

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
6757 ADMIN. REG. REVIEW & HOUSE COMMUNITY & REGIONAL AFFAIRS



RECORDS



CERTIFICATION

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Jim Butler

Signature of Camera Operator

7/28/95

Date

1991-1992
ADMINISTRATIVE REGULATION REVIEW
LIST OF FILES (PAGE 1)

MICROFILM #

HEARING ON RECLAMATION MINING
REGULATIONS, 3/13/92

LEGISLATION TO BRING LONGEVITY
BONUS PROGRAM UNDER APA

HB 328 & SJR 2

Hearing on

Reclamation

mining

Regulations

3/12/92

These are the
files used for the
Admin. Reg. Review
hearing on March 13th

The hearing on the
Reclamation Mining reg-
the information from
that has been sent
to Fairbanks.

Barbara
Sen. Craft's office
465-3834

ALASKA STATE LEGISLATURE

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Shirley Craft
Alaska State Senator

MEMORANDUM

To: Administrative Regulation Review Committee
From: Senator Shirley Craft, Chair *SC*
Date: March 12, 1992
Re: Proposed legislation

The legislature has delegated the authority of writing regulations to the executive branch i.e. agencies. One blatant example of misuse of this power is the mining reclamation regulations. The statutes specify that private lands are included, but the Department of Natural Resources does not agree with the mining reclamation law passed by the legislature in 1990. The department has adopted regulations that exclude private lands. They are not funding the implementation of the regulations on private lands, nor are they introducing legislation to amend the statutes so it would be legal to omit private lands.

I feel that the avenues currently available to the legislature to amend regulations that do not meet the intent of the statute, are slow and cumbersome. Therefore, I would like to throw a couple of ideas on the table for discussion. The purpose of these proposals is to increase the legislature's involvement in the regulatory process, and expedite the process of amending regulations that have gone astray.

Enclosed in your packets are 4 proposals designated as Exhibit A, B, C, and D. Each of them establishes a Regulatory Review Commission made up of 9 members: Lt. Governor, Attorney General, Commissioner of Administration, 3 members of the Senate, and 3 members of the House of Representatives.

Exhibits A and B, amend the Alaska State Constitution to create the Regulatory Review Commission. The commission will have the power to repeal regulations. The methods of appointing members of the legislature is the distinct difference between the two resolutions. Exhibit A: the presiding officer of each body appoints the legislative members. Exhibit B: from each house, 2 members are appointed by the largest political party, 1 member is appointed by the smallest political body.

Briefing memo to committee
March 12, 1992
Page 2

Exhibits C and D, amend the Administrative Procedures Act to create the Regulatory Review Commission; and repeal the Administrative Regulation Review Committee. The legislative members are appointed by the presiding officer of each body. Both proposals would challenge the Alaska Supreme Court decision made by State v. A.L.I.V.E. Voluntary, in 1980. This decision states that a member of the legislature cannot exercise the powers of the executive branch. The legislature has delegated the authority of writing regulations to the executive branch, therefore giving the legislature the power to annul regulations conflicts with the constitutional separation of powers doctrine. It doesn't seem right that agencies can get away with writing regulations that do not meet the intent of the law. We can introduce legislation to amend regulations, but the time involved in using this process is tedious.

The differences between Exhibit C and D: with C the commission has the power to repeal regulations, with D the Lt. Governor has the power to repeal regulations and the Regulatory Review Commission only acts in an advisory capacity to the Lt. Governor.

I would appreciate any comments or recommendations from committee members on these proposals.

ALASKA STATE LEGISLATURE

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Shirley Craft
Alaska State Senator

MEMORANDUM

To: The Administrative Regulation Review Committee
From: Senator Shirley Craft *Shirley*
Date: March 11, 1992
Re: Summary of proposed legislation Exhibit A

This measure creates a Regulation Review Commission within the office of the Lt. Governor. The commission consists of 9 members:

- (1) Lt. Governor serves as chair of the commission
- (2) Attorney General
- (3) Commissioner of Administration
- (4) 3 members of the Senate
- (5) 3 members of the House of Representatives

This will create a balanced commission, made up of members from the executive branch and the legislature. The legislative appointments will be done by the presiding officers of each body. They will appoint 2 members of the majority, and 1 member of the minority. In the circumstance that there are no minority members, 3 majority members will be appointed. The presiding officers have the power to remove members they appoint.

The Regulation Review Commission has the power to repeal any proposed or adopted regulations by an affirmative vote of at least 5 members. If a regulation is in effect, the regulation is repealed on a day set by the commission, which must be at least 30 days after they've disapproved it. A proposed regulation that is disapproved by the committee, will simply not take effect.

This resolution places a constitutional amendment on the ballot, before voters during the next general election.

Exhibit "A"

SENATE JOINT RESOLUTION NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE RULES COMMITTEE BY REQUEST OF THE ADMINISTRATIVE REGULATION REVIEW COMMITTEE

Introduced:

Referred:

A RESOLUTION

1 Proposing an amendment to the Constitution of the State of Alaska relating to the
2 Regulation Review Commission.

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

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

5 SECTION 7. LIEUTENANT GOVERNOR DUTIES; REGULATION REVIEW

6 COMMISSION. (a) There shall be a lieutenant governor. He shall have the same
7 qualifications as the governor and serve for the same term. He shall perform such duties as may
8 be prescribed by law and as may be delegated to him by the governor.

9 (b) The Regulation Review Commission is established in the office of the lieutenant
10 governor. The lieutenant governor serves as a member and as chair of the commission.

11 Other members consist of the attorney general, the commissioner of administration, three
12 senators appointed by the presiding officer of the senate, and three representatives
13 appointed by the presiding officer of the house of representatives. Each presiding officer
14 shall appoint to the commission two members of the majority and one member of the
15 minority. If there are no minority members in the house, the presiding officer shall appoint
16 three majority members. The presiding officer of a house may remove members of that

1 house who serve on the commission.

2 (c) The Regulation Review Commission may consider any regulation adopted or
3 proposed for adoption by an agency of the executive branch. If the commission disapproves
4 a regulation that is in effect on the day of disapproval, the regulation is repealed on a day
5 set by the commission that is at least thirty days after the commission acts to disapprove
6 it. If the commission disapproves a proposed regulation or one that is not in effect at the
7 time of disapproval, the regulation does not take effect. The commission may only act to
8 disapprove a regulation or proposed regulation by affirmative vote of at least five members.

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

ALASKA STATE LEGISLATURE

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Shirley Craft
Alaska State Senator

MEMORANDUM

To: Administrative Regulation Review Committee
From: Senator Shirley Craft, Chair *Shirley*
Date: March 11, 1992
Re: Summary of proposed legislation Exhibit B

This measure creates a Regulation Review Commission within the office of the Lt. Governor that is made up of the same members as Exhibit A:

- (1) Lt. Governor serves as chair of the commission
- (2) Attorney General
- (3) Commissioner of Administration
- (4) 3 members of the Senate
- (5) 3 members of the House of Representatives

The same guidelines apply for the disapproval and repealing of regulations as cited in Exhibit A. This resolution is also an amendment to the constitution that will be placed on the ballot before voters during the next general election. The difference between the resolutions, is in the manner of appointment of the legislative members. Exhibit B provides for legislative appointments and removals to the commission, to be made by affirmative vote (50% + 1) of political parties.

Legislative Appointments

2 members will be appointed by the largest political party in the Senate.

1 member will be appointed by the second largest political party in the Senate.

2 members will be appointed by the largest political party in the House.

1 member will be appointed by the second largest political party in the House.

7-LS2163D ✓
Cook
3/6/92

Exhibit "B"

SENATE JOINT RESOLUTION NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE RULES COMMITTEE BY REQUEST OF THE ADMINISTRATIVE REGULATION REVIEW COMMITTEE

Introduced:
Referred:

A RESOLUTION

1 Proposing an amendment to the Constitution of the State of Alaska relating to the
2 Regulation Review Commission.

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

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

5 SECTION 7. LIEUTENANT GOVERNOR DUTIES; REGULATION REVIEW
6 COMMISSION. (a) There shall be a lieutenant governor. He shall have the same
7 qualifications as the governor and serve for the same term. He shall perform such duties as may
8 be prescribed by law and as may be delegated to him by the governor.

9 (b) The Regulation Review Commission is established in the office of the lieutenant
10 governor. The lieutenant governor serves as a member and as chair of the commission.
11 Other members consist of the attorney general, the commissioner of administration, and six
12 legislators appointed under (c) of this section.

13 (c) By the tenth day of each first regular session three legislators shall be appointed
14 from each house to the Regulation Review Commission. Two members of a house shall be
15 appointed by affirmative vote of a majority of the members of the political party with the
16 largest membership in that house. One member shall be appointed by affirmative vote of

1 a majority of the members of the political party with the second largest membership in that
2 house. If the two political parties with the largest membership have an equal number of
3 members, the presiding officer of that house shall appoint three members to serve on the
4 commission. The appointing authority may remove commission members and fill
5 vacancies.

6 (d) The Regulation Review Commission may consider any regulation adopted or
7 proposed for adoption by an agency of the executive branch. If the commission disapproves
8 a regulation that is in effect on the day of disapproval, the regulation is repealed on a day
9 set by the commission that is at least thirty days after the commission acts to disapprove
10 it. If the commission disapproves a proposed regulation or one that is not in effect at the
11 time of disapproval, the regulation does not take effect. The commission may only act to
12 disapprove a regulation or proposed regulation by affirmative vote of at least five members.

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

ALASKA STATE LEGISLATURE

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Shirley Craft
Alaska State Senator

MEMORANDUM

To: The Administrative Regulation Review Committee
From: Senator Shirley Craft, Chair *Shirley*
Date: March 11, 1992
Re: Summary of proposed legislation Exhibit C

This measure amends the Administrative Procedures Act (APA) to create the Regulation Review Commission; and repeals the Administrative Regulation Review Committee. The commission would exist within the office of the Lt. Governor and consist of the same members as in Exhibit A & B.

- (1) Lt. Governor serves as chair of the commission
- (2) Attorney General
- (3) Commissioner of Administration
- (4) 3 members of the Senate
- (5) 3 members of the House of Representatives

Legislative members will be appointed by the presiding officer of each body. The presiding officers will also have the power to remove the members they appoint.

The commission has the power to repeal regulations proposed or adopted by an agency, only if they are subject to the APA. An agency must provide notice 30 days prior to the adoption, amendment, or repeal of a regulation, to the staff of the Regulation Review Commission. Within 45 days after the adoption of a regulation, the agency must submit the regulation to the chair of the commission. If the agency is not bound by the APA, the commission may only recommend changes to a regulation. (ex: the Alaska Railroad and Dept. of Administration "longevity bonus program" are not subject to the APA.)

If the commission disapproves of a regulation in effect, the regulation will be repealed on a day that is set by the commission, which must be at least 30 days after they have disapproved it. If they disapprove of a proposed regulation, it will simply not take effect.

Orders of disapproval of regulations by the commission, will be submitted to the Lt. Governor for filing and published in the Alaska Administrative Register.

Exhibit "C"

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE RULES COMMITTEE BY REQUEST OF THE ADMINISTRATIVE REGULATION REVIEW COMMITTEE

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the review and disapproval of certain regulations and proposed
2 regulations, establishing the Regulation Review Commission, and eliminating the
3 Administrative Regulation Review Committee."

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

5 * Section 1. AS 14.40.871(b) is amended to read:

6 (b) Except for AS 44.62.310 and 44.62.312 regarding public meetings, the provisions of
7 AS 44.62 (Administrative Procedure Act) regarding the adoption of regulations do not apply to
8 the corporation. The corporation shall make available to members of the public copies of the
9 regulations adopted under this section. Within 45 days after adoption of a regulation under this
10 section, the chair of the corporation shall submit the regulation adopted to the chair of the
11 Regulation Review Commission for consideration under AS 44.62.294(a)
12 [ADMINISTRATIVE REGULATION REVIEW COMMITTEE UNDER AS 24.20.400 -
13 24.20.460].

14 * Sec. 2. AS 18.56.088(a) is amended to read:

1 (a) Except for AS 44.62.310 and 44.62.312, regarding public meetings, [AND
2 AS 44.62.320(a) REGARDING LEGISLATIVE REVIEW OF REGULATIONS,] the
3 Administrative Procedure Act (AS 44.62) does not apply to this chapter. The corporation shall
4 make available to members of the public copies of the regulations adopted under (b) - (e) of this
5 section. Within 45 days after adoption, the chair [CHAIRMAN] of the board shall submit a
6 regulation adopted under (b) - (e) of this section to the chair [CHAIRMAN] of the Regulation
7 Review Commission for consideration under AS 44.62.294(a) [ADMINISTRATIVE
8 REGULATION REVIEW COMMITTEE UNDER AS 24.20.400 - 24.20.460. THE
9 PROVISIONS OF AS 44.62.320(a) APPLY TO REGULATIONS ADOPTED UNDER (b) - (e)
10 OF THIS SECTION].

11 * Sec. 3. AS 24.05.182(d) is amended to read:

12 (d) If a standing committee determines that a regulation, amendment to a regulation, or
13 repeal of a regulation does not properly implement legislative intent, the standing committee's
14 findings shall be transmitted to the Regulation Review Commission [ADMINISTRATIVE
15 REGULATION REVIEW COMMITTEE].

16 * Sec. 4. AS 24.08.060(b) is amended to read:

17 (b) Bills introduced by the legislative council shall be delivered with a letter of
18 explanation to the rules committee of either house and bear the inscription "Rules Committee by
19 Request of the Legislative Council"; [BILLS INTRODUCED BY THE ADMINISTRATIVE
20 REGULATION REVIEW COMMITTEE SHALL BE DELIVERED WITH A LETTER OF
21 EXPLANATION TO THE RULES COMMITTEE OF EITHER HOUSE AND BEAR THE
22 INSCRIPTION "RULES COMMITTEE BY REQUEST OF THE ADMINISTRATIVE
23 REGULATION REVIEW COMMITTEE";] bills introduced by the Legislative Budget and Audit
24 Committee shall be delivered with a letter of explanation to the rules committee of either house
25 and bear the inscription "Rules Committee by Request of the Legislative Budget and Audit
26 Committee." Bills presented by the governor shall be delivered with a letter to the rules
27 committee of either house and bear the inscription "Rules Committee by Request of the
28 Governor"; bills so presented and inscribed shall be received as bills carrying the approval of the
29 governor as to policy and budget impact. The governor may submit a statement of purpose and
30 effect with each bill and appear personally or through a representative before any committee
31 considering legislation.

1 * Sec. 5. AS 44.62.160 is amended to read:

2 Sec. 44.62.160. DATE AND CONTENT OF REGISTER. (a) The Alaska
3 Administrative Register shall be published quarterly on the first day of the month, beginning in
4 a month to be designated by the Department of Law, but not later than October 1969. All
5 regulations required to be submitted under AS 44.62.040 and all orders of disapproval required
6 to be submitted under AS 44.62.296 that [WHICH] are filed by the first day of the month
7 preceding publication shall be published in the register for that quarter.

8 (b) If during a quarter no regulation, amendment, order of repeal, or order of
9 disapproval [REPEAL] has been filed, the regular quarterly register shall be published reflecting
10 that fact.

11 * Sec. 6. AS 44.62.175(a) is amended to read:

12 (a) The lieutenant governor shall publish or contract for the publication of the Alaska
13 Administrative Journal. The journal shall be published weekly. The journal must include

14 (1) notices of proposed actions given under AS 44.62.190(a);

15 (2) notices of state agency meetings required under AS 44.62.310(e), even if the
16 meeting has been held;

17 (3) notices of solicitations to bid issued under AS 36.30.130;

18 (4) notices of state agency requests for proposals issued under AS 18.55.255,
19 18.55.320; AS 36.30.210; AS 37.05.316; AS 38.05.120; and AS 43.40.010;

20 (5) executive orders and administrative orders issued by the governor;

21 (6) written delegations of authority made by the governor or the head of a
22 principal department under AS 44.17.010;

23 (7) the text or a summary of the text of a regulation or order of repeal of a
24 regulation for which notice is given under AS 44.62.190(a), including an emergency regulation
25 or repeal whether or not it has taken effect;

26 (8) a summary of the text of recently issued formal opinions and memoranda of
27 advice of the attorney general; [AND]

28 (9) a list of vacancies on boards, commissions, and other bodies whose members
29 are appointed by the governor; [AND]

30 (10) under [IN ACCORDANCE WITH] AS 39.52.240(h), advisory opinions of
31 the attorney general; and

1 (11) orders of disapproval issued by the Regulation Review Commission
2 under AS 44.62.294(b).

3 * Sec. 7. AS 44.62.190(a) is amended to read:

4 (a) At least 30 days before the adoption, amendment, or repeal of a regulation, notice of
5 the proposed action shall be

6 (1) published in the newspaper of general circulation or trade or industry
7 publication that the state agency prescribes and in the Alaska Administrative Journal; in the
8 discretion of the state agency giving the notice, the requirement of publication in a newspaper
9 or trade or industry publication may be satisfied by using a combination of publication and
10 broadcasting; when broadcasting the notice, an agency may use an abbreviated form of the notice
11 if the broadcast provides the name and date of the newspaper or trade or industry journal where
12 the full text of the notice can be found;

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

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

17 (4) when appropriate in the judgment of the agency,

18 (A) mailed to a person or group of persons whom the agency believes is
19 interested in the proposed action; [,] and

20 (B) published in the additional form and manner the state agency
21 prescribes;

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

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

27 (7) furnished to the standing committee of each house of the legislature having
28 legislative jurisdiction over the subject matter treated by the regulation under the Uniform Rules
29 of the Alaska State Legislature, together with a copy of the proposed regulation, amendment, or
30 order of repeal for the committee's use in conducting the review authorized by AS 24.05.182;

31 (8) furnished to the staff of the Regulation Review Commission

1 [ADMINISTRATIVE REGULATION REVIEW COMMITTEE].

2 * Sec. 8. AS 44.62 is amended by adding new sections to read:

3 ARTICLE 4A. REVIEW OF REGULATIONS.

4 Sec. 44.62.292. REGULATION REVIEW COMMISSION. (a) The Regulation Review
5 Commission is established in the office of the lieutenant governor. The lieutenant governor
6 serves as a member and as chair of the commission. Other members consist of the attorney
7 general, the commissioner of administration, and six legislators appointed under (b) of this
8 section.

9 (b) The presiding officer of each house shall appoint to the commission two members
10 of the majority and one member of the minority. If there are no minority members in a house,
11 the presiding officer shall appoint three majority members. The presiding officer of a house may
12 remove members of that house who serve on the commission.

13 Sec. 44.62.294. POWERS. (a) Notwithstanding other provisions of law, the Regulation
14 Review Commission may consider any regulation adopted by a state agency and any proposed
15 adoption, amendment, or repeal of a regulation. The commission may submit recommendations
16 regarding the regulation or proposal to the agency.

17 (b) Except as provided in AS 44.62.290(b), the Regulation Review Commission may
18 consider and disapprove any regulation required to be submitted to the lieutenant governor under
19 AS 44.62.010 - 44.62.312 or any proposed adoption, amendment, or repeal of a regulation for
20 which notice is required under AS 44.62.190. If the commission disapproves a regulation that
21 is in effect on the day of disapproval, the regulation is repealed on a day set by the commission
22 that is at least 30 days after the commission acts to disapprove it. If the commission disapproves
23 a proposed adoption, amendment or repeal of a regulation, the proposal does not take effect. The
24 commission may act to disapprove a regulation or proposed regulation only by affirmative vote
25 of at least five members.

26 Sec. 44.62.296. FILING ORDERS. An order of disapproval adopted by the Regulation
27 Review Commission under AS 44.62.294(b) shall be submitted to the lieutenant governor for
28 filing.

29 * Sec. 9. AS 44.88.085(a) is amended to read:

30 (a) Except for AS 44.62.310 and 44.62.312 regarding public meetings, [AND EXCEPT
31 FOR AS 44.62.320(a) REGARDING LEGISLATIVE REVIEW OF REGULATIONS,] the

1 provisions of the Administrative Procedure Act regarding the adoption of regulations,
2 AS 44.62.040 - 44.62.312, [(AS 44.62.040 - 44.62.320)] do not apply to the authority. The
3 authority shall make available to members of the public copies of the regulations adopted under
4 this section. Within 45 days after adoption of a regulation under this section, the chair
5 [CHAIRMAN] of the authority shall submit the regulation adopted to the chair [CHAIRMAN]
6 of the Regulation Review Commission for consideration under AS 44.62.294(a)
7 [ADMINISTRATIVE REGULATION REVIEW COMMITTEE UNDER AS 24.20.400 -
8 24.20.460].

9 * Sec. 10. AS 24.20.400, 24.20.410, 24.20.420, 24.20.430, 24.20.440, 24.20.445, 24.20.450,
10 24.20.460, and AS 44.62.320 are repealed.

ALASKA STATE LEGISLATURE

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Shirley Craft
Alaska State Senator

To: The Administrative Regulation Review Commission
From: Senator Shirley Craft, *Shirley Craft*
Date: March 11, 1992
Re: Summary of proposed legislation Exhibit D

This measure amends the Administrative Procedures Act (APA) to create the Regulation Review Commission; and repeals the Administrative Regulation Review Committee. The commission would exist within the office of the Lt. Governor and consist of the same members as in Exhibit A, B & C.

- (1) Lt. Governor serves as chair of the commission
- (2) Attorney General
- (3) Commissioner of Administration
- (4) 3 members of the Senate
- (5) 3 members of the House of Representatives

Legislative members will be appointed by the presiding officer of each body. The presiding officers will also have the power to remove the members they appoint.

The distinct difference in this measure from Exhibit C is that the commission only acts in an advisory capacity to the Lt. Governor. The Lt. Governor holds the power to repeal regulations.

The Lt. Governor has the power to repeal regulations proposed or adopted by an agency, only if they are subject to the APA. An agency must provide notice 30 days prior to the adoption, amendment, or repeal of a regulation, to the staff of the Regulation Review Commission. Within 45 days after the adoption of a regulation, the agency must submit the regulation to the chair of the commission. If the agency is not bound by the APA, the Lt. Governor may only recommend changes to a regulation. For example, the Alaska Railroad and Department of Administration's "longevity bonus program", are not subject to the APA.

If the Lt. Governor disapproves of a regulation in effect, the regulation will be repealed on a day that is set by the Lt. Governor, which must be at least 30 days after he has disapproved it. If he disapproves of a proposed regulation, it will simply not take effect.

The Lt. Governor will publish orders of disapproval in the Alaska Administrative Register and then file them.

Exhibit "D"

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE RULES COMMITTEE BY REQUEST OF THE ADMINISTRATIVE REGULATION REVIEW COMMITTEE

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the review and disapproval of certain regulations and proposed
2 regulations, establishing the Regulation Review Commission, and eliminating the
3 Administrative Regulation Review Committee."

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

5 * Section 1. AS 14.40.871(b) is amended to read:

6 (b) Except for AS 44.62.310 and 44.62.312 regarding public meetings, the provisions of
7 AS 44.62 (Administrative Procedure Act) regarding the adoption of regulations do not apply to
8 the corporation. The corporation shall make available to members of the public copies of the
9 regulations adopted under this section. Within 45 days after adoption of a regulation under this
10 section, the chair of the corporation shall submit the regulation adopted to the chair of the
11 Regulation Review Commission for consideration under AS 44.62.294(a)
12 [ADMINISTRATIVE REGULATION REVIEW COMMITTEE UNDER AS 24.20.400 -
13 24.20.460].

14 * Sec. 2. AS 18.56.088(a) is amended to read:

1 (a) Except for AS 44.62.310 and 44.62.312, regarding public meetings, [AND
2 AS 44.62.320(a) REGARDING LEGISLATIVE REVIEW OF REGULATIONS,] the
3 Administrative Procedure Act (AS 44.62) does not apply to this chapter. The corporation shall
4 make available to members of the public copies of the regulations adopted under (b) - (e) of this
5 section. Within 45 days after adoption, the chair [CHAIRMAN] of the board shall submit a
6 regulation adopted under (b) - (e) of this section to the chair [CHAIRMAN] of the Regulation
7 Review Commission for consideration under AS 44.62.294(a) [ADMINISTRATIVE
8 REGULATION REVIEW COMMITTEE UNDER AS 24.20.400 - 24.20.450. THE
9 PROVISIONS OF AS 44.62.320(a) APPLY TO REGULATIONS ADOPTED UNDER (b) - (e)
10 OF THIS SECTION].

11 * Sec. 3. AS 24.05.182(d) is amended to read:

12 (d) If a standing committee determines that a regulation, amendment to a regulation, or
13 repeal of a regulation does not properly implement legislative intent, the standing committee's
14 findings shall be transmitted to the Regulation Review Commission [ADMINISTRATIVE
15 REGULATION REVIEW COMMITTEE].

16 * Sec. 4. AS 24.08.050(b) is amended to read:

17 (b) Bills introduced by the legislative council shall be delivered with a letter of
18 explanation to the rules committee of either house and bear the inscription "Rules Committee by
19 Request of the Legislative Council"; [BILLS INTRODUCED BY THE ADMINISTRATIVE
20 REGULATION REVIEW COMMITTEE SHALL BE DELIVERED WITH A LETTER OF
21 EXPLANATION TO THE RULES COMMITTEE OF EITHER HOUSE AND BEAR THE
22 INSCRIPTION "RULES COMMITTEE BY REQUEST OF THE ADMINISTRATIVE
23 REGULATION REVIEW COMMITTEE";] bills introduced by the Legislative Budget and Audit
24 Committee shall be delivered with a letter of explanation to the rules committee of either house
25 and bear the inscription "Rules Committee by Request of the Legislative Budget and Audit
26 Committee." Bills presented by the governor shall be delivered with a letter to the rules
27 committee of either house and bear the inscription "Rules Committee by Request of the
28 Governor"; bills so presented and inscribed shall be received as bills carrying the approval of the
29 governor as to policy and budget impact. The governor may submit a statement of purpose and
30 effect with each bill and appear personally or through a representative before any committee
31 considering legislation.

1 * Sec. 5. AS 44.62.160 is amended to read:

2 Sec. 44.62.160. DATE AND CONTENT OF REGISTER. (a) The Alaska
3 Administrative Register shall be published quarterly on the first day of the month, beginning in
4 a month to be designated by the Department of Law, but not later than October 1969. All
5 regulations required to be submitted under AS 44.62.040 and all orders of disapproval issued
6 under AS 44.62.295 that [WHICH] are filed by the first day of the month preceding publication
7 shall be published in the register for that quarter.

8 (b) If during a quarter no regulation, amendment, order of repeal, or order of
9 disapproval [REPEAL] has been filed, the regular quarterly register shall be published reflecting
10 that fact.

11 * Sec. 6. AS 44.62.175(a) is amended to read:

12 (a) The lieutenant governor shall publish or contract for the publication of the Alaska
13 Administrative Journal. The journal shall be published weekly. The journal must include

14 (1) notices of proposed actions given under AS 44.62.190(a);

15 (2) notices of state agency meetings required under AS 44.62.310(e), even if the
16 meeting has been held;

17 (3) notices of solicitations to bid issued under AS 36.30.130;

18 (4) notices of state agency requests for proposals issued under AS 18.55.255,
19 18.55.320; AS 36.30.210; AS 37.05.316; AS 38.05.120; and AS 43.40.010;

20 (5) executive orders and administrative orders issued by the governor;

21 (6) written delegations of authority made by the governor or the head of a
22 principal department under AS 44.17.010;

23 (7) the text or a summary of the text of a regulation or order of repeal of a
24 regulation for which notice is given under AS 44.62.190(a), including an emergency regulation
25 or repeal whether or not it has taken effect;

26 (8) a summary of the text of recently issued formal opinions and memoranda of
27 advice of the attorney general; [AND]

28 (9) a list of vacancies on boards, commissions, and other bodies whose members
29 are appointed by the governor; [AND]

30 (10) under [IN ACCORDANCE WITH] AS 39.52.240(h), advisory opinions of
31 the attorney general; and

1 (11) orders of disapproval issued under AS 44.62.295.

2 * Sec. 7. AS 44.62.190(a) is amended to read:

3 (a) At least 30 days before the adoption, amendment, or repeal of a regulation, notice of
4 the proposed action shall be

5 (1) published in the newspaper of general circulation or trade or industry
6 publication that the state agency prescribes and in the Alaska Administrative Journal; in the
7 discretion of the state agency giving the notice, the requirement of publication in a newspaper
8 or trade or industry publication may be satisfied by using a combination of publication and
9 broadcasting; when broadcasting the notice, an agency may use an abbreviated form of the notice
10 if the broadcast provides the name and date of the newspaper or trade or industry journal where
11 the full text of the notice can be found;

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

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

16 (4) when appropriate in the judgment of the agency,

17 (A) mailed to a person or group of persons whom the agency believes is
18 interested in the proposed action; [,] and

19 (B) published in the additional form and manner the state agency
20 prescribes;

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

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

26 (7) furnished to the standing committee of each house of the legislature having
27 legislative jurisdiction over the subject matter treated by the regulation under the Uniform Rules
28 of the Alaska State Legislature, together with a copy of the proposed regulation, amendment, or
29 order of repeal for the committee's use in conducting the review authorized by AS 24.05.182;

30 (8) furnished to the staff of the Regulation Review Commission
31 [ADMINISTRATIVE REGULATION REVIEW COMMITTEE].

1 * Sec. 8. AS 44.62 is amended by adding new sections to read:

2 ARTICLE 4A. REVIEW OF REGULATIONS.

3 Sec. 44.62.292. REGULATION REVIEW COMMISSION. (a) The Regulation Review
4 Commission is established in the office of the lieutenant governor. The lieutenant governor
5 serves as a member and as chair of the commission. Other members consist of the attorney
6 general, the commissioner of administration, and six legislators appointed under (b) of this
7 section.

8 (b) The presiding officer of each house shall appoint to the commission two members
9 of the majority and one member of the minority. If there are no minority members in a house,
10 the presiding officer shall appoint three majority members. The presiding officer of a house may
11 remove members of that house who serve on the commission.

12 Sec. 44.62.294. POWERS OF THE COMMISSION. (a) Notwithstanding other
13 provisions of law, the Regulation Review Commission may consider any regulation adopted by
14 a state agency and any proposed adoption, amendment, or repeal of a regulation. The
15 commission may submit recommendations regarding the regulation or proposal to the agency.

16 (b) Except as provided in AS 44.62.290(b), the Regulation Review Commission may
17 consider any regulation required to be submitted to the lieutenant governor under AS 44.62.010 -
18 44.62.312 or any proposed adoption, amendment, or repeal of a regulation for which notice is
19 required under AS 44.62.190. If the commission disapproves of a regulation or proposal, it may
20 recommend disapproval of the regulation or proposal to the lieutenant governor.

21 Sec. 44.62.295. ORDER OF DISAPPROVAL. Except as provided in AS 44.62.290(b),
22 the lieutenant governor may consider and disapprove any regulation required to be submitted to
23 the lieutenant governor under AS 44.62.010 - 44.62.312 or any proposed adoption, amendment,
24 or repeal of a regulation for which notice is required under AS 44.62.190. If the lieutenant
25 governor disapproves a regulation that is in effect on the day of disapproval, the regulation is
26 repealed on a day set by the lieutenant governor in the order of disapproval that is at least 30
27 days after the date of the order. If the lieutenant governor disapproves a proposed adoption,
28 amendment, or repeal of a regulation, the proposal does not take effect.

29 Sec. 44.62.296. FILING ORDERS. The lieutenant governor shall file each order of
30 disapproval issued under AS 44.62.295.

31 * Sec. 9. AS 44.88.085(a) is amended to read:

1 (a) Except for AS 44.62.310 and 44.62.312 regarding public meetings, [AND EXCEPT
2 FOR AS 44.62.320(a) REGARDING LEGISLATIVE REVIEW OF REGULATIONS,] the
3 provisions of the Administrative Procedure Act regarding the adoption of regulations,
4 AS 44.62.040 - 44.62.312, [(AS 44.62.040 - 44.62.320)] do not apply to the authority. The
5 authority shall make available to members of the public copies of the regulations adopted under
6 this section. Within 45 days after adoption of a regulation under this section, the chair
7 [CHAIRMAN] of the authority shall submit the regulation adopted to the chair [CHAIRMAN]
8 of the Regulation Review Commission for consideration under AS 44.62.294(a)
9 [ADMINISTRATIVE REGULATION REVIEW COMMITTEE UNDER AS 24.20.400 -
10 24.20.460].

11 * Sec. 10. AS 24.20.400, 24.20.410, 24.20.420, 24.20.430, 24.20.440, 24.20.445, 24.20.450,
12 24.20.460, and AS 44.62.320 are repealed.

Legislation

... Longevity

Bonus Under

APPA

Alaska State Legislature



3111 C STREET, SUITE 550
ANCHORAGE, ALASKA 99503
(907) 561-7615

While in Juneau
STATE CAPITOL
JUNEAU, ALASKA 99801-1182
(907) 465-3818


SENATOR
ARLISS STURGULEWSKI

Senate

MEMORANDUM

March 20, 1992

TO: Senator Shirley Craft, Chair
Administrative Regulation Review Committee

FROM: Senator Arliss Sturgulewski 
Senate District F

RE: Regulations to implement the Longevity Bonus program

Attachment: Copy of a piece of legislation that would bring the longevity bonus program regulations under the Administrative Procedures Act. I can think of absolutely no reason why the longevity bonus program should not be subject to the APA. We might well have prevented the nearly 10 million dollar overpayment had there been a more specific public process utilized when considering the regulations. It is my opinion that the Administrative Regulation Review Committee should have legislation prepared to be introduced by the Senate Rules committee so that this issue can be clarified this session.

Attachment

Article 3. Administrative Regulation Review Committee.

| Section | Section |
|---|--------------------------|
| 400. Administrative Regulation Review Committee established | 440. Meetings |
| 410. Membership | 445. Power of suspension |
| 420. Term of membership | 450. Staff |
| 430. Vacancies | 460. Powers |

Sec. 24.20.400. Administrative Regulation Review Committee established. The Administrative Regulation Review Committee is established as a permanent interim committee of the legislature. The establishment of the committee recognizes the need for prompt legislative review of administrative regulations filed by the lieutenant governor to determine whether annulment under AS 44.62.320 is appropriate. (§ 1 ch 27 SLA 1975)

NOTES TO DECISIONS

Constitutionality of legislative veto. — The legislative veto contained in AS 44.62.320 (a), which provides that the "legislature, by a concurrent resolution adopted by a vote of both houses, may annul a regulation of an agency or depart-

ment." violates art. II of the state constitution. No implied general power to veto agency regulations by informal legislative action exists. *State v. A.L.I.V.E. Voluntary*. Sup. Ct. Op. No. 2022 (File No. 3670). 606 P.2d 769 (1980).

Sec. 24.20.410. Membership. The Administrative Regulation Review Committee is composed of three members of the house appointed by the speaker of the house, and three members of the senate appointed by the president of the senate. The membership from each house shall include at least one member from each of the two major political parties. The committee elects a chairman from among its members. (§ 1 ch 27 SLA 1975)

Sec. 24.20.420. Term of membership. The committee shall be organized within 15 days after the organization of each legislature. Members serve for the duration of the legislature during which they are appointed. If they are reelected or their term of office extends into the next succeeding legislature, they continue to serve until reappointed or the appointment of their successor. (§ 1 ch 27 SLA 1975)

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

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

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

(b) The effectiveness of an adoption or amendment of a regulation is suspended on the date a resolution of the Administrative Regulation Review Committee resolving that the regulation be suspended is filed with the lieutenant governor. If an adoption of or amendment to a regulation is not effective on the date a resolution is filed with the lieutenant governor, the effectiveness of the adoption or amendment which is the subject of the committee's resolution is suspended from the date the adoption or amendment would otherwise become effective under AS 44.62.180.

(c) Action under (a) of this section may not be undertaken unless all interested parties are afforded an opportunity to be heard at a hearing held upon 15 days' notice to those parties.

(d) The provisions of this section do not apply to emergency regulations. (§§ 1, 2 ch 3 SLA 1978; am § 2 ch 1 SLA 1982)

Revisor's notes. — Subsection (d) was enacted as sec. 2, ch. 3, SLA 1978, and rewritten and codified as a part of this section in 1978.

Cross references. — For intent of 1982 amendatory act, see sec. 1, ch. 1, SLA 1982.

Effect of amendments. — The 1982

amendment in subsection (b), substituted "resolution of the Administrative Regulation Review Committee resolving that the regulation be suspended" for "committee report passing in favor of suspension" in the first sentence and substituted "resolution" for "report" in two places in the second sentence.

NOTES TO DECISIONS

Constitutionality of legislative veto. — The legislative veto contained in AS 44.62.320 (a), which provides that the legislature, by a concurrent resolution adopted by a vote of both houses, may annul a regulation of an agency or depart-

ment," violates art. II of the state constitution. No implied general power to veto agency regulations by informal legislative action exists. *State v. A.L.I.V.E. Voluntary*, Sup. Ct. Op. No. 2022 (File No. 3670). 606 P.2d 739 (1980).

Sec. 24.20.450. Staff, The Legislative Affairs Agency shall provide the committee with professional and clerical assistance under the auspices of the Legislative Council. (§ 1 ch 27 SLA 1975)

Sec. 24.20.460. Powers. The Administrative Regulation Review Committee has the following powers:

- (1) to organize and adopt rules for the conduct of its business;
- (2) to hold public hearings;
- (3) to require all state officials and agencies of state government to give full cooperation to the committee or its staff in assembling and furnishing requested information;
- (4) to examine all administrative regulations to determine if they properly implement legislative intent;
- (5) to make recommendations for legislative annulment of administrative regulations under AS 44.62.320;
- (6) to prepare and distribute reports, memoranda, or other materials;
- (7) to promote needed revision or repeal of regulations that have been adopted by state departments and agencies and, when the committee determines a regulation should be repealed or amended, to introduce a bill that would enact a statute that would supersede or nullify the regulation;
- (8) to investigate findings that are transmitted to the committee by a standing committee in accordance with AS 24.05.182 and, as appropriate, to either introduce a bill annulling the regulation or exercise the committee's power to suspend the effectiveness of the regulation in accordance with AS 24.20.445. (§ 1 ch 27 SLA 1975; am § 3 ch 1 SLA 1982)

Effect of amendments. — The 1982 amendment added paragraphs (7) and (8).

NOTES TO DECISIONS

Constitutionality of legislative veto. — The legislative veto contained in AS 44.62.320 (a), which provides that the "legislature, by a concurrent resolution adopted by a vote of both houses, may annul a regulation of an agency or department," violates art. II of the state constitution. No implied general power to veto agency regulations by informal legislative action exists. *State v. A.L.I.V.E. Voluntary*, Sup. Ct. Op. No. 2022 (File No. 3670), 606 P.2d 769 (1980).

Sec. 24.08.060. Introduction of bills. (a) A member of the legislature or a committee chairman, with the concurrence of a majority of the active members of the committee and on behalf of the committee, may introduce a bill or resolution. Bills and resolutions shall be prepared and introduced in the manner and form prescribed in the uniform rules and the legislative style manual.

(b) Bills introduced by the Legislative Council shall be delivered with a letter of explanation to the rules committee of either house and bear the inscription "Rules Committee by Request of the Legislative Council"; bills introduced by the Administrative Regulation Review Committee shall be delivered with a letter of explanation to the rules committee of either house and bear the inscription "Rules Committee by Request of the Administrative Regulation Review Committee"; bills introduced by the Legislative Budget and Audit Committee shall be delivered with a letter of explanation to the rules committee of either house and bear the inscription "Rules Committee by Request of the Legislative Budget and Audit Committee." Bills presented by the governor shall be delivered with a letter to the rules committee of either house and bear the inscription "Rules Committee by Request of the Governor"; bills so presented and inscribed shall be received as bills carrying the approval of the governor as to policy and budget impact. The governor may submit a statement of purpose and effect with each bill and appear personally or through a representative before any committee considering legislation. (§ 34 ch 157 SLA 1959; am § 10 ch 47 SLA 1961; am § 1 ch 2 SLA 1971; am § 38 ch 32 SLA 1971; am § 27 ch 71 SLA 1972; am § 1 ch 2 SLA 1977)

Revisor's notes. — Formerly AS
24.30.060. Renumbered in 1985.

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Quoted in *Homer Elec. Ass'n v. City of Kenai*, Sup. Ct. Op. No. 390 (File No. 675), 423 P.2d 285 (1967).

Article 7. Legislative Review of Rules.

Section

320. Legislative annulment of regulations and review

Sec. 44.62.320. Legislative annulment of regulations and review. (a) The legislature, by a concurrent resolution adopted by a vote of both houses, may annul a regulation of an agency or department.

(b) At the same time a regulation is filed by the lieutenant governor, the lieutenant governor shall submit the regulation to the chairman and all members of the Administrative Regulation Review Committee for review under AS 24.20.400 — 24.20.460 together with the fiscal information required to be prepared under AS 44.62.195. (§ 1 art VII (ch 1) ch 143 SLA 1959; am § 3 ch 149 SLA 1962; am § 2 ch 72 SLA 1963; am § 2 ch 27 SLA 1975; am § 5 ch 64 SLA 1978; am § 3 ch 16 SLA 1980)

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No implied general power to veto agency regulations by informal legislative

ture, by a concurrent resolution adopted by a vote of both houses, may annul a regulation of an agency or department." violation exists. *State v. A.L.I.V.E. Voluntary*, 606 P.2d 769 (Alaska 1980).

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(c) Action under (a) of this section may not be undertaken unless all interested parties are afforded an opportunity to be heard at a hearing held upon 15 days' notice to those parties.

(d) The provisions of this section do not apply to emergency regulations. (§§ 1, 2 ch 3 SLA 1978; am § 2 ch 1 SLA 1982)

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Effect of amendments. — The 1982 amendment added paragraphs (7) and (8).

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(b) At the same time a regulation is filed by the lieutenant governor, the lieutenant governor shall submit the regulation to the chairman and all members of the Administrative Regulation Review Committee for review under AS 24.20.400 — 24.20.460 together with the fiscal information required to be prepared under AS 44.62.195. (§ 1 art VII (ch 1) ch 143 SLA 1959; am § 3 ch 149 SLA 1962; am § 2 ch 72 SLA 1963; am § 2 ch 27 SLA 1975; am § 5 ch 64 SLA 1978; am § 3 ch 16 SLA 1980)

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Cited in Wickersham v. State, Com. Fisheries Entry Comm'n, 680 P.2d 1135 (Alaska 1984).

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Introduced:
Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to regulations to implement the longevity bonus program."

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

3 * Section 1. AS 47.45.100 is amended to read:

4 Sec. 47.45.100. POWERS AND DUTIES OF THE ADMINISTRATOR. The
5 commissioner of administration shall

6 (1) adopt regulations under AS 44.62.010 - 44.62.320 (Administrative
7 Procedure Act) necessary to carry out the provisions of this chapter;

8 (2) make expenditures from the fund necessary to administer this chapter;

9 (3) establish and maintain an adequate system of accounts for the fund;

10 (4) publish annually a report showing the financial condition of the fund.

11 * Sec. 2. AS 47.45.160 is amended to read:

12 Sec. 47.45.160. APPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT. The
13 provisions of AS 44.62.320 - 44.62.630 do [THE ADMINISTRATIVE PROCEDURE ACT
14 (AS 44.62) DOES] not apply to this chapter.

HB 328

92

STR 2

Alaska State Legislature



House of Representatives
House Judiciary Committee
Chairman Dave Donley

State Capitol
Juneau, Alaska 99801-1182
(907) 465-4990

MEMORANDUM

TO: Representative Mike Navarre, Co-Chair
Representative Eileen MacLean, Co-Chair
House Finance Committee

FROM: Representative Dave Donley, Chair
House Judiciary Committee

RE: Request for hearing on HB 328, "relating to the
notice and public comment requirements for the
adoption, amendment and repeal of regulations."

DATE: March 3, 1992

On behalf of the House Judiciary Committee, I am requesting a hearing on CSHB 328(Jud). This bill would remedy a problem with existing provisions of the Administrative Procedure Act relating to notice of adoption, amendment, or repeal of regulations.

At the present time, an agency need only give initial public notice of the adoption, amendment, or repeal of regulations. If, after giving notice, the agency substantially rewrites the regulation, amendment or order of repeal, it need not give notice of what often amounts to major, substantive changes in that which was originally noticed.

This bill would require new public notice each time an agency substantially rewrites a proposed regulation, amendment, or order of repeal. We feel that this bill represents good public policy and will help prevent abuses of the regulatory process, without placing an onerous burden on an agency. HB 328 has received 11 "do passes" and 3 "no recommendations" in the committee process.

DD/hk

Alaska State Legislature

Senator Paul Fischer
Senate District D
Box 784
Soldotna, Alaska 99669
(907) 262-9420 W
262-9269



While in Juneau
P.O. Box V
Juneau, Alaska 99811
(907) 465-3791

State Senate

MEMORANDUM

TO: Senator Shirley Craft, Chairman
Administrative Regulation Review Committee
Regulation Review Committee members

FROM: Senator Paul Fischer *PAF/sgn*

SUBJECT: CS Senate Joint Resolution 2 (Judiciary)
(repeal of regulations by the legislature)

DATE: March 13, 1992

It is my understanding that the Administrative Regulation Review Committee will be looking at the above referenced resolution today with the thought in mind of a possible endorsement by the committee.

I have asked my staff to prepare a packet for your committee with a brief history of the ballot propositions. As you are aware, this subject has been before us before and has appeared on the ballot several times. I have also attached written testimony that was presented by staff to the Senate Finance Committee.

It would be my desire to give the voters a chance to decide on this issue again, hopefully with a much better campaign promotion.

I appreciate your consideration of this issue.

PAF/sgn

Attachments

TESTIMONY BEFORE SENATE FINANCE COMMITTEE (2-11-92)

CS SENATE JOINT RESOLUTION 2 (Judiciary)
(Repeal of regulations by the legislature)

MR. CHAIRMAN.....MEMBERS OF THE SENATE FINANCE COMMITTEE....
FOR THE RECORD, I AM SANDY NUSBAUM, STAFF TO SENATOR PAUL
FISCHER.....

THIS JOINT RESOLUTION IS A PROPOSAL TO PLACE A CONSTITUTIONAL
AMENDMENT BEFORE THE VOTERS OF THE STATE OF ALASKA ON THE 1992
GENERAL ELECTION BALLOT.....

THE AMENDMENT WOULD PERMIT THE LEGISLATURE TO TAKE ACTION ON
REGULATIONS PROMULGATED BY STATE AGENCIES THAT MAY NOT PROPERLY
IMPLEMENT THE INTENT OF THE LAWS PASSED BY THE LEGISLATURE.....

ANNULMENT OF REGULATIONS BY RESOLUTION WAS AUTHORIZED BY THE FIRST
STATE LEGISLATURE IN 1959; HOWEVER, IN 1980 THE ALASKA SUPREME
COURT RULED.....IN A 3-2 DECISION.....THAT THE CONSTITUTION PERMITS
THE LEGISLATURE TO ANNUL A REGULATION BY PASSING A BILL. 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.....

ADOPTION OF A RESOLUTION ANNULLING A REGULATION REQUIRES APPROVAL
BY A MAJORITY VOTE OF THE MEMBERSHIP OF EACH BODY OF THE
LEGISLATURE.....

TESTIMONY BEFORE SENATE FINANCE COMMITTEE (2-11-92)

CS SENATE JOINT RESOLUTION 2 (Judiciary)
(Repeal of regulations by the legislature)

WHILE MANY REGULATIONS DO CONFORM TO AND SUPPORT THE LAWS PASSED BY THE LEGISLATURE.....THERE ARE EVER INCREASING EVIDENCE THAT REGULATIONS WHICH ARE IMPOSED ON THE CITIZENS OF THE STATE GO FAR BEYOND THE INTENT OF THE LAWS PASSED BY THE LEGISLATURE.....MANY TIMES IGNORING THE LEGISLATIVE DIRECTIVE OR GOING BEYOND THE LIMITS OF WHAT THE LEGISLATURE INTENDED.....

ONCE REGULATIONS GO INTO EFFECT.....THEY HAVE ALL THE FORCE OF LAW.....EVEN THOUGH NO SINGLE PERSON ELECTED BY THE VOTERS HAS APPROVED THEM.....

I FIRMLY BELIEVE THAT THE FRAMERS OF OUR STATE CONSTITUTION NEVER INTENDED THAT ANY GOVERNMENTAL BODY.....EXCEPT THE LEGISLATURE... HAVE THE POWER TO MAKE LAWS.....

THE ALASKA CONSTITUTION PROVIDES A SYSTEM OF CHECKS AND BALANCES AMONG THE THREE BRANCHES OF GOVERNMENT AND FURTHER PROVIDES THE PEOPLE OF ALASKA THEIR OWN CHECKS AND BALANCES THROUGH THE VOTING BOOTH.....THE INITIATIVE PROCESS.....AND FINAL AUTHORITY OVER AMENDMENTS TO THE CONSTITUTION.....

THE ONE AREA THAT IS NOT CURRENTLY ACCESSIBLE TO THE PEOPLE'S CHECKS AND BALANCES IS THE VOLUME OF ADMINISTRATIVE REGULATIONS WHICH ARE WRITTEN BY THE STATE AGENCIES IN THE EXECUTIVE BRANCH OF GOVERNMENT.....REGULATIONS THAT AFFECT EVERY ASPECT OF THESE PEOPLE'S LIVES YET THEY ARE POWERLESS TO CHANGE THEM.....

TESTIMONY BEFORE SENATE FINANCE COMMITTEE (2-11-92)

CS SENATE JOINT RESOLUTION 2
(Repeal of regulations by the legislature)

THIS MEASURE WOULD PROVIDE A REASONABLE AVENUE FOR ANNULMENT OF
IMPROPER REGULATIONS.....

MR. CHAIRMAN.....THE SENATE JUDICIARY MOVED THIS RESOLUTION
FROM COMMITTEE WITH A UNANIMOUS "DO PASS" RECOMMENDATION.....

THE ONLY CHANGE MADE BY THE COMMITTEE IN THE COMMITTEE SUBSTITUTE
WAS TO DELETE THE FOLLOWING LANGUAGE IN THE ORIGINAL VERSION:

[IF THE LEGISLATURE FINDS THAT A REGULATION IS INCONSISTENT WITH
THE AUTHORIZING STATUTE]

IT WAS THEIR CONTENTION THAT SIMPLIFYING THE LANGUAGE WOULD MAKE
IT EASIER FOR THE AVERAGE VOTER TO UNDERSTAND....ALTHOUGH THERE
ARE CERTAINLY NO GUARANTEES HOW THE BALLOT MEASURE WILL READ
WHEN IT IS PLACED BEFORE THE VOTERS.....

I MIGHT ADD THAT I BELIEVE IN YOUR FILES YOU WILL FIND A CHART
OF THE HISTORY OF THE THREE OTHER OCCASIONS THIS CONSTITUTIONAL
AMENDMENT HAS BEEN ON THE BALLOT AS WELL AS A COPY OF THE
PROPOSITION MATERIALS USED EACH TIME.....

THIS RESOLUTION CARRIES A SMALL FISCAL NOTE.....\$2,200 FROM THE
DIVISION OF ELECTIONS.....TO COVER THE COST OF PLACING THIS
QUESTION ON THE ELECTION BALLOT.....THE DEPARTMENT OF LAW HAS
SUBMITTED A ZERO FISCAL NOTE.....

Alaska State Legislature

Senator Paul Fischer
Senate District D
Box 784
Soldotna, Alaska 99669
(907) 262-9420 W
262-9269



While in Juneau
P.O. Box V
Juneau, Alaska 99811
(907) 465-3791

State Senate

MEMORANDUM

TO: Senator Shirley Craft, Chairman
Administrative Regulation Review Committee
Regulation Review Committee members

FROM: Senator Paul Fischer *PAF*

SUBJECT: CS Senate Joint Resolution 2 (Judiciary)
(repeal of regulations by the legislature)

DATE: March 13, 1992

Background

This proposal for an amendment to the Constitution of the State of Alaska to repeal regulations by the Legislature has been placed on the ballot on three previous occasions. Each time it failed to be approved by the voters. The following chart and past proposition materials are attached for your files.

| <u>1980</u> | <u>1984</u> | <u>1986</u> | |
|-------------|-------------|-------------|----------------------------|
| 58,808 | 91,174 | 65,176 | Yea's |
| 82,010 | 98,856 | 94,299 | Nay's |
| 140,818 | 190,030 | 159,475 | Total Proposition Votes |
| 16% | 4% | 18% | Failure Percentage |
| 162,653 | 213,173 | 182,526 | Total Votes Cast |
| 258,742 | 305,262 | 292,274 | Total Registered Voters |
| 63% | 70% | 62% | Voter Turnout |

PAF/sgn
Attachments

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 <u>18</u> | Nays <u>0</u> | Absent or Not Voting <u>2</u> |
| House | (40 members): | Yeas <u>36</u> | Nays <u>0</u> | Absent or Not Voting <u>4</u> |

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.

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

MEASURE NO. 1

Constitutional Amendment

LEGISLATIVE ANNULMENT OF ADMINISTRATIVE REGULATIONS

(1983 Legislative Resolve No. 15 (SCS HJR 5(Jud)))

SUMMARY

(As it will appear on the November 6, 1984 General Election Ballot)

This amendment of the Alaska Constitution would permit the legislature to annul executive-branch regulations by passing a resolution. The annulment would become effective 30 days after passage by the legislature, unless the resolution sets a different date. The resolution must have three readings in each house on separate days, except that it may be advanced from second to third reading on the same day by a three-fourths vote of the house considering it. The resolution must receive approval of a majority of the membership of each house. The yeas and nays on final passage must be entered in the legislative journals. The resolution is not subject to veto by the governor, and it is not subject to repeal by referendum.

BALLOT FORM:

A vote "FOR" adopts the amendment.

A vote "AGAINST" rejects the amendment.

FOR
AGAINST

VOTES CAST BY MEMBERS OF THE 13TH STATE LEGISLATURE ON FINAL PASSAGE

| | | | | |
|--------|---------------|---------|--------|------------------------|
| Senate | (20 members): | Yeas 19 | Nays 0 | Absent or Not Voting 1 |
| House | (40 members): | Yeas 34 | Nays 2 | Absent or Not Voting 4 |

LEGISLATIVE AFFAIRS AGENCY SUMMARY

(As required by law)

This proposal for a constitutional amendment would allow the legislature to annul a regulation adopted by a state department or agency by concurrent resolution. The annulment is effective thirty days after the date the concurrent resolution is approved by both houses unless the resolution specifies a different date. Adoption requires three readings in each house on three separate days except it may be advanced from second to third reading on the same day by concurrence of three fourths of the membership of the house considering it. Adoption requires approval by a majority vote of the membership of each house. The vote on final passage must be entered into the journal.

FULL TEXT OF PROPOSED CONSTITUTIONAL AMENDMENT

(This amendment would add the following section to article II of the Alaska Constitution.)

SECTION 22. ANNULMENT OF REGULATIONS. The legislature by concurrent resolution may annul a regulation adopted by a state department or agency. The annulment of the regulation is effective thirty days after the date the concurrent resolution is approved by both houses unless the concurrent resolution specifies a different date. The concurrent resolution requires three readings in each house on three separate days, except that it may be advanced from second to third reading on the same day by concurrence of three-fourths of the house considering it, and approval by a majority vote of the membership of each house. The yeas and nays on final passage shall be entered into the journal.

STATEMENT IN FAVOR OF BALLOT MEASURE NO. 1

Voters who have ever experienced irritation or anger as a result of a problem they have had with state regulations should vote in favor of Ballot Measure No. 1. While many regulations do conform to and support state laws, there are occasionally regulations which are imposed that go beyond the intent of the law and cause undue hardship on our citizens. These regulations often make no sense at all, state agency people are often at a loss to explain the meaning or sense of the regulations, and yet the state agencies involved continue to enforce them, and voters are powerless to change them.

The Alaska Constitution, patterned essentially upon the Constitution of the United States and the experience of the other states, provides a system of checks and balances among the three branches of government, and further entitles the people to their own checks and balances through the voting booth, the initiative process, and final authority over amendments to the constitution. The one major area of government that is currently not directly accessible to the people's checks and balances is the very considerable volume of administrative regulations which are written by the state agencies in the executive branch of government.

These regulations deal with every aspect of government and our lives: fish and game, education, health and social services, traffic, land development, utilities, taxes; the list is endless. And once the regulations go into effect, they have all the force of law. The problem is, that unlike the situation that occurs with laws, the agency people who make and enforce regulations are not subject to voter approval at election time; they are either appointed by the governor or by his commissioners.

While the legislature is often made aware of foolish bureaucratic requirements by unhappy constituents, it is almost powerless to do anything about them. Currently, to annul a regulation, the legislature must pass a new bill which is then subject to veto by the governor. This puts the governor in the powerful position of being able to stop a bill that would overturn a regulation made by his own subordinates.

It was never intended by the framers of our State Constitution that any governmental body except the legislature have the power to make laws. Yet, bad regulations have been written, on occasion by state agencies, which go beyond the letter and intent of the law as passed by the legislature and in effect create law on their own.

This measure would provide a reasonable avenue for annulment of bad regulations. It would allow your elected representatives in the legislature, through a majority vote of both houses, to annul regulations in the same way they pass any legislative bill, except it would not be subject to veto by the governor, who clearly has a biased position in the matter.

The House Joint Resolution which created the ballot measure had bi-partisan sponsorship during the last legislative session, and was passed with near-unanimous support by both houses of the legislature.

—Mike Szymanski,
State Representative

STATEMENT OPPOSING BALLOT MEASURE NO. 1

This proposed amendment to the Alaska Constitution is very similar to the one proposed in 1980 and rejected by the voters 82,010 to 58,808. Although the present version includes some improvements over the 1980 version, it is another attempt by the legislature to concentrate governmental power in its own hands.

Under the current constitution and statutes, the legislature has all the power it needs to make laws and to limit or guide the adoption of administrative regulations. The regulations are adopted to implement statutes. This proposal would enable legislators to use a law-making procedure that is not subject to veto by the governor or repeal by referendum, and that could be used to ignore the prohibition against special and local legislation.

The constitution now provides for a balance of power among the legislative, executive, and judicial branches of the government. This balance requires a blending or sharing, as well as a dividing, of governmental responsibilities. If this constitutional amendment were to be approved by the voters, it would enable the legislature not only to write the laws, as has traditionally been the legislature's function, but it would also enable the legislature to act in place of the courts in deciding whether the executive has lawfully executed the laws when adopting a regulation; and it would empower the legislature to act in place of the executive by nullifying a specific executive-branch decision.

The annulment is like a repeal. In using this expedited procedure to annul a regulation, the legislature would act only in a negative way. It would not be providing the sort of policy guidance and direction that is appropriate to its law-making function. And it would not be providing the thoughtful analysis necessary to solve a problem. The legislature would be saying to the agency "your decision to adopt that regulation is wrong". But it would not be telling the agency what would be right. This is especially troublesome when dealing with a complex subject. Without any guidance beyond the statute that the executive branch agency was trying to implement in the first place, the agency is left with only the option to guess again. That is neither an efficient nor an appropriate way to run the government.

The Alaska Supreme Court has ruled that the legislature must abide by the Constitution's checks and balances on its power when it exercises that power, including when it acts to annul regulations. The present proposal is intended to overrule the court's decision. As argued four years ago, when the voters rejected the 1980 proposal, this amendment would aid legislators, not the public, and it should be rejected.

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

BALLOT MEASURE NO. 2

Constitutional Amendment Legislative Annulment of Administrative Regulations (1986 Legislative Resolve No. 60 HCS SJR 40 [Jud] am H)

BALLOT LANGUAGE

(As it will appear on the November 4, 1986, General Election Ballot)

This amendment of the Alaska Constitution would permit the legislature to annul executive branch regulations by passing a resolution that is not subject to veto by the governor or repeal by referendum. The annulment would become effective 30 days after passage by the legislature, unless the resolution sets a different date. The resolution must have three readings in each house on separate days, except that it may be advanced from second to third reading on the same day by a three-fourths vote of the house considering it. The resolution must receive approval of a majority of the membership of each house. The yeas and nays on final passage must be entered in the legislative journals.

A vote "FOR" adopts the amendment. FOR

A vote "AGAINST" rejects the amendment. AGAINST

VOTES CAST BY MEMBERS OF THE 14TH ALASKA LEGISLATURE ON FINAL PASSAGE

| | | |
|---------|----------------------|----|
| House: | Yeas | 31 |
| | Nays | 4 |
| | Absent or Not Voting | 5 |
| Senate: | Yeas | 17 |
| | Nays | 0 |
| | Absent or Not Voting | 3 |

LEGISLATIVE AFFAIRS AGENCY SUMMARY

(HCS SJR 40 (Jud) am H)

This proposal for a constitutional amendment would allow the legislature to annul a regulation adopted by a state department or agency by its adoption of a concurrent resolution. Under the present provisions of the constitution, the legislature may annul a regulation only by the enactment of a bill that is subject to the veto of the governor; if the governor vetoes the bill, the constitution now requires a two-thirds affirmative vote of the legislature assembled in joint session to override the veto.

If the legislature adopts a concurrent resolution to annul a regulation under the authority proposed here, the annulment would be effective thirty days after the date the concurrent resolution is approved by both houses unless the resolution specified a different date. The concurrent resolution would not be subject to the veto of the governor. Adoption would require three readings in each house on three separate days except that it may be advanced from second to third reading on the same day by the concurrence of three-fourths of the membership of the house considering it. Adoption would require approval by a majority vote of each membership of each house. The vote on final passage must be entered into the journal.

FULL TEXT OF PROPOSED CONSTITUTIONAL AMENDMENT

(This amendment would add the following section to article II of the Alaska Constitution.)

SECTION 22. ANNULMENT OF REGULATIONS. The legislature by concurrent resolution may annul a regulation adopted by a state department or agency. The annulment of the regulation is effective thirty days after the date the concurrent resolution is approved by both houses unless the concurrent resolution specifies a different date. The concurrent resolution requires three readings in each house on three separate days, except that it may be advanced from second to third reading on the same day by concurrence of three-fourths of the house considering it, and approval by a majority vote of the membership of each house. The yeas and nays on final passage shall be entered into the journal.

BALLOT MEASURE NO. 2

STATEMENT IN SUPPORT OF BALLOT MEASURE NO. 2

The issue is basically simple: should bureaucrats or the Legislature be the ultimate lawmaking authority?

All 60 members of the Legislature (40 House and 20 Senate) are elected by the people. They are all voted in to, and out of, office by individual voters. The Alaska Constitution says, "The legislative (i.e., lawmaking) power of the State is vested in a Legislature consisting of a Senate... and a House of Representatives..." The Legislature proposes, considers, and enacts laws, known collectively as the Alaska Statutes (if general and permanent) or as the Session Laws of Alaska (if specific and temporary).

All bureaucrats who promulgate (i.e., enact and enforce) regulations (theoretically, to put laws into effect) are in the Executive Branch, headed by the Governor. Bureaucrats are not voted into office and thus cannot be removed by the people. Instead, bureaucrats are hired by the Governor or by his/her appointees, and thus can only be removed from office by the Governor or by somebody answerable to him/her. However, the regulations promulgated by the bureaucrats, known collectively as the Alaska Administrative Code, have the force of law and affect all of us, sometimes adversely.

What can be done about a law that's bad? It can be repealed by the Legislature or, in some cases, by the people directly via an initiative petition.

What about a regulation that's bad? It can only be repealed by the bureaucrats who promulgated it, up to and including the Governor. If the Legislature tries to repeal a regulation by passing a bill, the Governor will almost certainly (and always has, in the past) veto the bill so that the bad regulation stays in full force and effect.

Now, if the Legislature had the power to repeal regulations by passing a concurrent resolution (instead of a bill), then the resolution could not be vetoed by the Governor. Thus, the Legislature would be able to get rid of bad regulations, which in effect it cannot do now.

Would this give the Legislature too much power? Not hardly. Since the Legislature already has full power to enact laws, why shouldn't it have full power to repeal all laws, including regulations?

Why do Governors and bureaucrats oppose giving the Legislature such regulatory repeal power? Because Governors and their handpicked bureaucrats, which are answerable only to the Governor (and cannot be removed by the people, which can remove Legislators), don't want to lose the power they now have to promulgate and enforce any regulation they want. It's that simple.

If you feel that the Legislature should have the power to repeal regulations via concurrent resolution (not vetoable by the Governor), vote FOR the ballot measure. If you feel that bureaucrats should be the ultimate lawmaking authority, vote otherwise.

I recommend that you vote FOR. Only in this way will we realistically be able to get rid of bad regulations.

Andre Marrou
State Representative

STATEMENT OPPOSING BALLOT MEASURE NO. 2

For the third time in six years, the legislature insists on confronting the voters with a proposed constitutional amendment giving the legislature a short-cut to law-making—another attempt by the legislature to concentrate governmental power in its own hands. The voters rejected a similar proposal in 1980 and the identical proposal in 1984. It should be rejected again.

Under the current constitution and statutes, the legislature has all the power it needs to make laws and to limit or guide the adoption of administrative regulations. Regulations are adopted to implement statutes. They have the force of law. Annulling them changes the law. This proposal would enable legislators to use a law-making procedure that is not subject to veto by the governor or repeal by referendum, and that would be used to ignore the prohibition against special and local legislation.

The constitution now provides for a balance of power between the legislative, executive, and judicial branches of the government. This balance requires a blending or sharing, as well as a dividing, of governmental responsibilities. If this constitutional amendment were to be approved by the voters, it would enable the legislature not only to write the laws, as has traditionally been the legislature's function, but it would also enable the legislature to act in place of the courts in deciding whether the executive has lawfully executed the laws when adopting a regulation, and it would empower the legislature to act in place of the executive by reversing a specific executive-branch decision.

In its intent statement accompanying this proposal, the legislature admitted that the "difficulty in achieving [the two-thirds] majority [to override a veto] in opposition to the governor and the governor's administration has led the legislature to propose this amendment." In other words, the fear that the governor might veto a bill and that not enough legislators would agree to override that veto prompted this short-cut approach to law-making. That fear overlooks the governor's accountability to the voters throughout the state.

The annulment is like a repeal. The legislature would act only in a negative way. It would not be providing the sort of policy guidance and direction that is appropriate to its law-making function. The legislature would be saying to the agency "your decision to adopt that regulation is wrong." But it would not be telling the agency what would be right. This is especially troublesome when dealing with a complex subject. Without any guidance beyond the statute that the executive-branch agency was trying to implement in the first place, the agency is left with only the option to guess again. That is neither an efficient nor appropriate way to run the government.

The Alaska Supreme Court has ruled that the legislature must abide by the constitution's checks and balances on its power, including when it acts to annul regulations. The present proposal is intended to overrule the court's decision. As mentioned when the voters rejected the 1980 and 1984 proposals, this amendment would aid legislators, not the public, and it should be rejected.

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



RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

Jim Butler

Signature of Camera Operator

7/28/95

Date

1991-1992
HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE
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SB 284

SJR 12

Blatchford

Confirmation



Alaska State Legislature

House of Representatives Community & Regional Affairs

April 25, 1991

The House Community & Regional Affairs Committee has considered recommendations in a confirmation hearing for Edgar Blatchford as Commissioner of the Department of Community & Regional Affairs.

CONFIRM

DO NOT CONFIRM

OTHER RECOMMENDATIONS

| | | |
|----------------------------|-------|-------|
| <i>Richard [Signature]</i> | _____ | _____ |
| <i>Keith Phillips</i> | _____ | _____ |
| <i>Betty Davis</i> | _____ | _____ |
| <i>Jerry [Signature]</i> | _____ | _____ |
| <i>Jerry M.</i> | _____ | _____ |
| <i>Cheri Davis</i> | _____ | _____ |
| <i>John C. Douglas</i> | _____ | _____ |

Jerry M.
Rep. Jerry Mackie, Chairman

Resumé
Edgar Blatchford
P.O. Box 1344
Seward, Alaska 99664
(907) 333-6394

- Experience:** 1990 (July 1) – present: Editor/Publisher, "The Tundra Drums", the most widely distributed weekly newspaper serving the Yukon-Kuskokwim Delta.
- 1989 (April) – present: Chairman of the Board, Chugach Alaska Corporation. Responsible for implementing all corporate policies both public and private. A full-time position.
- 1984 – present: Editor/Publisher, "The Seward Phoenix Log", a weekly award-winning newspaper serving the people of the Eastern Kenai Peninsula.
- 1979 – 1985: President or chairman of the board of Chugach Alaska Corporation, an Alaska Native regional corporation. Served as the board's principal negotiator during the land settlement process. CAC received \$12 million and 372,000 acres as a result of 1982 agreement. Principal spokesman for company.
- 1969 – 1979: Worked construction out of the Local 302, International Union of Operating Engineers hall – Amchitka, Adak, Cold Bay, Dillingham, Anchorage, Crooked Creek, Valdez, Tonsina, and Glennallen.
- Education:** M.S. (journalism), Columbia University, New York, New York, 1988.
J.D. (law), University of Washington School of Law, Seattle, Washington, 1976.
B.A. (social sciences), Alaska Methodist University, Anchorage, Alaska, 1973.
Diploma, Seward High School, Seward, Alaska, 1969.
- Affiliations:** Present: Trustee, board of trustees – Alaska Pacific University, Anchorage, Alaska (second, three-year term).
Director, board of directors – Chugach Alaska Corporation, Anchorage, Alaska (13 years).
- Past: Member – Alaska Land Use Council, Anchorage, Alaska.
Director, board of directors – Seward Senior Citizens, Seward, Alaska
Trustee, board of trustees – Alaska Federation of Natives, Inc., Anchorage, Alaska
President – Alaska Methodist University/Alaska Pacific University Alumni Association, Anchorage, Alaska.

Memberships: National Newspaper Association
The Society of Professional Journalists, Sigma Delta Chi
Alaska Press Club
Alaska Presswomen
Elks
Rotary International
Mt. Marathon Native Association
University of Washington Alumni Association
Seward Chamber of Commerce

**University
Activities:** Student Body President, AMU
Alaska Native Students Organization President, AMU
Cross-country Ski Team, AMU
Fund-raising Committee Chairman, AMU
Representative, Student Bar Association, UW
Graduation Committee Chairman, UW

References: Lee McAnerney
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Ricardo Worl

**Alaska State Legislature
House of
Representatives**

P.O. Box V

Juneau, Alaska 99811

MEMORANDUM

TO: Committee Chairs and Committee Aides

FROM: Rep. Max Gruenberg, House Majority Leader
Rep. Johnny Ellis, Chair, House Rules Committee

RE: Confirmation Hearings

DATE: March 25, 1991

We have been working to develop comprehensive hearings for Governor Hickel's commissioner appointees. This is the first time in years that there has been such a wholesale changeover in the administration of state government. These appointments can have a far-reaching effect on the future of our state, making it critically important that the legislature do a thorough job in our constitutional duty to confirm these individuals.

We have developed the following list of suggestions to assist you in gathering the information necessary to better understand the qualifications of these individuals and their plans for the departments they head. If you have additional suggestions, please share them with us and the other committee chairs and aides.

1) Review the resumes of the appointees as an avenue for further background checks on their qualifications for the job.

2) Review the Cowper Transition Report for issues of importance to the department that the commissioner-appointee should address.

3) Contact the previous commissioners (some are still in Juneau) for issues they think are important for the new commissioner to address.

4) There are some questions you may want to ask of the appointee in writing before the hearing so that you will not get a typical, "I'll have to get back to you later on that" response.

5) There are probably other legislators not on your committee who have significant knowledge about the relevant department. You should encourage them to attend the hearing and ask questions.

6) There may be other legislators who will not be able to attend the hearing, but will want to know what transpired during the proceedings before making a decision on a confirmation vote. For this reason we encourage you to prepare prompt and comprehensive committee minutes. Minutes will also be important for reference in case there occur future misunderstandings about a commissioner's plans for the department.

7) Informing the public is also a critically important function of the confirmation hearings. It is a good idea to notify the news media in advance of the hearings and to provide them with background information on each appointee. You may also wish to issue a news release after the hearings to explain committee deliberations and final action.

Please feel free to contact Terence O'Malley in Max's office at x4968 for help on press relations. Jim Nordlund in Johnny's office at x3764 and Mark Handley in Max's office at x4968 are also available to assist you in locating information and preparing questions for the hearings.

Good luck with your hearings.



Alaska State Legislature House of Representatives

P.O. Box V

Juneau, Alaska 99811

House of Representatives

CONFIRMATION HEARING SCHEDULE

REVISED April 3, 1991
Changed dates indicated by *

| <u>Appointee</u> | <u>Department</u> | <u>Committee</u> | <u>Date/Time</u> |
|------------------|-------------------|------------------|------------------|
| Glenn Olds | C&ED | L & C | Apr. 4 1:00 pm |
| Ted Mala | H & SS | HESS | Apr. 8 8:00 am |
| Lloyd Hames | Corrections | HESS | Apr. 9 8:00 am |
| * Nancy Usera | Labor | L & C | Apr. 9 1:00 pm |
| Charles Cole | Law | Judiciary | Apr. 10 1:30 pm |
| Harold Heinze | Nat. Resources | Resources | Apr. 16 3:00 pm |
| Lloyd Hames | Corrections | Judiciary | Apr. 17 1:30 pm |
| Millet Keller | Admin. | S. Affairs | Apr. 22 8:30 am |
| * John Sandor | Env. Conser. | Resources | Apr. 25 3:00 pm |
| Richard Burton | P. Safety | S. Affairs | Apr. 29 8:30 am |
| Edgar Blatchford | C&RA | C&RA | TBA |
| * Lee Fisher | Revenue | Finance | TBA |

Note: Hearings for Commissioners-designate Hugh Cox of Military and Veterans Affairs, Frank Turpin of Transportation, and Carl Rosier of Fish and Game have already occurred. There will be a second hearing for Lee Fisher of Revenue.

HB

!

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 1
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE LARSON

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the incorporation of boroughs, to annexation of certain areas, and to
2 the committee on municipalities; and providing for an effective date."

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

4 * Section 1. COMMITTEE ON MUNICIPALITIES. (a) A committee on municipalities is
5 established in the Department of Community and Regional Affairs consisting of the commissioner of
6 community and regional affairs or the commissioner's designee, the chair of the local boundary
7 commission or the chair's designee, and the following members appointed by the governor:

8 (1) a member of the senate;

9 (2) a member of the house of representatives;

10 (3) an employee or official of a borough or unified municipality;

11 (4) an employee or official of a city in the unorganized borough;

12 (5) a member of a regional educational attendance area school board;

13 (6) a resident of an unincorporated community in the unorganized borough who is a

14 member of a local governing body organized under 25 U.S.C. 476 or a traditional village council of a

1 Native village that meets the requirements of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 -
2 1628); and

3 (7) a representative of the Alaska Municipal League.

4 (b) Members are not entitled to receive compensation, but the members appointed under (a)(3) -
5 (7) of this section are entitled to per diem and travel expenses authorized for boards and commissions
6 under AS 39.20.180.

7 (c) The commissioner of community and regional affairs or the commissioner's designee shall
8 serve as committee chair. The committee shall consider means to eliminate or reduce disincentives and
9 enhance incentives for the formation of boroughs. The committee shall also consider ways to ensure
10 greater equity in the distribution of financial aid to all municipalities. The committee shall submit a
11 report of its findings and recommendations to the legislature and to the local boundary commission by
12 January 1, 1994. The Department of Community and Regional Affairs shall make copies of the report
13 available to all municipalities.

14 (d) The committee terminates upon submission of its report under (c) of this section.

15 * Sec. 2. BOUNDARY STUDY. (a) The local boundary commission shall conduct a boundary study
16 of the unorganized borough to determine

17 (1) which regions meet the standards set out in AS 29.05.031 for borough incorporation;
18 and

19 (2) which areas should be annexed to existing boroughs or unified municipalities.

20 (b) In conducting the boundary study, the local boundary commission shall consult with existing
21 municipalities, regional educational attendance areas, and coastal resource service areas. The commission
22 shall conduct at least one public hearing in each region found to have met the standards for borough
23 incorporation and in each area the commission determines should be annexed. The study must be
24 completed by May 1, 1994.

25 * Sec. 3. ANNEXATION OR BOROUGH FORMATION. (a) After completing the boundary study,
26 the local boundary commission shall notify the director of elections of each region the commission
27 determines should be incorporated as a borough and each area the commission determines should be
28 annexed. Within 30 days after notification, the director of elections shall order an election in each
29 region and area to determine whether the voters desire borough incorporation or annexation in
30 accordance with the boundary study. The elections shall be held before December 1, 1994.

31 (b) The director of elections shall supervise each election in the general manner prescribed by

1 the Alaska Election Code (AS 15). The state shall pay all election costs.

2 (c) The director of elections shall certify the election results. If an annexation is approved, the
3 annexation is effective when the election results are certified. If a borough incorporation is approved,
4 incorporation is effective in accordance with sec. 7 of this Act.

5 (d) If an annexation is disapproved, the local boundary commission may submit the proposal for
6 annexation to the legislature under AS 44.47.567 - 44.47.583. If a borough incorporation is disapproved,
7 the commission may submit the proposal for incorporation to the legislature during the first 10 days of
8 the First Regular Session of the Eighteenth Alaska State Legislature. A proposal for borough
9 incorporation may be disapproved by a concurrent resolution adopted by a majority of the members of
10 each house within 45 days after the proposal is submitted to the legislature. If it is not disapproved,
11 borough incorporation becomes effective in accordance with sec. 7 of this Act.

12 * Sec. 4. PROVISIONAL HOME RULE CHARTER. (a) By March 1, 1995, the Department of
13 Community and Regional Affairs shall prepare a provisional home rule charter for the boroughs to be
14 incorporated under this Act. The charter must provide that each new borough exercise only those powers
15 a home rule borough must exercise by law.

16 (b) The voters of a region scheduled for incorporation under sec. 3(c) or (d) of this Act may
17 petition the department for an amendment to the provisional charter for that new borough. If the
18 department determines that at least 15 percent of the number of voters who voted in the last general
19 election in the region have signed the petition, the department shall submit the proposed amendment to
20 the director of elections.

21 * Sec. 5. CHARTER COMMISSION. (a) If a borough incorporation is approved under sec. 3(c)
22 of this Act, the director of elections shall schedule a charter commission election in the region to be held
23 by March 1, 1995. Any person who has been qualified to vote in the region for at least one year
24 immediately preceding the date set for the charter commission election may become a charter
25 commission candidate by notifying the director of elections. The notification must be received by the
26 director at least 30 days before the election date. If at least seven candidates have not notified the
27 director by the deadline, no charter commission election may be held. If an election is held, the seven
28 candidates receiving the highest number of votes immediately organize as a charter commission.

29 (b) The Department of Community and Regional Affairs shall provide staff and administrative
30 assistance to each charter commission organized under this section. Charter commission members serve
31 without compensation, but are entitled to per diem and travel expenses authorized for boards and

1 commissions under AS 39.20.180.

2 (c) The charter commission shall prepare a proposed home rule charter. The charter must be
3 signed by a majority of the commission members and filed with the director of elections. The
4 commission shall hold at least one public hearing on the charter before signing and filing it. The
5 director of elections shall submit the proposed charter to the voters at an election held before the first
6 Tuesday in October 1995. If the charter is approved, it becomes effective on the first Monday following
7 certification of the election of initial borough officials.

8 (d) If no charter is prepared and approved by the voters under this section, the provisional
9 charter prepared under sec. 4 of this Act, together with any proposed amendments adopted at the election
10 of initial officials, operates as the charter for the new borough.

11 * Sec. 6. ELECTION OF INITIAL OFFICIALS. On or before the first Tuesday in October 1995,
12 the director of elections shall hold an election of initial borough officials under AS 29.05.120 in each
13 borough scheduled for incorporation under this Act. Unless a borough has already adopted a charter
14 under sec. 5 of this Act, any proposed amendments to the provisional charter of the borough received
15 by the director under sec. 4(b) of this Act shall be submitted to the voters at the election of initial
16 borough officials.

17 * Sec. 7. INCORPORATION OF NEW BOROUGHES. (a) A region is incorporated as a home rule
18 borough on the first Monday following certification of the election held under sec. 6 of this Act. The
19 home rule charter adopted under sec. 5 of this Act or the provisional home rule charter prepared by the
20 Department of Community and Regional Affairs under sec. 4 of this Act, together with any charter
21 amendments approved by the voters, operates as the charter for the new borough.

22 (b) AS 29.05.140 and 29.05.190 - 29.05.210 apply to boroughs incorporated under this section.

23 * Sec. 8. This Act takes effect immediately under AS 01.10.070(c).

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

March 13, 1991

POSITION PAPER

RE: SPONSOR SUBSTITUTE FOR HOUSE BILL 1

SPONSOR: Representative Larson

Program Effects of Bill:

COMMITTEE ON MUNICIPALITIES. The SSHB 1 revises House Bill 1 in a number of ways, some more significantly than others. Both pieces of proposed legislation provide for creation of a "Committee on Municipalities" to consider means to eliminate or reduce disincentives and enhance incentives for the formation of boroughs. It will also consider ways to ensure greater equity in the distribution of financial aid to all municipalities. The composition of the committee is altered slightly by the Sponsor Substitute, adding new members while eliminating others. The SSHB 1 also insures that the Committee's report is distributed to a wider audience than that provided in the original House Bill 1.

BOUNDARY STUDY. Both Bills call for a boundary study of the unorganized borough to determine which regions meet the standards for borough incorporation and which should be annexed to existing regional governments. While HB 1 provides for annexation and home rule borough incorporation by the legislature under the terms of Article X, Section 12 of the Constitution, the Sponsor Substitute does so only upon failure of the referendum for annexation and borough incorporation by popular vote.

PROVISIONAL HOME RULE CHARTERS. Each bill provides for preparation of a provisional home rule charter for boroughs to be incorporated by the act. However the dates by which they are to be in place differ significantly in relation to the borough incorporation process. That is, HB 1 creates the charter prior to submittal of borough incorporation recommendations to the legislature. The Sponsor Substitute does not require the charter until two years after recommendations are submitted to the legislature.

CHARTER COMMISSION. SSHB 1 introduces the provision for election of a charter commission in the regions approved for borough incorporation by popular vote. House Bill 1 makes no similar provision.

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Comments:

SSHB 1 has evolved from legislation considered by the Fifteenth and Sixteenth Alaska Legislatures and House Bill 1 currently before the Seventeenth Alaska Legislature. The Department has provided extensive comments on all of these bills. The comments offered here focus on the Sponsor Substitute of the bill before the current legislature, while in some cases observing the differences from past proposals.

Section 1. COMMITTEE ON MUNICIPALITIES. While the Committee consists of members representing appropriate bodies to carry forward its tasks, it would benefit from the inclusion of a representative from both the Department of Revenue and Department of Education, as provided by HB 1. The SSHB 1 Committee adds a representative from a city in the unorganized borough, a representative of the Alaska Municipal League, a representative of a regional educational attendance area school board and a member of a local governing body organized under 25 U.S.C. 476 or a traditional village council of an ANCSA village to the Committee envisioned by HB 1.

However, as commented on HB 1, the Department believes that the representative of a city in the unorganized borough (added by SSHB 1) should be from either a first class or home rule city. Several such municipalities expressed interest in reclassifying to second class status over the last year in order to eliminate their current obligations for education services. A representative from a city in this situation could offer valuable insight on ways to provide equity in state funding for local services.

The Committee should also provide a representative from regional governments of defined population (one with fewer than 10,000 residents and one with more than 10,000 residents). Because the issues of impact to governments can differ significantly by the size of the municipality, the Department encourages representation by both sectors.

Section 2. BOUNDARY STUDY. As noted by the Department in comments on HB 1 and its predecessors, the Local Boundary Commission (LBC) is actively engaged in a study essentially identical to the one outlined in Section 2 (a) and (b). The only distinction is that the LBC's efforts focus on boundaries to the intentional exclusion of matters relating to the financial viability of prospective boroughs. The project is scheduled for completion in June of 1992.

With respect to financial viability, the Department completed a series of borough feasibility studies for nearly all regions of the unorganized borough in 1988 and 1989. Thus, the study requested by this proposed legislation could in fact be accomplished by completion of the LBC's 'model boundaries study' in conjunction with an update to the Department's earlier borough feasibility studies.

Section 3. ANNEXATION OR BOROUGH FORMATION. This section of SSHB 1 differs from HB 1 by providing for mandatory borough incorporation through submittal of a proposal from the LBC to the legislature failing incorporation by popular vote. The Department appreciates the opportunity of the populace to incorporate. It further believes however, that the incorporation process should not move forward to legislative mandate if the electorate fails to approve the referendum. The Department and LBC have long maintained that boroughs should be created through popular vote. In point of fact, the Commission has counseled against mandatory incorporation on several occasions while supporting local initiative.

Section 4. PROVISIONAL HOME RULE CHARTER and Section 5. CHARTER COMMISSION. The process proposed by Sections 4 and 5 of the Sponsor Substitute strikes the Department as unnecessarily complicated, redundant and out of synchronization. For example, the Section 4 provides that the Department shall prepare a provisional home rule charter by March 1, 1995 for each region incorporated under the act. (Voters are allowed to petition for amendments to the charter.)

Section 5 establishes that a proposed charter election (as compiled by a charter commission) in the region in which a borough is incorporated through popular vote, shall be held no later than October, 1995. If no charter created by the charter commission is approved by voters, then the provisional charter prepared by the Department and any proposed amendments will operate as the charter for the new borough. Thus for boroughs created either through legislative mandate or local election, it is conceivable that there will be no borough charter in place until at least March of 1995.

However, Section 3 (a) establishes that borough incorporation elections shall be conducted sometime between May 1 and December 1, 1994. Further, Section 3 (d) provides that, failing the election, a recommendation for borough incorporation may be submitted to the legislature during the first 10 days of the First Regular Session of the Eighteenth Alaska State Legislature. This would place the date of submittal in January, 1993.

Not only is the latter impossible (submittal of a recommendation to the 1993 legislature following an election that may not occur before May of 1994) but any borough formed before March of 1995 either through legislative mandate or local election may be operating without a charter.

The Department believes that it is important to have a basic charter proposal and a means for voters to tailor it to their specific needs at the time the borough incorporation election occurs. This could be accomplished by eliminating the charter commission, establishing the creation of a provisional charter by May, 1992, and simply allowing the new borough to operate under the provisional charter as written or amended by the residents of the borough, following incorporation. This would simplify an already complex process, eliminate redundant measures, and reduce the fiscal impact of this bill since the Department would be relieved of the responsibility to provide staff and administrative assistance to each charter commission provided by Section 5 (h).

Other processes contained within the provisions of this bill are likewise out of sequence.

General Comments:

Regional government in Alaska is facing major change. Economic, political and legal forces are likely to bring about the incorporation of numerous boroughs during the current administration. It is important that the State of Alaska anticipate this development and be prepared to respond.

The economic forces include declining State revenues and the resulting need for greater local participation in the funding of services. Political pressures stem principally from growing frustration among urban residents who perceive that services in unorganized areas are delivered in a wasteful fashion. (In January, 1991, the Anchorage Daily News reported on the front page that the State pays \$150,000 to operate a school in Paxson which serves only 3 students -- all of whom are children of the teacher.) Political influence of organized areas is due to increase substantially following the pending reapportionment of the legislature. Legal forces include actions such as the Matanuska-Susitna Borough's effort to overturn the State education foundation formula (Case No. 3PA-86-2022 CIV).

The Department of Community and Regional Affairs is not alone in its perception of the changes facing regional government in Alaska. In fact, officials of the Department of Education have urged the administration to consider forming 3rd class boroughs throughout all unorganized areas of the state.