree to repeal the rule. If the governor disagrees with the council's recommendation, the council can only recommend that the full legislature act through what is called a "legislative order" (presumably a statute). Legislative action must take place before the end of the legislative session in order to nullify a rule.

10
LEGISLATIVE POWERS AND PROCEDURES

Legislative Review of Administrative Regulations

STRUCTURE & PROCEDURES									COMMITTEE POWERS					LEGISLATIVE POWERS				
STATE	Statute Citation	Type of Reviewing Committee(s)	Name of Reviewing Committee	Composition of Reviewing Committee	Rules Reviewed: All	Rules Reviewed: Selective	Time Limit for Submission of Proposed Rules to Legislature	Time Limit for Legislative Review of Rules	Review of Proposed Rules Prior to Effectiveness	Review of Existing Rules	Automatic Approval — Passes Without Objections	Suspension Power Held by Committee	Time Limit of Committee Suspension	Legislature Must Sustain Committee Action or Recommendation	Time Limit for Legislative Affirmation	Method of Legislative Affirmation	Legislature Can Amend or Modify	Advisory Powers Only
ALASKA	AS §24.20.400 & §44.62.320	Joint	Admin. Regulations Review Committee	3 House 3 Senate (1 minority member from each house)	X		45 Days	None	X	X	X	X	30 days after convening of reg. session	X	30 days after convening of regular session	Concurrent Resolution		
ARIZONA	ARS 41-511.01 (1)	(2)	(2)	(2)		X (3)	Immediately After Adoption	N/A		X	N/A			X	1 year	Concurrent Resolution	X	
ARKANSAS	Ark. Stat. 5-806 et. seq.	Joint	Ark. Legislative Council	15 House 11 Senate	X		10 days before agency hearing	10 days	X	X	X			N/A	N/A	N/A	N/A	X
COLORADO	Colo. Rev. St. 24-4-103	Joint	Committee on Legal Services (4)	4 House 4 Senate (Maj. & Min. Floor Leaders of each House Judiciary Committee Chairmen; 1 minority member from each house)	X (4)		20 days after approval by Atty. General	None		X	N/A			X	None	Statute	X	
CONNECTICUT	CGS 4-170 et. seq.	Joint Bipartisan	Legislative Regulation Review Committee	8 House 8 Senate (Equal Maj.-Min. representation)	X		Simultaneously with filing with Atty. General	65 days	X	X	X	X	Until reversed by legislature	(5)		Joint Resolution	X (6)	
FLORIDA	Fla. Stat. Sec. 11.60	Joint	Joint Administrative Procedures Committee	3 House 3 Senate (1 minority member from each house)	X		21 days	20 days	X	X	X			N/A	N/A	N/A	N/A	X
GEORGIA	Ga. Stat. 3A-101(c)	Standing Committees (in session)	N/A	N/A	X		20 days	None	X		X			X	End of regular session	Concurrent Session (7)		
IDAHO	Idaho Code Sec. 67-5217, 67-5218	Standing Committees (in session)	N/A	N/A	X		Beginning of each session	45th day of regular session		X	N/A			X	End of regular session	Concurrent Resolution	X	
ILLINOIS	Ill. Rev. Stat. Chap. 127, §1007 et. seq.	Joint Bipartisan	Joint Committee on Administrative Rules	6 House 6 Senate (Equal Maj.-Min. representation)	X		45 days	45 days	X	X	X			N/A	N/A	N/A (8)		X
IOWA	Iowa Code Ann. Chap. 17A	Joint	Administrative Rules Review Committee	3 House 3 Senate (1 minority member from each house)	X		35 days (9)	35 days	X (10)	X (10)	X	(11)	(11)	N/A	N/A (10)	N/A (10)	N/A	X (10)
KANSAS	KSA 1979 Supp. 77-415 et. seq.	Joint	Joint Committee on Administrative Rules and Regulations	5 House 5 Senate	X		By Dec. 31 of each year	May 1	X	X	X			X	End of regular session	(12)	X	
KENTUCKY	KRS 13.087	Joint	Administrative Regulations Review Subcommittee (13)	3 members appointed by Legislative Research Commission (at least 1 minority member)	X		(14)	30 days	X	X	X			(15)	N/A	N/A (15)	N/A (15)	X
LOUISIANA	L.R.S. 49:951 et. seq.	Standing Committees	N/A	N/A	X		17 days prior to adoption of rule (16)	Committee must submit report to legislature by 2nd day of session	X		X			N/A	N/A	N/A	N/A	X

10
LEGISLATIVE POWERS AND PROCEDURES

Legislative Review of Administrative Regulations

	STRUCTURES & PROCEDURES								COMMITTEE POWERS					LEGISLATIVE POWERS				
STATE	Statute Citation	Type of Reviewing Committee(s)	Name of Reviewing Committee	Composition of Reviewing Committee	Rules Reviewed: All	Rules Reviewed: Select Few	Time Limit for Submission of Proposed Rules to Legislature	Time Limit for Legislative Review of Rules	Review of Proposed Rules Prior to Effective Date	Review of Existing Rules	Automatic Approval of Proposed Rules Without Objections	Suspension Power Held by Committee	Time Limit of Committee Suspension	Legislature Must Sustain Committee Action on Regulation	Time Limit for Legislative Affirmation	Method of Legislative Affirmation	Legislature Can Amend or Modify	Advisory Powers Only
ALASKA	AS 24.20.400 & 44.62.320	Joint	Administrative Regulation Review Committee	3 House 3 Senate (1 minority member from each house)	X		45 Days	None	X	X	X	X	30 days after convening of reg. session	X	30 days after convening of regular session	Concurrent Resolution		
ARIZONA	ARS 41.511.01 (7)	(7)	(7)	(7)		(11)	Immediately After Adoption	N/A		X	N/A			X	1 year	Concurrent Resolution	X	
ARKANSAS	Ark. Stat. § 5.806 et seq	Joint	Ark. Legislative Council	16 House 16 Senate	X		10 days before agency hearing	10 days	X	X	X			N/A	N/A	N/A	N/A	X
COLORADO	Colo. Rev. St. 24.4.103	Joint	Committee on Legal Services (9)	4 House 4 Senate (Maj. & Min. from Leaders of each House Judiciary Committee Chairman; 1 minority member from each house)	X (9)		20 days after approval by Atty General	None		X	N/A			X	None	Statute	X	
CONNECTICUT	CGS 4-170 et seq	Joint Bipartisan	Legislative Regulation Review Committee	8 House 8 Senate (Equal Maj.-Min. representation)	X		Simultaneously with filing with Atty. General	65 days	X	X	X	X	Until rejected by legislature	(1)		Joint Resolution	X (8)	
FLORIDA	Fla. Stat. Sec. 11.60	Joint	Joint Administrative Procedures Committee	3 House 3 Senate (1 minority member from each house)	X		21 days	20 days	X	X	X			N/A	N/A	N/A	N/A	X
GEORGIA	Ga. Stat. 3A-104(c)(f)	Standing Committees (in session)	N/A	N/A	X		20 days	None	X		X			X	End of regular session	Concurrent Session (7)		
IDAHO	Idaho Code Sec. 67.5217, 67.5218	Standing Committees (in session)	N/A	N/A	X		Beginning of each session	45th day of regular session		X	N/A			X	End of regular session	Concurrent Resolution	X	
ILLINOIS	Ill. Rev. Stat. Chap. 127, §1001 et seq	Joint Bipartisan	Joint Committee on Administrative Rules	6 House 6 Senate (Equal Maj.-Min. representation)	X		45 days	45 days	X	X	X			N/A	N/A	N/A (9)		X
IOWA	Iowa Code Ann. Chap. 17A	Joint	Administrative Rules Review Committee	3 House 3 Senate (1 minority member from each house)	X		35 days (15)	35 days	X (15)	X (15)	X	(15)	(15)	N/A	N/A (15)	N/A (15)	N/A	X (15)
KANSAS	KSA 1976 Supp. 77.415 et seq	Joint	Joint Committee on Administrative Rules and Regulations	7 House 5 Senate	X		By Dec. 31 of each year	May 1	X	X	X			X	End of regular session	(17)	X	
KENTUCKY	KRS 13.087	Joint	Administrative Regulations Review Subcommittee (13)	3 members appointed by Legislative Research Commission (at least 1 minority member)	X		(11)	30 days	X	X	X			(13)	N/A	N/A	N/A (15)	X
LOUISIANA	L.R.S. 49.951 et seq	Standing Committees	N/A	N/A	X		15 days prior to adoption of rule (16)	Committee must submit report to legislature by 2nd day of session	X		X			N/A	N/A	N/A	N/A	X

STRUCTURES & PROCEDURES									COMMITTEE POWERS					LEGISLATIVE POWERS				
STATE	Statute Citation	Type of Reviewing Committee	Name of Reviewing Committee	Composition of Reviewing Committee	Rules Reviewed: Pro.	Rules Reviewed: Exist.	Time Limit for Submission of Proposed Rules to Legislature	Time Limit for Legislative Review of Rules	Review of Proposed Rules Prior to Effect. Hearings	Review of Existing Rules	Automatic Approval of Proposed Rules Without Objections	Suspension Power Held by Committee	Time Limit of Committee Suspension	Legislature Must Sustain Committee Action or Suspension Action	Time Limit for Legislative Affirmation	Method of Legislative Affirmation	Legislature Has Power to Amend or Modify	Advisory Powers Only
MAINE	5 MRSA § [illegible] et seq. (17)	Joint Standing Committees	N/A	N/A	X (17)		None	None		X (17)	N/A			X (17)	None	Statute (17)		
MARYLAND	Md. Ann. Code 1977, Art. 40, § 40A	Joint	Joint Standing Committee on Administrative, Executive and Legislative Review	5 Senate 5 House (Proportionate party representation)	X		None, but cannot go into effect without its being printed in Maryland Register	45 days	X	X	X			X	End of regular session	Statute	X	
MICHIGAN	Mich. St. Ann. 24.2[illegible] et seq. (18)	Joint	Committee on Administrative Rules	[illegible] House, [illegible] Senate	X		20 days before adoption	60 days	X			X (19)	[illegible] (19)			[illegible]		
MINNESOTA	Minn. St. [illegible]	Joint	Legislative Commission to Review Administrative Rules	5 House 5 Senate	X		None	None		X	N/A	X (20)	[illegible] regular session	X	[illegible] regular session	Statute		
MISSOURI	Sec. 536.037 R.S. Mo.	Joint	Committee on Administrative Rules	5 House 5 Senate (At least 2 minority members from each house)	X		None	None		X	N/A			N/A	N/A	N/A	N/A	X
MONTANA	MCA [illegible] Sec. 2-4-[illegible] et seq.	Joint Bi-partisan	Administrative Code Committee	4 House 4 Senate (At least 2 minority members from each house)	X		None	None		X	N/A			X (21)	None	[illegible]	X	
NEBRASKA	Neb. Rev. St. Sec. 84-901 et seq.	Standing Committees	Administrative Rules and Regulations Review Committee	9 members	X		None	None	X	X	N/A	X	During current session	X	N/A	N/A	N/A	X (22)
NEVADA	[illegible] NRS et seq.	Joint	Legislative Commission (23)	6 House 6 Senate	X		After adoption	Not more than 35 days		X	N/A			N/A	N/A	N/A	N/A	X
NEW HAMPSHIRE	RSA Sec. 541A	Standing Committees	N/A	N/A	X		None	30 days	X	X	X			N/A	N/A	N/A	N/A	X
NEW YORK	[illegible]	Joint	Administrative Regulations Review Commission	3 House 3 Senate (1 minority member from each house)	X		30 days prior to effective date	None	X	X				X	None	Statute		X
N. CAROLINA	GS 120-30.[illegible] et seq.	Joint	Administrative Rules Review Committee	7 members of General Assembly	X		Simultaneously with filing with Atty. General	45 days		X	N/A			N/A	N/A	N/A	N/A	X (24)
OHIO	Sec. 101.35, [illegible], 119.03 & 119.031 of Rev. Code	Joint	Joint Committee on Agency Rule Review	5 House 5 Senate (At least 2 minority members from each house)	X		60 days before adoption by agency	60 days	X	X	X	X (25)	90 days after convening of next regular session	X	90 days	Concurrent resolution	X	

	[illegible] Rev. Code		an Agency Rule Review	(At least 1 minority members from each house)			adoption by agency							of next regular session					

STRUCTURES & PROCEDURES									COMMITTEE POWERS					LEGISLATIVE POWERS					
STATE	Statute Citation	Type of Reviewing Committee(s)	Name of Reviewing Committee	Composition of Reviewing Committee	Rules Reviewed: All	Rules Reviewed: Select Few	Time Limit for Submission of Proposed Rules to Legislature	Time Limit for Legislative Review of Rules	Review of Proposed Rules Prior to [illegible]	Review of Existing Rules	Automatic Approval of Proposed Rules Without Objections	Suspension Power Held by Committee	Time Limit of Committee Suspension	Legislature Must Sustain Committee Action to Implement Action	Time Limit for Legislative Affirmation	Method of Legislative Affirmation	Legislature Can Amend or Modify	Advisory Powers Only
OKLAHOMA	75 O.S. Supp. 1977 Sec. [illegible]	Standing Committees	N/A	N/A	X		10 days after adoption	None		X	N/A			X	[illegible] days	Simple res. of either house		
OREGON	ORS [illegible] to [illegible]	Joint	Legislative Counsel Committee	[illegible] House [illegible] Senate	X		Simultaneously with filing with Sec'y of State	None	X	X	X			N/A	N/A	N/A	N/A	X
S. CAROLINA	Act No. 176 of 1977	Standing Committees	N/A	N/A	X		None, but cannot go into effect until [illegible] days after submission	[illegible]	X		X			X	[illegible] days after rule filed with legislature	Joint resolution		
S. DAKOTA	SDCL 1-26-[illegible] et seq.	Joint	Interim Rules Review Committee	3 House 3 Senate (At least 1 minority member from each house)	X		[illegible] days before agency hearing	[illegible] days prior filing with Sec'y of State	X	X	X	X (27)	[illegible] days after convening of regular session	X	[illegible] days after convening of regular session	Statute	X (28)	
TENNESSEE	Tenn. Code Sec. [illegible]	House: Govt Operations Committee; Senate: Standing Committees	N/A	N/A		X	After adoption	None		X	N/A	X (29)	Until rescinded by legislature			Joint resolution		
TEXAS	Chap. [illegible] Acts of [illegible] Leg., 1977	Standing Committees	N/A	N/A	X		[illegible] days prior to adoption		X		X			N/A	N/A	N/A	N/A	X
VERMONT	3 V.S.A. [illegible]	Joint	Legislative Committee on Administrative Rules (30)	[illegible] House [illegible] Senate (At least 1 minority member from each house)	X		2 weeks before adoption	[illegible] days	X	X	X			X	End of next regular session	Joint resolution	X	
W. VIRGINIA	Code of W. Va. Art. 3 Chap. 29A	Joint	Legislative Rule-making Review Committee	[illegible] House [illegible] Senate (At least 2 minority members from each house)	X		None, but cannot go into effect unless filed with committee	[illegible] Months	X		X	X (31)	Until rescinded by legislature	(31)	(31)	Concurrent resolution		
WISCONSIN	W.S.A. 13.56	Joint and Standing Committees	Joint Committee for Review of Administrative Rules	[illegible] House [illegible] Senate (At least 1 minority member from each house)	X		None	[illegible] days	X	X	N/A	X	End of next regular session	X	End of next regular session	Statute	X	
WYOMING	Wyo. Stat. Sec. [illegible] et seq.	Joint	Legislative Management Council	[illegible] members of legislature (33)	X		[illegible] days prior to adoption	Within [illegible] days after submission by agency (32)		X	N/A			X ([illegible])		Legislative [illegible]		

FOOTNOTES

1. Provides for legislative review of only the rules promulgated by State Parks Board.
2. Not specified; presumably, review done by appropriate committee.
3. Performs review during interim; during session, standing committees perform review.
4. Staff reviews all new rules and makes recommendations to committee.
5. Legislature "may . . . either sustain or reverse a vote of disapproval" by the committee, but it is not mandatory.
6. Committee may disapprove a part of a rule.
7. Committee must introduce resolution within first 30 days of next regular session. If resolution adopted by two-thirds majority of each house, rule is void. If resolution adopted by less than two-thirds majority, it must be submitted to governor for veto or approval.
8. Committee may submit "appropriate legislation to implement" committee recommendations.
9. Published in Iowa Administrative Code 35 days prior to adoption.
10. If the committee objects to a rule on the grounds it is "unreasonable, arbitrary, capricious or otherwise beyond the authority delegated to that agency," the burden of proof is then on the agency in any judicial review.
11. By a two-thirds vote the committee may delay for further study the effective date of a proposed rule for up to 70 days.
12. By concurrent resolution for proposed rules; by statute for existing rules.
13. Permanent subcommittee of the Legislative Research Commission (LRC).
14. No time limit, but proposed rule can't go into effect unless it is filed with the LRC and reviewed by the Administrative Regulations Review Subcommittee.
15. If proposed rule is found objectionable by the Administrative Regulations Review Subcommittee and by an interim or standing committee, it is submitted to the House and Senate "for such action as (they) may determine to be appropriate."
16. Also, agencies must submit, 30 days prior to regular session, an annual report to the legislature on all rules adopted over the past year.
17. Under this 1977 law, joint standing committees review all existing rules and introduce legislation stating an expiration date of 5 years or less for each rule. All new rules automatically expire in 5 years unless legislation is enacted to terminate them within 5 years.
18. In addition, Article IV - Section 37 of the Michigan constitution provides for the legislative power to review and suspend rules.
19. Suspension power enacted by legislature over governor's veto in 1977 and effective in January 1, 1978.
20. Suspension is delayed for 60 days to allow appropriate standing committee to review rule.
21. During the interim, the committee may poll the members of the legislature by mail to determine if a rule is consistent with legislative intent.
22. Legislature has power to repeal or amend statute granting promulgating or general program authority upon recommendation of the committee.
23. Standing committees review rules if agency returns unchanged a rule objected to by the Legislative Commission. If standing committee also objects, rule is submitted to legislature for "proper" action.
24. If a rule is found objectionable by the committee and agency refuses to modify, the rule is reviewed by Legislative Research Commission. If LRC objects and the agency refuses to modify, LRC reports to the General Assembly, recommending "legislative action."
25. Committee may suspend a rule only during the interim by a two-thirds vote of the members.
26. Committee may suspend a rule by a three-fourths vote of the members.
27. Legislature has authority to amend, but it has never been used.
28. Committee can suspend rule after 15 days notice to agency.
29. There is also an executive branch committee which reviews rules consistency with legislative intent and the authority and policies of the governor.
30. Disapproval of a rule by committee prevents the agency from taking any "action to implement such disapproval rule or regulation," unless the committee action is reversed by the legislature. However, disapproval of a rule implementing a federally subsidized program must be sustained by the legislature before the end of the regular session, or the committee's action is reversed.
31. The Legislative Management Council submits its report to the governor. If the governor objects to the report, he must file his objections with the council within 15 days. The council reports to the legislature each session, at which time, the legislature can prohibit implementation of rule by "legislative order."
32. Council consists of eleven members, which includes presiding officers and the majority and minority floor leaders, or their designees, of the Senate and House; one member from each political party selected at large from the Senate and House; and one member selected at large from either the Senate or House by the ten above-named.

27. Legislature has authority to amend, but it has never been used.
28. Committee can suspend rule after 15 days notice to agency.
29. There is also an executive branch committee which reviews rules consistency with legislative intent and the authority and policies of the governor.
30. Disapproval of a rule by committee prevents the agency from taking any "action to implement such disapproved rule or regulation," unless the committee action is reversed by the legislature. However, disapproval of a rule implementing a federally subsidized program must be sustained by the legislature before the end of the regular session of the committee's action is reversed.
31. The Legislative Management Council submits its report to the governor. If the governor objects to the report, he must file his objections with the council within 15 days. The council reports to the legislature each session, at which time, the legislature can prohibit implementation of rule by "legislative order."
32. Council consists of eleven members, which includes presiding officers and the majority and minority floor leaders, or their designees, of the Senate and House; one member from each political party selected at large from the Senate and House; and one member selected at large from either the Senate or House by the ten above-named

11
LEGISLATIVE STAFF OFFICES

Legislative Staff Offices Providing Staff Assistance for Legislative Review of Administrative Regulations

ALASKA
Legislative Affairs Agency
Division of Legal Services
Pouch Y
Juneau, AK 99811
907/465-3867

ARIZONA
(not specified)

ARKANSAS
Arkansas Legislative Council
315 State Capitol
Little Rock, AR 72201
501/371-1937

COLORADO
Legislative Drafting Office
Rule-Review Section
Room 30, State Capitol
Denver, CO 80203
303/839-2045

CONNECTICUT
Legislative Commissioner's Office
Legislative Legal Services
Room 113, State Capitol
Hartford, CT 06115
203/566-5030

FLORIDA
Joint Administrative Procedures Committee
120 Holland Building
Tallahassee, FL 32304
904/488-9110

GEORGIA
(review by standing committees; no central staff assistance)

IDAHO
Idaho Legislative Council
State House
Boise, ID 83702
208/384-2475

ILLINOIS
Joint Committee on Administrative Rules
520 South 2nd Street, Suite 100
Springfield, IL 62706
217/785-2254

IOWA
Administrative Rules Review Committee
State House
Des Moines, IA 50319
515/281-3084

KANSAS
Legislative Research Department
Room 545 - North
State House
Topeka, KS 66612
913/296-3181

KENTUCKY
Legislative Research Commission
Capitol Building
Frankfort, KY 40601
502/564-3136

LOUISIANA
Louisiana Legislative Council
Committee Staff Division
State Capitol, P.O. Box 44012
Baton Rouge, LA 70804
504/389-6141

MAINE
Legislative Research Office
State House
Augusta, ME 04333
207/289-2101

MARYLAND
Department of Legislative Reference
90 State Circle
Annapolis, MD 21401
301/269-2361

MICHIGAN
Joint Committee on Administrative Rules
735 Washington Square Building
Lansing, MI 48901
517/373-6476

MINNESOTA
Legislative Commission to Review Administrative Rules
Room 3, State Capitol
St. Paul, MN 55155
612/296-1143

MISSOURI
Thomas Graham
Committee on Administrative Rules
301B East High Street
Jefferson City, MO 65101
314/635-9191

MONTANA
Office of the Legislative Auditor
Room 135, State Capitol
Helena, MT 59601
406/449-3122

NEBRASKA
Revisor of Regulations
State House, Room 1012
Lincoln, NE 68509
402/471-2567

NEVADA
Legislative Counsel Bureau
Legal Division
Legislative Building
Carson City, NV 89710
702/885-5627

NEW HAMPSHIRE
Office of Legislative Services
Division of Administrative Procedures
Room 107, State House
Concord, NH 03301
603/271-3680

NEW YORK
Administrative Regulations Review Commission
Senate Section
23rd Floor, Alfred E. Smith Office Building
Albany, NY 12247
518/455-2731

Assembly Section
13th Floor, Agency Building #4
Empire State Plaza
Albany, NY 12247
518/455-3416

raham
e on Administrative

High Street
City, MO 65101
91

A
the Legislative Auditor
. State Capitol
IT 59601
22

Regulations
se, Room 1012
E 68509
67

Counsel Bureau
sion
Building
ty, NV 89710
27

MPSHIRE
Legislative Services
f Administrative
ires
, State House
NH 03301
80

K
ative Regulations Review
ssion
ction
, Alfred E. Smith Office
Y 12247
31

Section
, Agency Building #4
ate Plaza
Y 12247
16

NORTH CAROLINA
Administrative Rules Review Committee
Legislative Research Commission
2129 State Legislative Building
Raleigh, NC 27611
919/733-7044

OHIO
Legislative Service Commission
State House, Fifth Floor
Columbus, OH 43215
614/466-7977

OKLAHOMA
Oklahoma Legislative Council
305 State Capitol
Oklahoma City, OK 73105
405/521-3201

OREGON
Office of Legislative Counsel
S101 State Capitol
Salem, OR 97310
503/378-8148

SOUTH CAROLINA
Legislative Council
P.O. Box 11417
Columbia, SC 29211
803/759-2334
(committee staff also assists standing committees)

SOUTH DAKOTA
Legislative Research Council
Code Counsel
State Capitol
Pierre, SD 57501
605/224-3251

TENNESSEE
Joint Legislative Services Committee
State Capitol
Nashville, TN 37219
615/741-3511
(provides staff to standing committees)

TEXAS
(standing committee staff)

VERMONT
Legislative Council
State House
Montpelier, VT 05602
802/828-2231

WEST VIRGINIA
Legislative Rulemaking Review Committee
State Capitol
Charleston, WV 25305
(no phone listed)

WISCONSIN
David Stute
Legislative Council
State Capitol
Madison, WI 53702
608/266-1304

WYOMING
Legislative Service Office
213 Capitol Building
Cheyenne, WY 82002
307/777-7881

STATEMENT IN FAVOR OF BALLOT PROPOSITION NO. 1

The legislature, when it writes a law, cannot foresee all of the possible details involved in carrying it out. The appropriate administrative agency is therefore allowed to write regulations which spell out who does what, when, where, and how. If the agency does no more than this no problem is created.

Unfortunately agency regulations are not always consistent with the intent the legislature had in passing the law. Sometimes an agency will get carried away and put out regulations that cause an unnecessary burden for the citizens. The First State Legislature realized this and provided a simple solution. The legislature could, by a concurrent resolution passed by a majority of each house, annul an administrative regulation. Such a resolution is not subject to the governor's veto.

The Alaska Supreme Court recently held, in a 3-2 decision, that the legislature must use a bill rather than a resolution to annul administrative regulations. But a bill is subject to the governor's veto. The governor can hardly be expected to approve a bill overruling his subordinates, who put out the regulation in the first place. The present governor has already vetoed one such bill.

The court ruling gives agency regulations equal standing with laws, *even though no single person elected by the voters has approved them.*

Our government is wisely based on dividing power among the three branches: legislative, executive and judicial. The current situation gives entirely too much power to the executive branch. Your approval of this constitutional amendment will restore the better balance under which the state operated from 1961 to 1980.

— Charles H. Parr
Chairman, House Judiciary Committee
Alaska State Legislature

STATEMENT AGAINST BALLOT PROPOSITION NO. 1

This is still another proposal by the legislature to free itself from the checks and balances of our constitution. Under the constitution, the legislature has all the power it needs to make laws and annul administrative regulations. This proposal does not aid the public in any way. What it does is allow the legislature to exercise its power to annul regulations in disregard of the constitutional requirements that each bill have a single subject, that each bill have three readings in each house, and that there be a recorded vote of the ayes and nays on final passage. It would also free the legislature from the executive veto and it would allow it to ignore the prohibition against special and local legislation.

The Alaska Supreme Court has recently ruled that the legislature must abide by the constitution's checks and balances on its power whenever it exercises that power, including when it acts to annul regulations. This amendment is intended to overrule the court's decision and erode the constitution's safeguards. It aids legislators, not the public, and it should be rejected.

— Katherine D. Nordale
Delegate to the Alaska
Constitutional Convention,
1955-1956

Arguments printed on this page are the opinions of the authors and have not bee checked for accuracy by any official agency.

BALLOT PROPOSITION NO. 1

LEGISLATIVE ANNULMENT OF REGULATIONS

Constitutional Amendment

(Committee Substitute for House Joint Resolution No. 82 Amended)

SUMMARY

(As it will appear on the November 4, 1980 General Election Ballot)

This proposal would permit the legislature to annul, by adopting a resolution, regulations adopted by state agencies. Annulment of regulations by resolution was authorized by the First State Legislature in 1959; however, in 1980 the Alaska Supreme Court held that the constitution permits the legislature to annul a regulation only by passing a bill, which requires three readings of the bill and a roll call vote which is recorded. The procedures for adopting resolutions are governed by legislative rules and require only the approval of the resolution by voice vote of a majority of both houses. A bill passed by the legislature annulling a regulation could be vetoed by the governor or repealed by referendum. A resolution annulling a regulation could not.

BALLOT FORM:

A vote "FOR" adopts the amendment.

A vote "AGAINST" rejects the amendment.

FOR ☐

AGAINST ☐

VOTE CAST BY MEMBERS OF 11TH STATE LEGISLATURE ON FINAL PASSAGE

Senate	(20 members):	Yeas 18	Nays 0	Absent or Not Voting 2
House	(40 members):	Yeas 36	Nays 0	Absent or Not Voting 4

LEGISLATIVE AFFAIRS AGENCY SUMMARY

(As required by law)

This proposal would add a new section, section 22, to Article II of the state constitution. If adopted, the proposal would authorize the legislature to annul or set aside a regulation which has been adopted by a state department or agency. In order to annul a regulation, the legislature could adopt a concurrent resolution by approval of the resolution by majority vote of the membership of each house of the legislature. The resolution specifies the date on which the annulment of a regulation would take effect.

FULL TEXT OF PROPOSED CONSTITUTIONAL AMENDMENT

SECTION 22. ANNULMENT OF REGULATIONS. The legislature by a concurrent resolution approved by a majority vote of the membership of each house may annul a regulation adopted by a state department or agency. The annulment of the regulation is effective on the date the concurrent resolution is approved by both houses unless the concurrent resolution specifies a different date.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3500

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M December 29, 1982

SUBJECT: Constitutional amendments: regulations
(Work Order No. 13-0408)

TO: Representative-elect Mike Szymanski

FROM: Edward H. Hein EHH
Legislative Counsel

You have asked what legislation has passed the legislature proposing amendments to the Alaska constitution that would give the legislature power to change or modify administrative regulations.

The only measure proposing such an amendment that was passed by the legislature was CS HJR 82 am in 1980. The proposal appeared on the November 4, 1980 general election ballot as ballot proposition no. 1. It was rejected by the voters.

The identical proposal was again passed by the House in 1982 as HJR 77. The Senate, however, passed a different version of the resolution. The House would not concur in the amendment; the Senate would not recede from its amendment. The Conference Committee reported out the House version, but the Legislature adjourned without voting on the measure again.

I have been unable to locate any other proposed constitutional amendments on the subject that have passed the legislature.

EHH:lmb

Enclosure

FILE WITH HJR 5

Alaska State Legislature

SENATOR
ROBERT H. ZIEGLER, SR.
307 BAWDEN STREET
KETCHIKAN, ALASKA 99901

While in Juneau
POUCH V
JUNEAU, ALASKA 99811

Senate

VICE CHAIRMAN
SENATE RESOURCES COMMITTEE

MEMBER
SENATE JUDICIARY COMMITTEE

WESTERN STATES LEGISLATIVE
FORESTRY TASK FORCE

WESTERN CONFERENCE COUNCIL
OF STATE GOVERNMENTS

May 5, 1983

Senator Bill Ray,
Chairman
Senate Judiciary Committee
Alaska State Legislature
Juneau, Alaska

Re: HJR 5

Dear Bill:

This proposed constitutional amendment is well known to both of us. It provides that a concurrent resolution approved by a majority vote of each house may annul state departmental or agency regulations.

As you are well aware, the voters knocked this proposition down by at least a four-to-three margin in the general election in 1980. If we do pass it out, and if it does go on the ballot, we should make sure that the public is educated.

Art Peterson wrote a letter to Charlie Bussell on April 13th in which he took a fairly dim view of the legislation.

Regards,

Robert H. Ziegler, Sr.

RHZ:lk

FILE WITH HJR 5

STATE

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

May 11, 1983

The Honorable Bill Ray
Chairman
Senate Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: HJR 5 (constitutional amendment on annullment of regulations)

Dear Senator Ray:

The Senate committee schedule shows that your committee will be taking up House Joint Resolution No. 5 on May 13. The Department of Law strongly opposes that resolution, and I am attaching to this letter a copy of my April 13, 1983 letter to Representative Bussell on the same subject.

Essentially, the Department of Law's position is that:

1. In 1980, the voters rejected a virtually identical resolution by a substantial margin -- 82,010 to 58,808. We should assume that the voters knew what they were doing.

2. The legislature does not need this short-cut method to perform its proper oversight function.

   (A) The Alaska Administrative Procedure Act includes provisions giving multiple notice to the legislature and enabling legislators to participate in the regulations-adoption process.

   (B) If an executive-branch agency, in adopting a regulation, goes in a direction that is not supported by the current legislature, the legislature may legislate further -- enact guidelines, limitations, prohibitions.

3. A concurrent resolution, the vehicle proposed by this resolution to annul administrative regulations, is not covered by the constitutional and other provisions applicable

to bills, which provisions tend to assure protection of and accountability to the public.

4. An annullment resolution's bare negative statement does not afford the executive-branch agency responsible for executing the law any guidance in performing its constitutionally mandated duties.

Thank you for this opportunity to comment on this measure.

Yours truly,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Art Peterson

Arthur H. Peterson
Assistant Attorney General

AHP:jb

Attachment

cc w/enc.: Hon. Mike Szymanski
Alaska House of Representatives

cc: Emil Notti
Legislative Assistant
Governor's Office

Bill Sheffield, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

April 13, 1983

The Hon. Charlie Bussell
Chairman
House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: HJR 5 (constitutional amendment on annulment of regulations)

Dear Representative Bussell:

I understand that House Joint Resolution No. 5 is on your committee's agenda for today. This letter is to briefly express the Department of Law's opposition to that resolution.

The amendment proposed by HJR 5 is virtually identical to the Eleventh Legislature's CS HJR 82 am. (The only difference between the two amendments is that HJR 5 provides for the annulment to take effect 30 days after approval of the resolution, whereas the earlier version provided that it would take effect on the date the current resolution is approved.) That amendment was rejected by the voters on November 4, 1980 by a vote of 82,010 to 58,808. That is a substantial margin, and we should assume that the voters knew what they were doing. They should not be repeatedly subjected to the same ballot issue.

As you know, these proposals for constitutional amendments are intended to reverse the effect of the Alaska Supreme Court's decision in State of Alaska v. A.L.I.V.E Voluntary, 606 P.2d 769 (1980). The essence of that court decision, which held invalid the statute (AS 44.62.320(a)) that provided for legislative annulment of administrative regulations by concurrent resolution, is that (1) procedurally and substantively valid regulations have the force of law, (2) an "annulment" of a regulation has the effect of changing the law, and (3) when the legislature changes the law, it must do so by following the constitutional procedures for law-making. Since AS 44.62.320(a)'s concurrent resolutions do not follow the procedures for law-making, the court held that that statute was invalid.

As the court pointed out in Plumley v. Hale, 594 P.2d 497, 500 (Alaska 1979), the various constitutional provisions specifying the mechanics of legislation are "designed to engender

a responsible legislative process worthy of the public trust." Those provisions are "to ensure deliberation prior to passage, to ensure that the requisite majority of each house affirmatively votes to enact a bill into law, and to provide a public record of the vote cast by each legislator." Id. Those procedures include, for example, the single subject rule of art. II, sec. 13; the requirement of separate readings on separate days, under art. II, sec. 14; the requirement that the ayes and nays on final passage be recorded in the legislative journal, under art. II, sec. 14; and, of course, the provisions on gubernatorial veto, under art. II, secs. 15 and 16.

Those provisions provide for public accountability, public notice, and an opportunity for the public to prepare for the application of new law. Regulations adopted under the Alaska Administrative Procedure Act require public notice, opportunity for public comment, legal review by the Department of Law, and a deferred effective date. The current version of this proposed constitutional amendment has improved upon some earlier versions by the provision for a thirty-day deferral of the effective date, but neither the other constitutional protections nor the corresponding Administrative Procedure Act protections would be applicable to the annulment of an administrative regulation.

The proposed constitutional amendment before you is not a "mere adjustment" or technical correction of the constitution. It proposes a substantial realignment of the constitutionally specified powers. Although the adoption of administrative regulations by an administrative agency is considered a "quasi-legislative function," it is an essential part of the executive branch's execution or implementation of a statute. The proposed amendment, by providing for legislative annulment, by means a concurrent resolution, provides for the legislature to make what could be considered executive-branch decisions -- executing a program created by statute. This concentration of power in the legislative branch -- both enacting the program statute and then participating in executing it -- does not reflect a sound policy in the face of the separation-of-powers doctrine as expressed in the Federalist Papers and other writings. That doctrine, of course, involves a blending or sharing of powers. The purpose is to avoid an inappropriate concentration of power.

In addition, when the legislature makes a simple negative statement by merely annulling a regulation, it interferes with the executive-branch's execution of the statute and offers nothing in its place. For example, the regulation involved in the A.L.I.V.E. Voluntary case was a Department of Revenue regulation dealing with permits for such things as lotteries. It contained several elements: a dollar limitation, a time limitation, and a provision for the cumulative effect of the value of individual prizes in reaching the dollar limitation. When the legislature annuls a provision such as that, is the agency to

interpret that annulment as meaning that the dollar limitation is not appropriate, or that the time period is not appropriate, or that the cumulative effect is not appropriate? If the agency concluded that the legislature must have been primarily concerned about the dollar limitation, and adopted a new regulation specifying a different dollar amount, would it be guessing right?

I do not believe that anyone questions the legislature's right to review the executive-branch's execution of the statute. Nor does anyone question the legislature's right to enact statutes setting guidelines and imposing limitations or prohibitions. We may disagree as to the merit of a particular guideline or prohibition, but not as to the right of the legislature to enact it (subject, in some circumstances, to the applicability of other constitutional provisions).

The Alaska Administrative Procedure Act (AS 44.62) provides a carefully structured system with many opportunities for legislator-involvement in the adoption of administrative regulations. If one of those opportunities was missed, or proved otherwise unavailing in some circumstance, further legislation might be appropriate. Such legislation would, of course, supersede the offending regulation.

Chadha v. Immigration and Naturalization Service, 634 F.2d 408 (9th Cir. 1980), is currently on appeal to the United States Supreme Court. That case presents to the court the question of the validity of what has become known as the "legislative veto." A decision is expected by June of this year. Your committee might also find helpful the discussion in the official commentary to the 1981 Revised Model State Administrative Procedure Act, promulgated by the National Conference of Commissioners on Uniform State Laws; see, especially, the art. III introductory comments which discuss the legislative/executive/public interrelationship regarding administrative regulations.

Thank you for this opportunity to comment. I would be happy to discuss the matter further with you at your convenience.

Yours truly,

Norman C. Gorsuch
Attorney General

By: Arthur H. Peterson
Arthur H. Peterson
Assistant Attorney General

AHP/jb

cc: Emil Notti
Legislative Assistant
Governor's Office

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HJR 5 No. 2
Title: "...annulment of regulations..."
Sponsor: Repr. Szymanski
Requestor: House Judiciary Committee

II. FISCAL DETAIL

Agency Affected: Department of Law
Program Category Affected: General Go
BRU, Program of Subprogram(s) Affected
Legal Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY.87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Division Date: April 13, 1983
Approved by Commissioner: Richard L. Planer / FOR Norman C. Gorsuch, Attorney General Date: April 13, 1983
Department: Department of Law

Fiscal Note
Analysis

While the Department of Law opposes this resolution, we will limit our comments here to fiscal matters. This proposed amendment to the state's constitution, if adopted in the 1984 general election, will probably not have a direct fiscal impact on the department's operations. The department is statutorily responsible for reviewing all regulations for legality and form to insure consistency with the appropriate enabling legislation. The department also drafts regulations on behalf of other departments and assists other departments in drafting regulations that deal with highly complex matters requiring the attention of an attorney. Obviously, some of the time spent in these efforts will have been lost whenever a regulation has been annulled. Larger departments, which have the responsibility for carrying out major state programs, and who routinely draft numerous program operating regulations inhouse, will probably experience an even greater loss of staff time. The absence of statutorily mandated regulations, which would occur after annulment, could result in litigation from an adversely impacted industry or public interest group. The impact of such litigation cannot, in this case, be estimated in advance and therefore no cost impact can be shown.

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. House Joint Resolution No. 5 No. 1
Title Proposing an amendment to the Constitution of the State of Alaska relating to annulment of regulations by the legislature.
Requested by: House Judiciary Committee Date 4/13/83

II. FISCAL DETAIL
Agency Affected General Government
Program Category Affected Legislative Affairs Agency
BRU, Program, Or Subprogram(s) Affected Session
(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 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES	-0-	-0-				
200 TRAVEL	-0-	-0-				
300 CONTRACTUAL	-0-	-0-				
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL	-0-	-0-				

FUNDING (Thousands of Dollars)

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

POSITIONS None

FULL TIME						
PART TIME						
TEMPORARY						

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

Assuming that no special session is called for the express purpose of annulling regulations, it is estimated that this resolution will have no additional fiscal impact.

There is no additional cost to the Division of Elections to place an issue before the voters as that is the division's function.

IV. DATE 04-13-83 PREPARED BY Wally Harrison, Dir. of Admin. S
AGENCY Legislative Affairs Agency
PHONE 465-3850

Original: Legislative Finance
cc: Budget and Management

FILE WITH HJR5

Alaska State Legislature

SENATOR
ROBERT H. ZIEGLER, SR.
307 BAWDEN STREET
KETCHIKAN, ALASKA 99901

While in Juneau
POUCH V
JUNEAU, ALASKA 99811

Senate

VICE CHAIRMAN
SENATE RESOURCES COMMITTEE

MEMBER
SENATE JUDICIARY COMMITTEE

WESTERN STATES LEGISLATIVE
FORESTRY TASK FORCE

WESTERN CONFERENCE COUNCIL
OF STATE GOVERNMENTS

May 5, 1983

Senator Bill Ray,
Chairman
Senate Judiciary Committee
Alaska State Legislature
Juneau, Alaska

Re: HJR 5

Dear Bill:

This proposed constitutional amendment is well known to both of us. It provides that a concurrent resolution approved by a majority vote of each house may annul state departmental or agency regulations.

As you are well aware, the voters knocked this proposition down by at least a four-to-three margin in the general election in 1980. If we do pass it out, and if it does go on the ballot, we should make sure that the public is educated.

Art Peterson wrote a letter to Charlie Bussell on April 13th in which he took a fairly dim view of the legislation.

Regards,

Robert H. Ziegler, Sr.

RHZ:lk

FILE WITH HJR 5

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

May 11, 1983

The Honorable Bill Ray
Chairman
Senate Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: HJR 5 (constitutional amendment on annullment of regulations)

Dear Senator Ray:

The Senate committee schedule shows that your committee will be taking up House Joint Resolution No. 5 on May 13. The Department of Law strongly opposes that resolution, and I am attaching to this letter a copy of my April 13, 1983 letter to Representative Bussell on the same subject.

Essentially, the Department of Law's position is that:

1. In 1980, the voters rejected a virtually identical resolution by a substantial margin -- 82,010 to 58,803. We should assume that the voters knew what they were doing.

2. The legislature does not need this short-cut method to perform its proper oversight function.

   (A) The Alaska Administrative Procedure Act includes provisions giving multiple notice to the legislature and enabling legislators to participate in the regulations-adoption process.

   (B) If an executive-branch agency, in adopting a regulation, goes in a direction that is not supported by the current legislature, the legislature may legislate further -- enact guidelines, limitations, prohibitions.

3. A concurrent resolution, the vehicle proposed by this resolution to annul administrative regulations, is not covered by the constitutional and other provisions applicable

to bills, which provisions tend to assure protection of and accountability to the public.

4. An annullment resolution's bare negative statement does not afford the executive-branch agency responsible for executing the law any guidance in performing its constitutionally mandated duties.

Thank you for this opportunity to comment on this measure.

Yours truly,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Art Peterson

Arthur H. Peterson
Assistant Attorney General

AHP:jb

Attachment

cc w/enc.: Hon. Mike Szymanski
Alaska House of Representatives

cc: Emil Notti
Legislative Assistant
Governor's Office

STATE OF ALASKA

Bill Sheffield, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

April 13, 1983

The Hon. Charlie Bussell
Chairman
House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: HJR 5 (constitutional amendment on annulment of regulations)

Dear Representative Bussell:

I understand that House Joint Resolution No. 5 is on your committee's agenda for today. This letter is to briefly express the Department of Law's opposition to that resolution.

The amendment proposed by HJR 5 is virtually identical to the Eleventh Legislature's CS HJR 82 am. (The only difference between the two amendments is that HJR 5 provides for the annulment to take effect 30 days after approval of the resolution, whereas the earlier version provided that it would take effect on the date the current resolution is approved.) That amendment was rejected by the voters on November 4, 1980 by a vote of 82,010 to 58,808. That is a substantial margin, and we should assume that the voters knew what they were doing. They should not be repeatedly subjected to the same ballot issue.

As you know, these proposals for constitutional amendments are intended to reverse the effect of the Alaska Supreme Court's decision in State of Alaska v. A.L.I.V.E Voluntary, 606 P.2d 769 (1980). The essence of that court decision, which held invalid the statute (AS 44.62.320(a)) that provided for legislative annulment of administrative regulations by concurrent resolution, is that (1) procedurally and substantively valid regulations have the force of law, (2) an "annulment" of a regulation has the effect of changing the law, and (3) when the legislature changes the law, it must do so by following the constitutional procedures for law-making. Since AS 44.62.320(a)'s concurrent resolutions do not follow the procedures for law-making, the court held that that statute was invalid.

As the court pointed out in Plumley v. Hale, 594 P.2d 497, 500 (Alaska 1979), the various constitutional provisions specifying the mechanics of legislation are "designed to engender

03-C5LH

a responsible legislative process worthy of the public trust." Those provisions are "to ensure deliberation prior to passage, to ensure that the requisite majority of each house affirmatively votes to enact a bill into law, and to provide a public record of the vote cast by each legislator." Id. Those procedures include, for example, the single subject rule of art. II, sec. 13; the requirement of separate readings on separate days, under art. II, sec. 14; the requirement that the ayes and nays on final passage be recorded in the legislative journal, under art. II, sec. 14; and, of course, the provisions on gubernatorial veto, under art. II, secs. 15 and 16.

Those provisions provide for public accountability, public notice, and an opportunity for the public to prepare for the application of new law. Regulations adopted under the Alaska Administrative Procedure Act require public notice, opportunity for public comment, legal review by the Department of Law, and a deferred effective date. The current version of this proposed constitutional amendment has improved upon some earlier versions by the provision for a thirty-day deferral of the effective date, but neither the other constitutional protections nor the corresponding Administrative Procedure Act protections would be applicable to the annulment of an administrative regulation.

The proposed constitutional amendment before you is not a "mere adjustment" or technical correction of the constitution. It proposes a substantial realignment of the constitutionally specified powers. Although the adoption of administrative regulations by an administrative agency is considered a "quasi-legislative function," it is an essential part of the executive branch's execution or implementation of a statute. The proposed amendment, by providing for legislative annulment, by means a concurrent resolution, provides for the legislature to make what could be considered executive-branch decisions -- executing a program created by statute. This concentration of power in the legislative branch -- both enacting the program statute and then participating in executing it -- does not reflect a sound policy in the face of the separation-of-powers doctrine as expressed in the Federalist Papers and other writings. That doctrine, of course, involves a blending or sharing of powers. The purpose is to avoid an inappropriate concentration of power.

In addition, when the legislature makes a simple negative statement by merely annulling a regulation, it interferes with the executive-branch's execution of the statute and offers nothing in its place. For example, the regulation involved in the A.L.I.V.E. Voluntary case was a Department of Revenue regulation dealing with permits for such things as lotteries. It contained several elements: a dollar limitation, a time limitation, and a provision for the cumulative effect of the value of individual prizes in reaching the dollar limitation. When the legislature annuls a provision such as that, is the agency to

interpret that annulment as meaning that the dollar limitation is not appropriate, or that the time period is not appropriate, or that the cumulative effect is not appropriate? If the agency concluded that the legislature must have been primarily concerned about the dollar limitation, and adopted a new regulation specifying a different dollar amount, would it be guessing right?

I do not believe that anyone questions the legislature's right to review the executive-branch's execution of the statute. Nor does anyone question the legislature's right to enact statutes setting guidelines and imposing limitations or prohibitions. We may disagree as to the merit of a particular guideline or prohibition, but not as to the right of the legislature to enact it (subject, in some circumstances, to the applicability of other constitutional provisions).

The Alaska Administrative Procedure Act (AS 44.62) provides a carefully structured system with many opportunities for legislator-involvement in the adoption of administrative regulations. If one of those opportunities was missed, or proved otherwise unavailing in some circumstance, further legislation might be appropriate. Such legislation would, of course, supersede the offending regulation.

Chadha v. Immigration and Naturalization Service, 634 F.2d 408 (9th Cir. 1980), is currently on appeal to the United States Supreme Court. That case presents to the court the question of the validity of what has become known as the "legislative veto." A decision is expected by June of this year. Your committee might also find helpful the discussion in the official commentary to the 1981 Revised Model State Administrative Procedure Act, promulgated by the National Conference of Commissioners on Uniform State Laws; see, especially, the art. III introductory comments which discuss the legislative/executive/public interrelationship regarding administrative regulations.

Thank you for this opportunity to comment. I would be happy to discuss the matter further with you at your convenience.

Yours truly,

Norman C. Gorsuch
Attorney General

By: Arthur H. Peterson
Arthur H. Peterson
Assistant Attorney General

AHP/jb

cc: Emil Notti
Legislative Assistant
Governor's Office

HJR

7

COMMITTEE REPORT

SENATE

FURTHER:

Date: _____

Mr. President:

The Committee on _____ has had _____

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

Testimony of

JUDGE THOMAS B. STEWART

before the

SENATE STATE AFFAIRS COMMITTEE

HJR 7:
Constitutional Amendment
Election of the Attorney General

May 26, 1983

Members Present:

Senator Vic Fischer, Chairman
Senator Tim Kelly
Senator Bill Ray
Senator Pat Rodey
Senator Arliss Sturgulewski

TRANSCRIPT OF PROCEEDINGS

SENATOR FISCHER:

We next have Judge Tom Stewart with us. I might just, as a matter of introduction, say that Judge Stewart was a member of the Legislature in the 1950s, helped organize the Alaska Constitutional Convention, served as a secretary for the Convention, subsequently served in the State Senate, has been a very prominent judge, and is now before us. Tom?

JUDGE STEWART:

Thank you, Mr. Chairman. The question of an elected Attorney General, I think should be looked at from several different aspects of the issue. I would begin with a question of history, and it's kind of a truism that those who do not look at history are condemned to its errors. The history of this issue, just in Alaska, is that we had an elected Attorney General for forty-six years, from 1913 until 1959. The people who considered whether as a state we should continue to have an elected Attorney General included twenty-seven former members of the Legislature who had functioned under an elected Attorney General for many years in their combined experience, including an Attorney General who was elected, Ralph J. Rivers, and who came to the convention convinced that the Attorney General should be elected, and upon the basis of the debate there and the information that he learned from it, voted against the election of the Attorney General. The appointed Attorney General decision was ultimately made. Look to the history of other states, and I recall very clearly when a gentleman named Thomas

E. Dewey, who was the Governor of New York, came to Alaska in the late 1940s or the early 1950s, and met with political leaders in Alaska, and one specific word of advice that he made after his years of experience as Governor of New York and a leading prosecutor was: "Whatever you do, do not elect the Attorney General in your state."

Now, another aspect besides history, and we'll touch a little bit on the history of election of attorneys general in other states, but I think before doing so I would like to look a little bit at the nature of his functions. By nature, it's an error to label the Attorney General the attorney for the people. In fact he is not that. He is the attorney for the executive branch of the government. A governor is the Governor for the people, but not the Attorney General. A citizen cannot go up to his office and say, "I want an opinion." He will of necessity say to you: "we don't give opinions for the citizens; we give opinions for the executive branch and its agencies."

And I might pause a moment there; there's been an unfortunate history in Alaska that the Legislature has somehow looked to the opinions of the Attorney General as guidance for the meaning of the laws. In my judgment that's a serious error. The Legislature should have its own attorney. It should not look to the Attorney General.

Now, the Attorney General is like any other professional attorney. He is an attorney. His professional duty is to his client. His professional duty is to help his client realize his client's needs, not to make an independent judgment of what he thinks is right or wrong in

terms of his client's needs, but what his client thinks his needs are, and as a professional person, he should be looking to that.

Now, there's a mistaken view. Perhaps you might believe that somehow the Attorney General's opinions, which are published, are usually, hopefully, well considered, thought out, researched, and detailed--somehow have the quality of a judicial opinion. They do not. They are fundamentally different in nature, because they are not framed on an adversary basis. They are not based upon two sides genuinely, seriously opposed to one another, summoning every argument on the opposite sides. Rather they are framed like any other attorney's opinion, based on what he thinks his client's interests are. He's an advocate of that side, where a judge sits and listens to both sides. A judge, in effect, listens to cross examination. He listens to the argument, to the criticism of the argument, and to the counter criticism of the argument. The Attorney General has none of that in the framing of his opinions, and his opinions should not be viewed as if they had behind them the adversary process, which is fundamental to a judicial opinion or descision.

It's an error to think that the Attorney General can somehow satisfy pressing, immediate political concerns about a particular issue. What gives him the ability to try to read in what the newspapers are printing, or what he sees on TV, or what some constituents are saying, that that is the opinion of the majority of the people? He is not elected to determine what the policy of the government should be. I mean, he's not chosen to do that, whether elected or otherwise. He's chosen

to be the legal advisor to the executive branch, and he should not frame his opinions based on current political views. That's the Governor's choice. The Governor is the one that is chosen to fix the policy of the executive branch of the government, or it's the Legislature's choice in making the laws. Now, it would be a sorry state of affairs if the Attorney General framed his opinions, not on what his client desires to do to answer the public need, but what somehow is his reading of political opinion and then to color his professional legal opinion based on that kind of a view.

I have substantial personal experience. I served under an elected Attorney General for better than three years -- under two of them: under elected Attorney General Ralph J. Rivers and under elected Attorney General J. Gerold Williams. What the Attorney General decides cuts across the whole spectrum of the executive branch. He advises each and every department, and believe me, gentlemen and ladies, from what I saw in the operation of that office, his opinions, when he is elected, are colored by what he thinks that commissioner should do on a specific issue when he is going to be answering to the people in an election, rather than on what the policy of the executive branch will be in general.

If the Attorney General is elected you have built in conflict with the Governor. Wherever they have different personal views, there is going to be an expression of opinion and the Attorney General will determine what he thinks will help him politically, and not what will help the Governor on the other side; so that his opinions are going to

be

affected by his personal posture in the eyes of the electorate, rather than on what the right legal decision should be for the benefit of the executive branch. An elected Attorney General has a constant ambition to be the Governor, and is, therefore, necessarily in conflict with the elected Governor.

The problem of putting this issue to the vote of the people is that it's an issue that should not be viewed as an independent question. The question is not just whether the Attorney General should be elected. The question is what kind of an executive branch do you want? Now, you hear it commonly said that under our constitution we have a strong Governor. I suggest to you that that's a mistaken characterization. What you have is an accountable Governor, a Governor who can be held to account for the conduct of the entire executive branch. His strength is a function of the Legislature: what kind of laws the Legislature passes, what kind of limitations the Legislature puts on his authority. If you put an independent elected officer there, whose functions will cut across the entire executive branch, you can no longer hold the Governor accountable for what he does, because he may try to take action and the Attorney General can thwart it by his opinion.

Another reason why it should not go to the electorate is because there is an inadequate opportunity to debate this issue. You cannot put it in the perspective of what kind of an executive branch do you want. It's, as I say, an issue that should not

and cannot rationally be considered independently of that larger question of the nature of the executive branch, and if you put it in the form of the resolution that's before you today, that's not what will be before the voters to consider and to look at.

In my judgment, there is no sound argument in saying that forty-five states have elected attorneys general. If you get an elected Attorney General, believe me, you will not change it. You can never, as it were, take away an elected Attorney General from the electorate. I suggest to you that before you consider this serious question, that you should invite some governors from some other states where this system functions to testify to you what happens in their states. invite the Governor of New York, invite the Governor of California, invite the Governor of Washington, and see what they say to you about how an independent person in that office frustrates the capacity of the executive branch to operate.

Now, let me turn back to history just a little bit. There was some mention made previously about the Attorney General of the United States, and in history the form of our state government is patterned from the federal government. I don't think you've ever heard a serious voice raised that the Attorney General of the United States should be elected. He is the advisor to the President and to the executive branch as such. He is the supervisor of the prosecutors for the nation. But I don't think you hear any responsible, reliable voice on the national scene say that somehow the government of the United States would be better if the Attorney General were elected. And the

history of that idea is two hundred years old.

Now, I'd just like to quote to you a few sentences from the Federalist Papers, number 70, written by Alexander Hamilton in 1783. It was addressed to the people of the State of New York at the time in the Federalist Papers: "There is an idea which is not without its advocates that a vigorous executive is inconsistent with the genius of republican government." Now, I would remind you, republican government is representative government. It is a government where you, the elected representatives, are asked to make wise decisions, decisions that the electorate cannot in its forum make, but which take the kind of consideration that you people can give it. "Enlightened well-wishers to this species of government must at least hope that the supposition is destitute of foundation." "Energy in the executive is a leading character in the definition of good government." Now, energy is the capacity to make a decision and carry it out. If you elect the Attorney General, you will deprive the Governor of that energy. His energy will go to fighting with the enemy within his own ranks. His energy will be directed to the intrafamily warfare within his cabinet generated by having an independent and conflicting voice there.

The situation is not unlike having two governments in one city, like the City of Anchorage and the Borough of Anchorage, the City of Juneau and the Borough of Juneau. If you look to the history of our local governments, most of our major communities have wisely consolidated those into one, so that the energy of the people that run them is not in fighting between people in their own community

but in addressing the principal problems. And I say to you that you will deprive the executive branch of its capacity for energy, for making effective decisions, if you saddle the Governor with an opponent within his system.

I don't want to prolong the discussion, but I'm utterly, totally convinced that to allow this to happen, and if you put it to the vote of the people it's likely to happen, because you can't adequately debate it in that forum, you can't put it in its perspective. If you allow it to happen, you will have forever damaged the quality of Alaskan government.

SENATOR FISCHER:

Tom, thank you very much for your solid statement. Are there any questions or comments? Senator Ray?

SENATOR RAY:

Judge Stewart, you brought up something that's been on my mind for a good length of time, and that is the problem with the Attorney General's opinions, and why the Legislature seeks his opinions and puts a great deal of credibility toward them. For the last, oh, at least ten years or more, it would appear to me that most attorneys general have thwarted the will of the Legislature. When we pass a bill that has not been appreciated by the Administration, or the Attorney General finds that the Administration doesn't want to administer, he writes a letter saying it's unconstitutional and, therefore, saying that he is sworn to uphold the laws of the State of Alaska, that he is advising the Administration not to administer it. This is contrary to the

Constitution of the State of Alaska. It says that he cannot do that. He must seek judicial counsel, and the judiciary makes the determination, and you have validated that for me today; and in our times of acquaintance and friendship, I want to thank you most for that statement you made right there. But how can we approach the Attorney General, or how do we overcome that? That's why we seek the opinions, and that's why a lot of times we're more or less bound by them, or we are asking them, rather than just to have our--we must come to a compromise position rather than just to have our bills go down the tube or not be administered.

JUDGE STEWART:

May I respond, Mr. Chairman?

SENATOR FISCHER:

Certainly, Tom.

JUDGE STEWART:

I think you're absolutely right, and it seems to me, as I began, you should look at history. How does it happen that the Attorney General has such a pervasive influence in the Alaskan government? Well, when we were a young territory, a small territory, the Attorney General was the only legal officer to look to. The Legislature had no staff, and there grew up an aura, somehow, of something sacrosanct about the Attorney General, and it should not be. He should be no more and no less than a legal advisor to the Governor. Now, the Governor might be a better lawyer than the Attorney General. You might very well have a Governor who's a lawyer and who's elected, who

knows more about the law, who does his research more carefully, is a better professional person than the Attorney General. He should be able to look at the Attorney General's opinion and say, "thank you, Mr. Attorney General, you're good and I want to keep you on, but I'm not going to pay any attention to that opinion because I don't think it's any good." He should be free to do that. The Legislature should never be bound by the Attorney General in any way. My advice, apart from this thing, is to hire yourself counsel: a counsel to the Senate and a counsel to the House; and rely on them for your legal opinions about the validity of your legislation, not the Attorney General, because his duty is elsewhere.

SENATOR RAY:

But, isn't there some way? You see, where we're thwarted a lot of times is that he will advise the Governor that in his opinion it's unconstitutional, and that, therefore, the Governor should not administer it. And a lot of times, by the time an individual legislator, who knows he's in the right, he does not have the wherewithal to bring court action.

JUDGE STEWART:

To take this to the court?

SENATOR RAY:

Yeah. And a lot of times when they do, by the time the two years that it would take to get before the courts, in a lot of instances, it's a moot question. The guy has lost. So you just more or less seek a compromise position with the Administration in order to resolve and

get a half a loaf, rather than to take the whole thing.

JUDGE STEWART:

There's nothing that I know of in the constitution that says the Governor has to follow the opinion of the Attorney General. Just because the Attorney General says it's unconstitutional does not make it so. I know of no way you can answer that question that you put, Senator Ray, without persuading the Governor in the particular instance that he should not follow the opinion of the Attorney General in that instance--or to go get another opinion if you can, to have the Attorney General take another look at it.

SENATOR RAY:

Well, if there is nothing that makes that opinion sacrosanct, that says the Governor can't support the legislation if he wants to ...

SENATOR RODEY:

Well, it might be in his best political interest to have the Attorney General say that and ...

JUDGE STEWART:

That may very well be.

SENATOR RAY:

In fact he might even seek that opinion out so that he can avoid doing what is politically distasteful to him.

JUDGE STEWART:

If that's the case, I think you have no alternative but to summon some resource to get yourself into court. I'd be glad to answer any other ...

SENATOR FISCHER:

Thank you, Tom.

SENATOR STURGULEWSKI:

Mr. Chairman, just a comment, that this is a most provocative discussion of how the Attorney General has evolved and just in the few years that I've been here, why, you see us going to [Legislative] Legal Services when we want one opinion, we go to the Attorney General for another. I think this is worthy of some exploration. It seems to me, one, you could, of course, go to court more often to challenge that opinion, but I almost think it would have to be, to bring change, an evolutionary kind of a thing where you would, in fact, either give the status to your current legal services or hire independent counsel that would be available for advice and you start going there as opposed to what we do now, which is more and more to go to the Attorney General for their opinion. But that is interesting and it would be interesting maybe to see a catalog of things that you might do to bring about the kind of change that will bring more balance there. We use the Attorney General as the final word in a lot of cases.

SENATOR FISCHER:

Senator Ray?

SENATOR RAY:

Because we're forced to. We're forced to reach a compromise position because otherwise he will say in his opinion it's unconstitutional and then the Governor will say, okay, and it's not administered; and then we're up to the wall unless we have the financial resources, the

backing of somebody to get it into court in a rapid fashion and then have the court act upon it.

SENATOR STURGULEWSKI:

Your asking what?

SENATOR RAY:

See, well, I even had the crazy idea one time of asking for advisory opinions from the Supreme Court or from the Superior Court - just advisory opinions on matters of great state interest and just have them give an opinion of whether it was constitutional or not, and they didn't want to do it.

JUDGE STEWART:

Mr. Chairman, may I just add one note, without extending your time, in response to Senator Sturgulewski's comments? I think it might be useful for you to look to the pattern of some other states. Now, the Legislative Affairs Agency is one thing that does its research, and it has its attorney that advises it as a staff. What I'm talking about is counsel to the Senate ...

SENATOR STURGULEWSKI:

That's right. We haven't done that.

JUDGE STEWART:

... and counsel to the House, and you will find that pattern in other states. I happen to know quite well an excellent counsel to the California State Senate, and the nature of the function of his office is very important in the success of legislation in that state, and to giving the - of necessity - the majority in the Senate that chooses him, legal

opinions.

SENATOR FISCHER:

Senator Ray?

SENATOR RAY:

Then, again, Tom, we've been, at various and odd times, in the Legislature, either one house or the other, or both acting in concert, have hired outside counsel in particular areas of interest or to answer specific questions, but then we're always criticized by the public or by those critics of the Legislature who declaim to the public that the Legislature spends its money, they have hired these people to do thus and such, and it gives the appearance that the Legislature is a bunch of spendthrifts when they have legal officers they could go to like the Attorney General which they in error believe is available to us to tell us what is constitutional and what isn't.

JUDGE STEWART:

I appreciate the opportunity to appear, Mr. Chairman.

SENATOR FISCHER:

I really appreciate your testifying.

COMMITTEE REPORT

SENATE

FURTHER: FINANCE

5/27/83

Date: 6/1/83

Mr. President:

The Committee on JUDICIARY has had CS SSHJR 7 (s)

Proposing amendments to the Constitution of Alaska relating to the election of the attorney general.

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

CHAIRMAN

DO NOT PASS

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: CSSSHJR No. 7(Judiciary)
Title: "...election of the Attorney General."
Sponsor: House Judiciary (Orig.-Uehling)
Requestor: Senate State Affairs

II. FISCAL DETAIL

Agency Affected: Department of Law
Program Category Affected: General Govt.
BRU, Program of Subprogram(s) Affected:
Legal Services, Administrative Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING			*	*	*	*
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND			*	*	*	*
FEDERAL FUNDS						
OTHER (Specif Source)						

POSITIONS:

FULL-TIME			*	*	*	*
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

* Because expenditures would not begin until the latter part of FY 85, actual costs cannot be determined at this time. Please see Analysis.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues Director
Division: Administrative Services Division
Phone: 465-3672
Date: May 26, 1983

Approved by Commissioner: Richard K. Pegues/for Norman C. Gorsuch, Attorney General
Department: Department of Law
Date: May 26, 1983

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

2/01

CSSSHJR No. 7 (Judiciary)
Analysis

This resolution provides for a ballot proposition that would, if approved by the voters, amend the state's constitution by changing the position of attorney general from an appointed office to an elected office. The proposed amendments would also remove the governor's organizational and supervisory controls over any function or unit of government headed by the attorney general.

These controls are normally maintained through executive branch procedural requirements imposed on other executive branch agencies by the Department of Administration and the Office of Management and Budget. The controls are exercised by requiring that other departments obtain OMB's and Administration's approval for: purchasing, leasing and supply; professional services contracting; duplicating services; personnel administration and labor relations; equal employment opportunity programs; data processing, information management and telecommunications services; records management; preaudit accounting services; and budget preparation and budget management.

It will be very expensive for an elected attorney general to provide all or most of these services in-house. Although an attorney general may decide to use some of the centrally provided services, key areas such as: personnel; professional services contracting; purchasing, supply and leasing; data processing; and budget preparation and management, would have to be provided in-house if the attorney general's functions are to be at least reasonably free of the governor's supervision. In addition, it is more than likely that attorney timekeeping would be required throughout the Civil Division because most client agencies would not share the same priorities and program goals of an elected attorney general and they would undoubtedly insist that all interagency-funded legal services provided on their behalf be accurately documented and fully substantiated.

Additional costs, expressed in FY 83 dollars, that will provide for complete independence from the organizational and supervisory control of the governor are shown below. Even if the attorney general were to forego a part of this independence, the savings would only amount to 20 or 30% of the total cost because of the necessity to retain in-house control over the essential support services that determine a department's freedom of action.

Function	Positions	Salary/ Benefits	Other Position Costs		Total
Director's Office					
	(1) Budget Analyst R19		Travel	2,500	
	(1) Admin. Officer R17		Contractual	24,100	
	(1) Clk. Typist R8		Commod.-ongoing	5,400	
			Commod.-one-time	4,500	
			Equip.-one-time	18,100	
	(3)	113,805		54,600	168,405
Personnel					
	(1) Personnel Mgr. R21		Travel	2,500	
	(2) Personnel Analysts R16		Contractual	54,200	
	(1) Training Officer R18		Commod.-ongoing	14,400	
	(2) Personnel Tech.'s R12		Commod.-one-time	12,000	
	(1) Payroll Clerk R10		Equip.-one-time	24,100	
	(1) Clk. Typist R8				
	(8)	255,307		107,200	362,507
Property/Supply					
	(1) Materials Mgr. R21		Travel	2,500	
	(1) Purchasing Agent R18		Contractual	19,600	
	(1) Supply Officer R16		Commod.-ongoing	7,200	
	(1) Clk. Typist R8		Commod.-one-time	6,000	
			Equip.-one-time	19,300	
	(4)	161,843		54,600	216,443
Finance/Accounting					
	(1) Finance Officer R21		Travel	2,500	
	(1) Acct. Supervisor R16		Contractual	19,900	
	(1) Acct. Clerk R10		Commod.-ongoing	5,400	
			Commod.-one-time	4,500	
			Equip.-one-time	3,600	
	(3)	120,427		35,900	156,327

Attorney Timekeeping					
	(1) Accountant R18		Travel	1,800	
	(3) DP Clerks R11/R9		Contractual	33,000	
			Commod.-ongoing	7,200	
			Commod.-one-time	6,000	
			Equip.-one-time	16,000	
	(4)	111,023		64,000	175,023
Records Management					
	(1) Records Analyst R18		Travel	1,800	
	(1) Records Supervisor R15		Contractual	81,200	
	(1) Records Handler R12		Commod.-ongoing	9,000	
	(2) Microfilm Operators R10/R14		Commod.-one-time	7,500	
			Equip.-one-time	81,000	
	(5)	180,432		180,500	360,932
Data Processing/Communications					
	(1) DP Mgr. R21		Travel	2,500	
	(1) Programmer Analyst R18		Contractual	319,900	
	(1) DP/Comm. Sys. Supvr. R18		Commod.-ongoing	5,400	
			Commod.-one-time	4,500	
			Equip.-one-time	41,600	
	(3)	142,116		373,900	516,016
Duplication Svcs.					
	(1) Duplication Mgr. R19		Travel	1,000	
	(1) Printing Tech. R17		Contractual	74,500	
	(2) Machine Operators R12		Commod.-ongoing	57,200	
			Commod.-one-time	6,000	
			Equip.-one-time	154,800	
	(4)	163,768		293,500	457,268
TOTAL	(34)	1,248,721		1,164,200	2,412,921

Non-salary costs include anticipated space rental of 6,000 sq. ft. for the additional staff of 34, at $2.00 per sq. ft., per month, plus 2,000 sq. ft. each, for records management and duplication services. Also costed in is $200 per month per employee for contractual services to cover telephone, copying and postage. Ongoing commodities are estimated at $150 per month, per employee. New position costs include $1,500 per employee for one-time commodities (furniture and equipment costing less than $500 per item), and $1,200 per employee for new position equipment costing more than $500 per item. Special items include $15,000 for employee recruitment advertising for non-attorney job applicants, $5,000 for personnel system printing, and $20,000 for a data processing program to maintain EEO statistics. Word processors will cost $14,500 each for a total cost of $48,000. Records management equipment include storage devices and microfilm/graphics equipment totalling $75,000. Duplication equipment will cost approximately $150,000. DP terminals for both the DP section and the timekeeping section will cost $50,000. Data processing computer-time should be at $150,000 per year and an additional $150,000 is included to maintain and enhance the department's work management, timekeeping, opinion indexing, Westlaw and PROMIS systems.

The total additional cost of $2,412,921 is an enormous increase over the department's current administrative overhead of $449,800 projected for FY 84. It is, however, part of the price that must be paid if the proposal to have an elected attorney general is adopted by the electorate during the 1984 general election.

Another major cost area that will eventually occur as a result of changing from an appointed to an elected attorney general, will be a proliferation of special counsel on the staff of major departments. Historically, such counsel have been employed by executive branch agencies to give department heads a "second" opinion in controversial matters in states having an elected attorney general. Such counsel usually do not have the authority to litigate, but they do provide legal advice to department heads and submit amicus briefs in litigation affecting their department's programs. It is not unusual in these states to see four or five separate briefs filed in a single matter, in addition to the attorney general's brief, representing the varying viewpoints of different agencies. Costs for just a single special counsel, including secretarial assistance, total about $150,000 per year in 1983 dollars. Although it is impossible, at this time, to accurately say how extensive the use of in-house counsel will be if there is an elected attorney general, the additional cost for such counsel could easily exceed $1.0 million annually, within just a few years.

STATE OF ALASKA

Bill Sheffield, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

May 26, 1983

The Honorable Vic Fischer
Senator
Chairman, Senate State
Affairs Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: Elected AG

Dear Senator Fischer:

You have requested that the Department of Law respond to several aspects of CSSSHJR 7 (Jud). In particular, you have made inquiry regarding:

1. The fiscal impact CSSSHJR 7 (Jud) would have on state government operations;

2. A statement of my position on the proposed legislation;

3. Information on the pattern of elected attorneys general compared to appointed attorneys general in the United States;

4. Information on increased costs associated with utilizing "in-house" counsel for the executive agencies in addition to the elected attorney general.

Attached is a fiscal note and fiscal analysis prepared by my office with respect to CSSSHJR 7 (Jud). As with all fiscal notes, this represents a good faith estimate of the likely increase the proposed legislation would have on the operating budget. In preparing this fiscal note we used conservative estimates of the probable costs an elected attorney general would encompass. If anything, the costs may be higher.

I personally am opposed to CSSSHJR 7 (Jud). I have lived and practiced law in our state for most of my adult life. I am absolutely convinced that the needs of all Alaskans are best served by having an appointed attorney general. Election of one cabinet level official makes no more sense than a complete election of all commissioners.

The Governor, as the state's principal executive officer, needs to have a responsive and reliable Department of Law. I think good management requires an appointed attorney general, but more importantly common sense suggests that the attorney general selection be made by appointment. In our vast state, with disparate interests and citizens, the administration of state government requires a strong governor. The last thing our state needs is an elected attorney general who may have a personal or political agenda which varies from the position of the Governor. The friction between the two elected officials can lead to a less responsive state bureaucracy with a diffuse accountability to the electorate.

I could relate anecdotes which illustrate this from other jurisdictions having elected attorneys general. Instead, I would rather provide a quotation from the National Municipal League:

> All authorities on executive organization agree with the position embraced by the Model State Constitution for more than 40 years that administrative power and responsibility should be concentrated in a single popularly elected chief executive. There is growing recognition that the governor, as the representative of all the people, should be equipped with the constitutional status necessary to exercise constructive leadership as the chief lawmaker and political head of his state. 1/

Studies on administrative reorganization usually argue that fragmentation leads to irresponsibility, but a single chief executive can be held accountable through the electoral system and, as a consequence, can make the administration more responsive. In my opinion, the Governor of Alaska needs the flexibility and discretion that is implied in an appointed attorney general. Anything less will inevitably drive a wedge between the Governor and the Department of Law to the detriment of the citizens of our state.

You also requested comparative information on elected versus appointed attorneys general. Our research indicates that the Attorney General is popularly elected in forty-two states.

1/ National Municipal League, MODEL STATE CONSTITUTION (6th ed.) 65-66 (1963).

The Attorney General is appointed by the Governor in six states, three territories and the Commonwealth of Puerto Rico. In Maine, the Attorney General is selected by the Legislature while Tennessee's Attorney General is selected by the Supreme Court of that state. Historically, the Attorney General has been an appointive, rather than elective, official. In England, he was appointed by the Crown and only incidentally acquired elective status through a seat in Parliament. In Colonial America, Attorneys General were usually appointed by the Governor of the Colony. The Attorney General of the United States still serves at the pleasure of the President with the advice and consent of the Senate.

In response to your question on use and cost of additional counsel for the executive branch in states having elected attorneys general, I am of the opinion that this use (and cost) depends on the relationship between the Governor and the elected Attorney General. In a situation where an elected Attorney General and Governor are cooperative, cordial and share a similar political philosophy, the need for additional counsel will be reduced. Regrettably, this is not always the situation. A 1976 study by the National Governors' Conference explored the role of Governors' legal advisors. The study, which was based primarily on a questionnaire to these advisors, found problems in this relationship:

> In many States the relationship between the Governor and the Attorney General is not a smooth one. In addition to whatever political differences there may be between them, there are several operational areas of potential conflict. These include conflicts over the extent to which the legal talent employed by state agencies should report to the Attorney General or to the agencies; concern that the Governor cannot easily deal with the Attorney General because the Attorney General normally provides "yes-no" answers rather than discussions of the legal risk of various options; and the possible frictions that may normally occur in an attorney-client situation. Nevertheless, all but two of the legal advisors reported that they seek informal opinions for the Governor from the Attorney General. 2/

2/ National Governors' Conference, Center for Policy Research and Analysis, LEGAL ADVICE FOR THE GOVERNOR, 7 (November, 1976).

While I cannot estimate the actual use and cost of additional counsel to oversee the elected Attorney General on behalf of the Governor, I am convinced there will be some additional use by the Governor's office even in the best of times. I sadly regret that the citizens of our state will be required to pay for this additional layer of bureaucracy.

In addition, the heads of executive departments will hire their own attorneys. Thus, there will be a proliferation of special counsel on the staff of major departments. Historically, such counsel have been employed by executive branch agencies to give department heads a "second" opinion in controversial matters in states having an elected attorney general. Such counsel usually do not have the authority to litigate, but they do provide legal advice to department heads and submit amicus briefs in litigation affecting their department's programs. It is not unusual in these states to see four or five separate briefs filed in a single matter, in addition to the attorney general's brief, representing the varying viewpoints of different agencies. Thus, the courts and the public will be confused about state policy on many issues. In addition, the cost for such counsel could easily exceed $1.0 million annually, within just a few years.

As always, I would be delighted to answer any additional questions you may have.

Sincerely,

Norman C. Gorsuch
Attorney General

NCG:vrb

Attachment

HJR

66

COMMITTEE REPORT

SENATE

FURTHER:

Date May 29 1984

Mr. President

The Committee on _____ considered _____

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

[ ] do pass

[ ] do pass with attached amendment(s)

[ ] replace with/or adopt CS for _____
[ ] new title
[ ] same title and recommends _____

[ ] and attached a "LETTER OF INTENT" [ ] NEW FISCAL NOTE

[ ] reports it back without recommendation

[ ] recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

_____

_____

_____

_____

_____

_____

_____

_____

MEMBERS HAVING
OTHER RECOMMENDATIONS

_____

_____

_____

_____

_____

_____

_____

Chairman

Chairman recommendation

TO: Senator Bill Ray

FROM: Paula d. Scavera

DATE: May 25, 1984

RE: SCS HJR 66 (State Affairs)

The purpose of this resolution is to request Congress to make it illegal to remove from Alaska World War II artifacts unless the removal is authorized by the federal and state governments or unless the artifact is determined by the federal and state government to be hazardous to human or animal life in the area on which it is located.

COMMITTEES
Vice Chairman — Judiciary
Vice Chairman — Legislative Regulations Review
Resources
Alternate Sub Committee on Labor

Alaska State Legislature

While in Session
Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-3733

Home - District 15
Star Route Box 421
Eagle River, Alaska 99577
(907) 688-2526

House of Representatives

John J. Liska

February 23, 1984

M E M O R A N D U M

FROM: Representative John J. Liska

REFERENCE: HJR 66, relating to removal of WW II artifacts from the State.

The purpose of this Joint Resolution to request the Federal Government not to remove World War II artifacts from the State of Alaska.

Unless the removal is authorized by the Federal or State Government or if the Federal or State Government determines the artifacts to be hazardous to human or animal life.

The problem of removal of World War II artifacts has been and is an ongoing problem in our State.

Your packets contain:

A. Pages 30, 31 and 32 from a publication entitled "The Historical "Battle of Alaska" remains". These pages refer to various types of aircraft that crashed in Alaska and where they were removed to:

1. Douglas - O - 38F - removed to Air Force Base Museum in Dayton Ohio in 1968.

2. Stinson - A Trimotor - to Wisconsin in 1972 by J.D. Berry.

3. P - 51H and P - 40 - Steve Myers, Washington

4. U.S. Navy Vough OS ?U King Fisher - removed to the Smithsonian Institute.

5. B - 25 Mitchell Bombers

6. P - 39 Airacobras

Additionally, page 73 shows Japanese artifacts from World War II.

In addition in your packets, but not nearly as interesting, are letters from CAVPAC supporting HJR 66 and HB 678 and a copy of a letter from General Talley who was involved in the Alutian Campaign.

Another piece of back up material has been submitted by the North Star Chapter Pearl Harbor Survivors Association. I have made copies of the first three pages - which may or may not be the same artifacts as previously submitted in your packet.

JJL/tm

Besides the public museums such as the Smithsonian Institute and the Anchorage Historical and Fine Arts Museums, there are many small or private collections which display items of Alaskan history. Unfortunately, in many cases, Alaskans have no say in how the collections are handled.

History is repeating itself in the area of aviation history. It is seen in many examples of aircraft downed during World War II which are leaving the state.

A Douglas 0-38F had engine problems and crashed in 1941. It was removed to the Air Force Museum in Dayton, Ohio in 1968.

In 1972 a Stinson 'A' Trimotor which crashed in 1947 was removed to Wisconsin by J.D. Berry. Berry wrote to Wien Air Alaska and followed it up with a phone call to try and get the airline to purchase the plane for the cost of its removal, but there was no interest, so it was sent Outside in order to pay the costs for its removal.

Two P-51D's were pulled out near Stevens Village. Two more were found near Kotzebue, and three were removed from across Cook Inlet. One P-40 was removed from Amchitka Island in the Aleutians. All of these aircraft were removed by Steve Myers of Washington.

Another P-40 was removed from a site near Fairbanks in 1977 and was sold to a buyer at an unknown Lower 48 destination.

A United States Navy Vough OS2U Kingfisher which crashed during WW II on one of the small islands near Kodiak, was removed in the early summer months of 1979 for removal to the Smithsonian.

There have been numerous other cases. An ad in Flying Magazine's June '80 issue states that sale of "P-39 Airacobras. Recently recovered from a fresh water lake in the Alaskan Peninsula. Russian armament, 117 hour totals hours each. Make offer, would like aviation museum or same to purchase...Yakima, Washington..." A call from the United States Historical Aircraft Preservation Museum in Anchorage brought no response.

Three B-25 Mitchell bombers have left the state in the past two years, in flyable condition, headed for the Outside.

The United States Historical Aircraft Preservation Museum has been trying for several years to open a museum facility located at Merrill Field, but has been blocked from doing so because it has no planes to put into the facility. At the same time, the Planes of Fame Museum from Chino, California has been soliciting donations of Alaska aircraft on a a promise of opening an alaskan branch museum at some undetermined later date.

It has successfully acquired an A-26 from Dr. Donald Rogers, an H-21 helicopter from Bill Swift to help in removing aircraft downed in Alaska, a B-25 from Fairbanks. A wing insignia was donated to the Air Force Museum by Ted Spencer - the insignia coming from the wing on an

aircraft downed at Nome which was to have been used in reconstructing a P-63 Airacobra.

The Committee contends that Planes of Fame has an established reputation for flying, crashing and destroying one-of-a-kind aircraft, and of selling aircraft and aircraft parts in the Lower 48 and abroad in order to keep itself solvent.

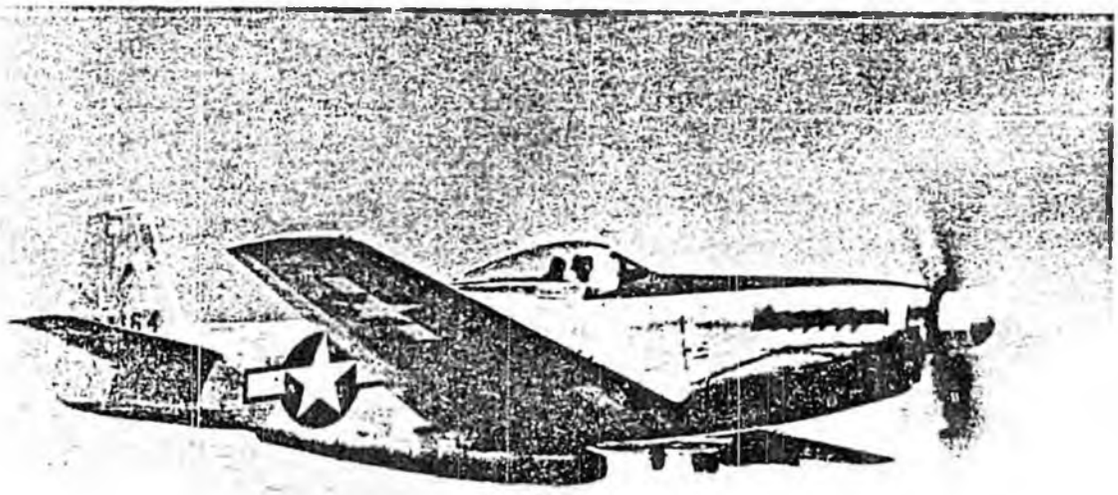
Flying in races and demonstrations for trophies and prize money has taken its toll on the vintage military aircraft.

The Committee feels that if it can adhere to those goals, Alaska will have one of the finest aviation museums in the U.S., preserving that part of Alaskan history.

The United States Historical Aircraft Preservation Museum is currently conducting negotiations for several planes of significant historical value, as well as parts and planes to be retrieved from bush areas.

Access to battlefields in the Aleutians is difficult because of the expense and weather conditions involved, but the area promises to be a fertile area to search.

If the museum has had a difficult time collecting actual aircraft for its displays, there has been no shortage of donations of other treasures. Photographs, blue prints from the Bell Factory which

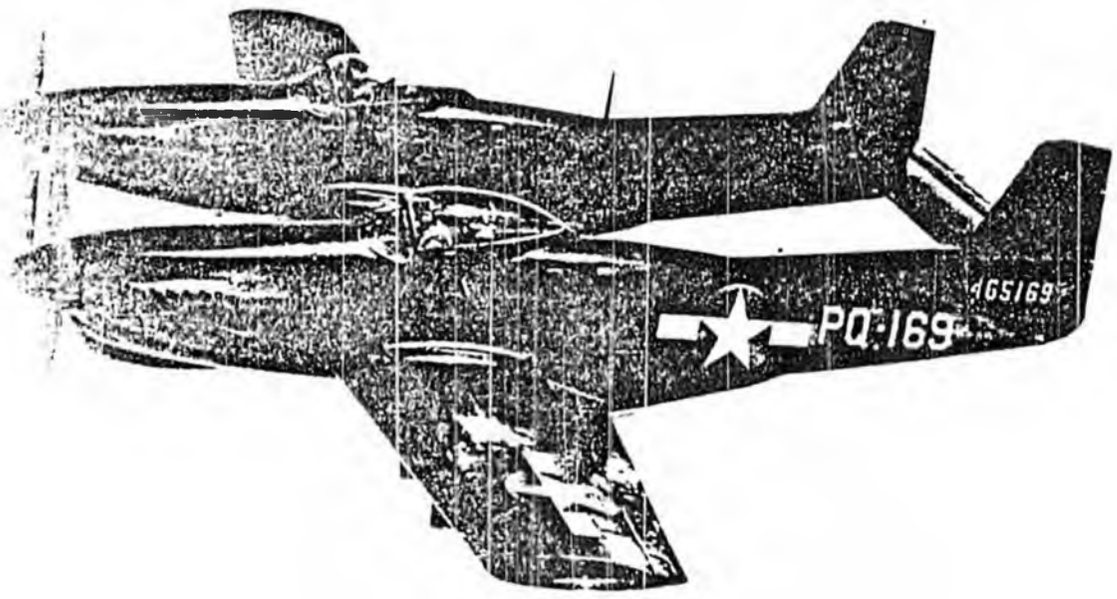


These fighters, P-51's Mustang, were used toward the end of WW II in Alaska. They did not see combat in the Aleutian Campaign. Three downed P-51's were located.

AAHS

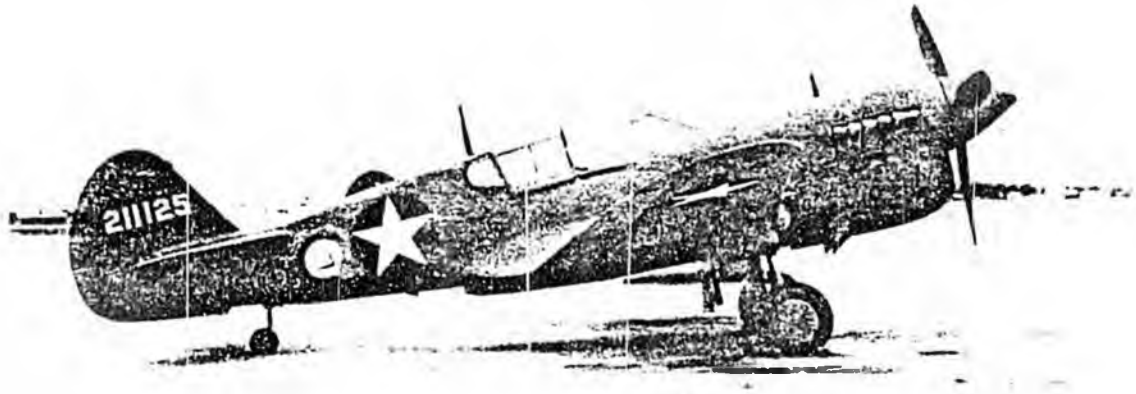
The P-82 Twin Mustang was based in Alaska after WW II. One was located that bellied in and is intact in the Interior.

USAF



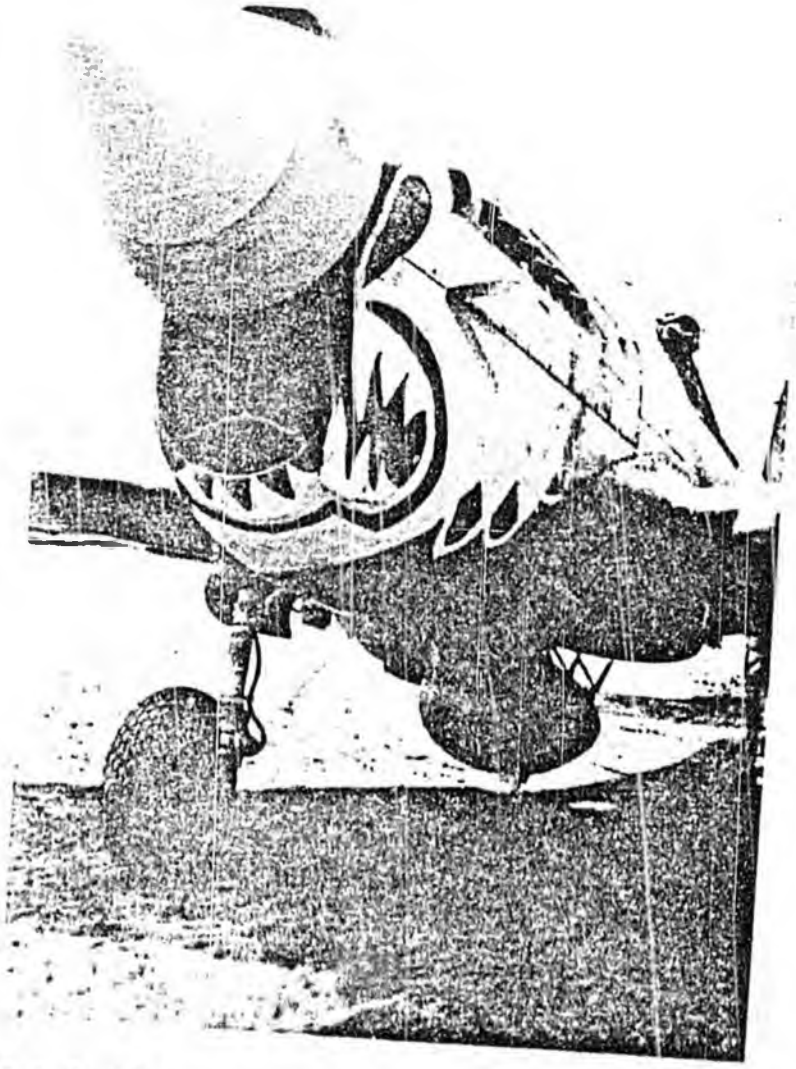
Curtiss P-40 was used by the USAF during the Aleutian Campaign. Eight P-40's were located: Five of them were abandoned, two were downed, and one is in the bottom of a fresh water lake. Also several brand new P-40's were buried in crates in the Aleutians.

RWT



Approximately 48 Lend Lease P-40's came through Alaska on their way to Siberia. At present Moscow is the only place in the world that has one of the Lend Lease P-40's. Two more were located in the Interior.

GFP



This is a Curtiss P-40 called the "Aleutian Tiger." It was used in combat by the United States during the Aleutian Campaign. Four of them were located.

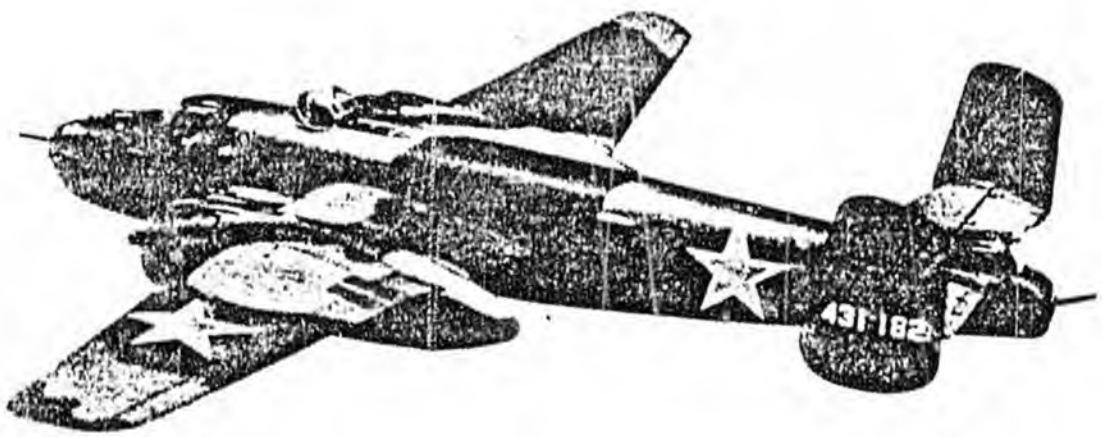
USAF

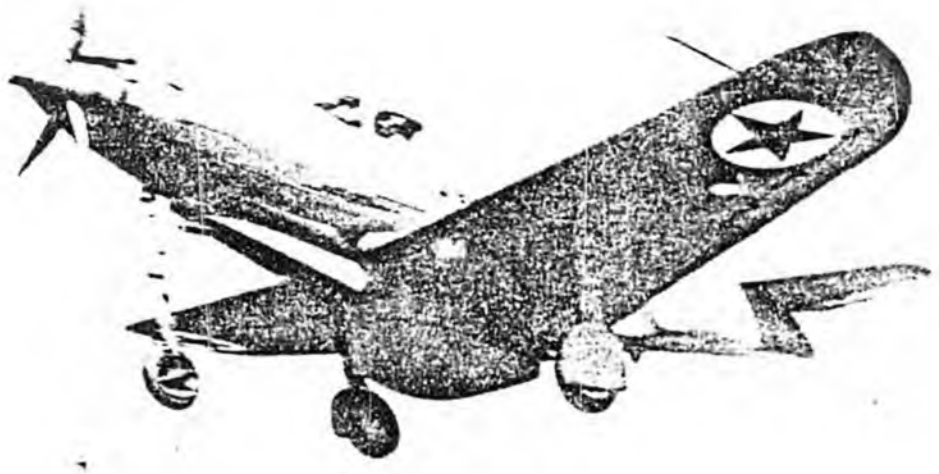
Two of these B-25 Medium Bombers went down in the Aleutians during the Aleutian Campaign.

USAF

Approximately 732 of these Lend Lease B-25 Mitchell Bombers were ferried from Great Falls, Montana, Whitehorse to Fairbanks to Siberia, Russia to be used against the Germans during WW II. Three of these aircraft went down in the Interior Alaska.

NAA





Approximately 2,618 P-39 Airacobra came through Alaska on their way to Siberia under the Lend Lease Program. Eleven of the P-39's went down in the Interior, and six of these are in fresh water lakes.

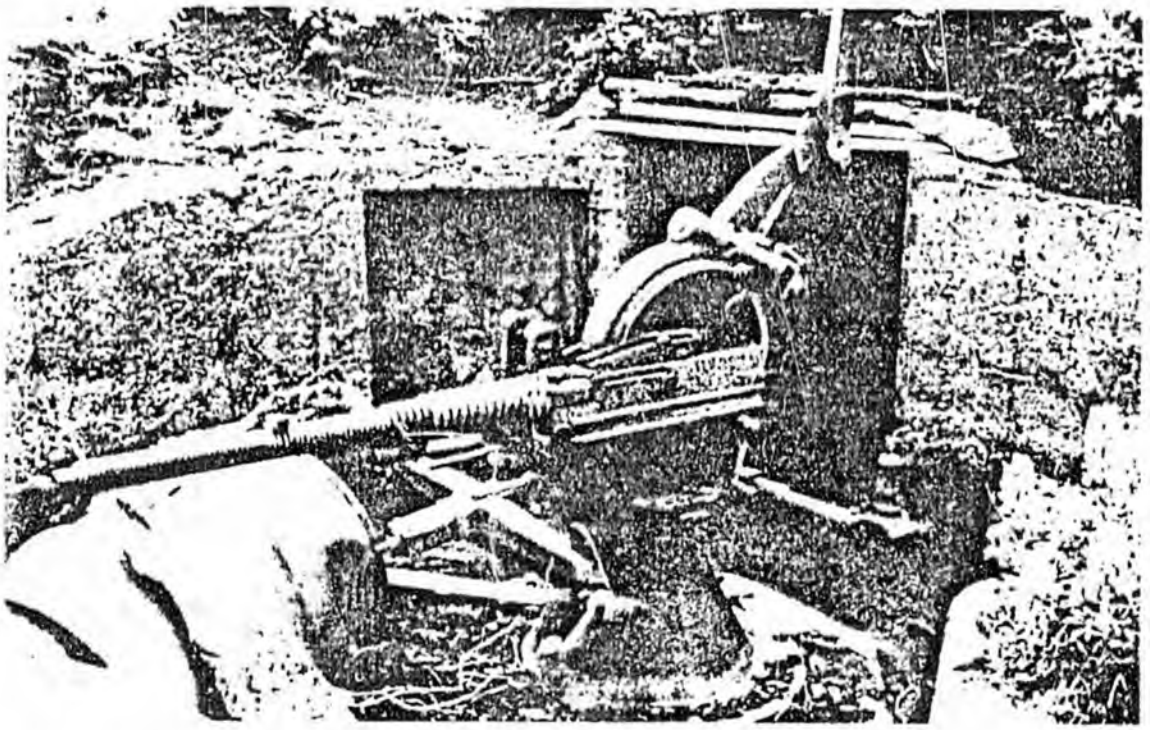
USAF

Japanese Model 96 (1936), Type 2, 25 mm Anti-aircraft Gun and Mount. This gun is very rare and was not extensively used by the Japanese.

COE

Japanese Model 93 Heavy Machine Gun, 13.3 mm on an Anti-Aircraft Mount.

USFWS



CAVPAC, P.O. Box 8-901

Anchorage, Alaska 99508

CAV
COALITION OF AMERICAN VETERANS
POLITICAL ACTION COMMITTEE

HJR66 and HB678 BACKUP INFORMATION

The Alaska Historical and Transportation Museum and other interested non-government organizations are focusing on long range planning, development, and preservation of pioneer, transportation and military history throughout the State and especially on the Aleutian Island Chain.

The projects of the organizing committees are to: (1) Survey and inventory significant relics, artifacts, and related historical material pertaining to transportation (surface, maritime, and with major emphasis on aviation); (2) Develop plans for the historic preservation and interpretation of these artifacts; (3) Recommend an appropriate museum site(s); (4) Coordinate with other public and private sector museums to insure that all groups interested in aircraft recovery can participate in recovery and restoration of aircraft, and that the restored aircraft will remain in Alaska; and (5) Prepare a presentation for submittal to the Governor and the Legislature in 1985 on a statewide program of cultural and historical preservation, including programs on pioneer, transportation, military, and the historically related areas, which are either not currently included in existing museum services or are inadequate in scope.

These projects and assessments will supplement the existing Statewide Museum Plan and will include recommendations for future museum development in the State of Alaska.

There has been no comprehensive statewide assessment or inventory of Alaska's historical artifacts that are constantly being removed from the State. Although many agencies have worked with each other on various aspects of preservation, an overall coordinated appraisal of the most critical needs in this area has never been possible.

Alaska's military history covers a wide range of topics: the Alaska Purchase to World War II era, aviation, maritime, World War II Aleutian campaign, DEW Line, and post-WW II history, etc. A number of agencies have shown an interest and have done limited statewide planning to locate historical Alaskan artifacts, but have discovered that big money in the lower 48 is stealing many of our WW II aircraft from federal and state land without any interference and are selling them to museums and making a fortune. It's big business. Many of these U.S. and Japanese aircraft have been salvaged almost intact.

It is hoped that HJR66 and HB678 will assist, when implemented, to retain valuable artifacts in Alaska and in 1985 some funds can be made available to improve our historical museums. The Army, Air Force, and National Guard have already assisted in salvaging and restoring some of these artifacts.

CAV Needs You And You Need CAV
for
VETERAN POWER

Army Navy Air Force Marines Coast Guard National Guard Reserves

Paid for by CAVPAC, P.O. Box 8-901, Anchorage, Alaska 99508

The historically significant relics, artifacts and other materials are part of Alaska's history and should be preserved before it is too late. Many WWII aircraft, both friendly and enemy, have been literally stolen from the Aleutian Chain and are now in museums in the States of Ohio, Tennessee, Washington and California that we know of. They are a part of Alaska's wartime history and should remain here. They will also be of tourist interest.

Draft prepared by B. B. Talley
with contribution by
Col. Evan J. Griffith, USAF

BACKGROUND MATERIAL IN SUPPORT OF HB _____
APPROPRIATING FUNDS FOR A COMPREHENSIVE DOCUMENTARY FILM
OF WWII IN ALASKA

There exist several books and papers, some official, which purport to document the history of WWII in Alaska. In addition, the military services have extensive motion pictures of their operations in Alaska. In recent years there has been a rebirth of interest on the part of individuals and organizations, particularly veterans organizations, in this part of Alaska's history. These individuals and groups have many important visual records which can be obtained for a comprehensive documentary film of WWII in Alaska.

In 1980, on the 40th anniversary of its arrival in Alaska, the veterans of the 11th US AF held a reunion in Alaska. It included a visit to the Aleutians as far out as Shemya. Weather prohibited their going to Attu. Extensive motion pictures and video tapes were made of this celebration, including interviews and oral history from many of the veterans present.

In 1982 extensive motion pictures and video tapes were made by individuals, organizations and by TV stations of the ceremony in dedication of a memorial on Unalaska Island to all those who lost their lives in the Aleutians during WWII. This included the Armed Forces of the United States and Canada, the Aleuts, and the Japanese Armed Forces. The two Japanese officers, now retired, who led the first and second waves of bombers in the attack on Dutch Harbor on 4 June 1942 participated in this dedication. The dedication was preceded by a flight from Unalaska Island to the Umnak Air Base, and to the position of the Japanese carrier from which the attack was launched, thence following the course of the planes to the rendezvous point and returning to Dutch Harbor. The plane was piloted by the Japanese officer who led the attack, flying

in reverse the course flown in the attack. From the rendezvous point, the plane flew the course at the same altitude flown in the actual attack. In the plane were Admiral James S. Russell, USN-Ret. who commanded the US Navy Catalinas in Alaska during WWII, BG B. B. Talley, Corps of Engineers, retired, who was responsible for building the secret air base on Umnak Island from which the US AF P-40s broke up the Japanese aerial attack on Dutch Harbor, and Admiral Hiroichi Samejima, JMSDF (Ret.) who led the first wave of Japanese bombers, and Colonel Zenji Abe, JMSDF (Ret.) who led the second wave which consisted of dive bombers. (Then Lieutenant Commander Abe later transferred to the army, as the reconstituted Naval defense force did not have dive bombers.) Also in the plane were Mr. Ted Spencer who arranged the dedication ceremony and the aerial flight here described. There was also a motion picture camera crew aboard who recorded the flight on film.

In view of the advancing age of the still living participants in WWII in Alaska, delay in the production of this visual history might preclude their participation in this important chapter in Alaska's history.

Inasmuch as the State of Alaska would be the primary beneficiary, the State should be the primary sponsor of the project. Such a project is within the purview of the Alaska Historical Commission of the Department of Education.

The project would include, but not necessarily be limited to, bringing together into a single compilation the best of the existing film, editing it into a single comprehensive historical document. There should be included in this compilation such additional footage as may be appropriate, with commentary by selected veterans who took part in the action.

Upon being instructed to carry out this project and being provided with the necessary funds for its accomplishment, the Alaska Historical Commission formed by AS Title 44, Article 3,

would have power to prepare or to authorize and coordinate the preparation and production by others of a documentary film covering this important portion of Alaska's history. Such a history should include but not be limited to the stills and motion pictures already in existance, but should include additional visual components as may be appropriate. Such a project should be completed by June 30, 1986.

A conceptual organization structure for executing this project is shown in Figure 1.

C O N T E N T S