ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9450 HOUSE STATE AFFAIRS

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606 P.2d 769 STATE V. A.L.I.V.E. VOLUNTARY (S. Ct. 1980)
STATE of Alaska and Department of Revenue, Appellants,
vs.
A.L.I.V.E. VOLUNTARY, Appellee
No. 3670
SUPREME COURT OF ALASKA
606 P.2d 769
February 19, 1980

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Peter J. Kalamarides, Judge.

COUNSEL
Joseph K. Donohue, Assistant Attorney General, Avrum M. Gross, Attorney General, Juneau, for Appellants.
Joe P. Josephson, Josephson & Trickey, Inc., Anchorage, for Appellee.
Stephen M. Ellis, Delaney, Wiles, Moore, Hayes & Reitman, Inc., Anchorage, for Amici Curiae Alaska Legislative Council and Administrative Regulation Review Committee.
JUDGES
Boochever, Chief Justice, Rabinowitz, Connor, Burke and Matthews, Justices. Boochever, Chief Justice, with whom Connor, Justice, joins, dissenting.
AUTHOR: MATTHEWS
OPINION
AS 44.62.320(a) provides:

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

This statute encompasses a variant of what has come to be called the legislative veto.1 The question in this case is whether this device violates article II of the Alaska Constitution. We hold that it does.

I

Chapter 15 of Title 5 of the Alaska Statutes authorizes games of chance and skill to be operated by permit holders. Only certain kinds of games, ("bingo, raffles and lotteries, ice classics, dog mushers' contests, fish derbies and contests of skill") are allowed,2 only nonprofit organizations may be issued a permit,3 and all revenues must be devoted to "the awarding of prizes to contestants or participants and to educational, civic, public, charitable, patriotic or religious uses."4 The Commissioner of Revenue has been delegated the authority to adopt rules and regulations "necessary to carry out this chapter or protect the best interest of the public."5

From 1960 until 1976 one of the Commissioner's regulations prohibited lottery operators from giving prizes exceeding $15,000 in personal property or $30,000 in real property annually.6 In November of 1976 the regulation was amended by increasing the annual personal property limit to $30,000 and the annual real property limit to $50,000 and by stating that personal property included cash and negotiable instruments.7

A.L.I.V.E. Voluntary is an unincorporated association which acts as the political action committee for the Teamster's Union Local No. 959, and affiliated unions. For three years

it has operated fund raising lotteries under a permit issued by the Department of Revenue. It applied for a permit for 1977 and reported that during 1976 it had distributed $80,000 in cash prizes. The Department denied A.L.I.V.E. a permit for 1977 on the ground that its prize distribution in 1976 had exceeded the allowable limit.

A.L.I.V.E. then brought suit against the Department alleging that the denial of the permit was wrongful, claiming that under the first version of the regulation which was in effect for most of 1976 cash prizes were not included within the personal property limitation of $15,000. While the case was pending before the superior court, the legislature, acting under AS 44.62.320(a), annulled, by concurrent resolution, 15 AAC 05.410(4).8

As a result of the legislative annulment A.L.I.V.E. added another count to its complaint under which it claimed that the denial of its permit was wrongful because it was based on continuing enforcement of the regulation despite its nullification by the legislature. In response, the state claimed that the legislature could not constitutionally annul an administrative regulation by concurrent resolution and therefore the regulation had not been annulled. Both parties moved for summary judgment on this issue. The court granted partial summary judgment in favor of A.L.I.V.E., holding that the legislative annulment power was constitutional and that the regulation in question was void ab initio.9

II

The Alaska Constitution defines with specificity the mechanics of legislation.10 Each provision has a purpose "designed to engender a responsible legislative process worthy of the public trust." Plumley v. Hale, 594 P.2d 497, 500 (Alaska 1979).

Article II, section 13 requires that every bill be confined to one subject and that there be a descriptive title. These requirements are designed "to prevent the inclusion of incongruous and unrelated matters in the same bill in order to get support for it which the several subjects might not separately command, and to guard against inadvertence, stealth and fraud in legislation." Suber v. Alaska State Bond Committee, 414 P.2d 546, 557 (Alaska 1966). The same section also requires a specific form of enactment clause to avoid confusion as to when the legislature is speaking with the force and effect of law, as distinguished from the mere expression of its views and desires.11

Article II, section 14 requires three readings of a bill, on three separate days in order "to ensure that the legislature knows what it is passing," North Slope Borough v. Sohio Petroleum Corp., 585 P.2d 534, 543 n.11 (Alaska 1978), and to ensure an opportunity for the expression of public opinion and due deliberation.12 Section 14 also requires that the vote of each legislator on final passage of a bill be recorded and that no bill may pass without an affirmative vote of a majority of the membership of each house. These provisions are meant "to ensure deliberation prior to passage, to ensure that the requisite majority of each house affirmatively votes to enact a bill into law, and to provide a public record of the vote cast by each legislator." Plumley v. Hale, 594 P.2d 497, 500 (Alaska 1979).

In addition to these formal safeguards there is the condition that no bill shall become law unless the governor has the opportunity to veto it.13 This power is granted "'to preserve the integrity of . . . . [the executive] branch of government . . . . and thus maintain an equilibrium of governmental powers . . . . [and] to act as a check upon corrupt or hasty and ill-considered legislation.'" Thomas v. Rosen, 569 P.2d 793, 795 n.5 (Alaska 1977) (citation omitted). Finally, there is the clause that laws do not become effective, unless a

two-thirds vote of the membership of each house provides otherwise, until ninety days after they are enacted. Art. II, § 18. This is designed to provide a fair opportunity to those people affected by legislation to learn of the laws they must live by.14

The question presented by this case is whether the legislature can exercise its legislative power without following these enactment provisions. In our view the answer must be in the negative, for otherwise they would serve no purpose. In Plumley v. Hale, 594 P.2d 497, 502 (Alaska 1979) we held that the requirements of Art. II § 14 are mandatory, not permissive.15 The minutes of the proceedings of our constitutional convention indicate that the delegates were fully aware that only by following the enactment procedures could the legislature make law. Thus, Delegate Sundborg stated:

Now, a majority vote in each house of the legislature is not equivalent to passing a law, because it does not require the signature of the governor, and it does not require conformance with the provisions of this constitution and the provisions of such laws as will be passed under it with respect to the procedure in enacting a law. So, when we say in the second sentence, "The state may by law," we are saying that that law must be passed by the legislature in the manner that is required by the constitution and the statutes, and either signed by the governor or passed over his veto or become law without his signature in the manner provided in the constitution, which we felt was the real intention of the body rather than merely requiring that the legislature by a majority in each house and without adhering to any of those other restrictions and without any reference to the governor could contract debt on behalf of the state.

5 Proceedings of the Alaska Constitutional Convention at 3405 (January 28, 1956). Of course, when the legislature wishes to act in an advisory capacity it may act by resolution. However, when it means to take action having a binding effect on those outside the legislature it may do so only by following the enactment procedures. Other state courts have so held with virtual unanimity.16

Thus in People ex rel. Burritt v. Commissioners of State Contracts, 120 Ill. 322, 11 N.E. 180 (Ill. 1887) a joint resolution directed state officials to make a contract for the publication and distribution of certain municipal laws and provided an appropriation for that purpose. The Illinois Supreme Court held that the joint resolution was invalid because the enactment procedures prescribed by the Illinois Constitution had not been followed. Speaking of them, the court stated:

That these various provisions, giving the form and mode by which, through the concurrent action of the legislative and executive departments, valid and binding laws are enacted, are, in the highest sense, mandatory, cannot be doubted.

11 N.E. at 185. The court went on to note that

nothing becomes law simply and solely because men who possess the legislative power will that it shall be, unless they express their determination to that effect in the mode pointed out by the instrument which invests them with the power, and under all the forms which that instrument has rendered essential. [Citation omitted].

Id.

In Mullan v. State, 114 Cal. 578, 46 P. 670 (Cal. 1896) the California legislature had passed a resolution requiring compensation of a private individual. In rejecting the argument that the resolution had the effect of law, the court stated:

A mere resolution . . . . is not a competent method of expressing the legislative will, where that expression is to have the force of law, and bind others than the members of the house or houses adopting it.

46 P. at 672.

Moran v. La Guardia, 270 N.Y. 450, 1 N.E.2d 961 (N.Y. 1936) involved statutory provisions reducing public employees' salaries during an economic emergency "until the legislature shall find their further operation unnecessary." The legislature first attempted to repeal this law by passing a bill, but it was vetoed by the Governor. The same result was then sought by the passage of a joint resolution. In an alternative holding the court held that the legislature could not constitutionally terminate the operation of the statute by resolution:17

A concurrent resolution of the Legislature is not effective to modify or repeal a statutory enactment . . . . To repeal or modify a statute requires a legislative act of equal dignity and import. Nothing less than another statute will suffice. A concurrent resolution of the two Houses is not a statute . . . . A concurrent resolution, unlike a statute, is binding only on the members and officers of the legislative body. It resembles a statute neither in its mode of passage nor in its consequences. The form of a bill is lacking, and readings are not required. It does not have to lie on the desks of members of the Legislature for three legislative days . . . . But more important, its adoption is complete without the concurrent action of the Governor, or, lacking this, passage by a two-thirds vote of each House of the Legislature over his veto. Thus a joint resolution may be adopted by a mere majority of the Legislature without action by the Governor or notice to the public, whereas the enactment of a statute requires action by three distinct bodies and at least three days' notice to the public. As has been well said: "In the exercise of this vast power [of the Legislature] according to the fundamental idea and constitution of parliament the concurrence of the three distinct bodies of which it is composed, each acting by itself and independent of the others, is necessary. No two of them acting together, much less alone, can make a law." [Citations omitted].18

1 N.E.2d at 962.

The express provision in the Alaska Constitution of two specific legislative veto mechanisms supports our view that no implied general power to veto agency regulations by informal legislative action exists. On the subject of the organization of the executive department the governor may propose changes in the law by executive order. Unless they are disapproved by the legislature within sixty days by "resolution concurred in by a majority of the members in joint session . . . .", such changes shall "become effective at a date thereafter to be designated by the governor."19 On the subject of municipal boundary changes, the state local boundary commission may make recommendations. They become effective forty-five days after presentation to the legislature unless vetoed by a "resolution concurred in by a majority of the members of each house."20

There are several noteworthy aspects of these expressed powers. First, they are accompanied by specific time deadlines. Second, the deadlines are different, sixty days in

one case and forty-five days in the other. One may question, if there is an implied legislative veto power in the constitution, whether it is accompanied by a time limit, and if so, what the limit is. Third, the expressed legislative vetoes annul proposed executive action, they do not change existing law. They therefore do not have the same potential for the disruption of public expectations and ongoing executive programs that the blanket veto in question has. Fourth, the legislative vote required for the exercise of each of the expressed vetoes is different. Re-organization orders may be blocked by a resolution of disapproval concurred in by a majority of the members of the legislature in joint session,21 while boundary change vetoes require disapproval by a resolution concurred in by a majority of the members of each house.22 Since the Senate has twenty members and the House has forty,23 these differences can be quite important. The votes of thirty legislators are required to forestall a veto taken in joint session, while ten senators can prevent a veto if the vote is to be by a majority of the members of each house. Here, as with the differing time deadlines mentioned above, one may inquire as to how the constitution addresses the issue of an implied general legislative veto power. The answer, of course, is that the constitution contains no clue. In our view, the specificity with which the constitution deals with the legislative veto powers it does grant leads logically to the conclusion that no other veto power is implied.

III

We are aware of only three cases which have decided the question whether a legislative veto is constitutional.24 They are Atkins v. United States, 556 F.2d 1028, 214 Ct. Cl. 186 (Ct. Cl. 1977), cert. denied, 434 U.S. 1009, 98 S. Ct. 718, 54 L. Ed. 2d 751 (1978); Opinion of the Justices, 96 N.H. 517, 83 A.2d 738 (N.H. 1950); and Reith v. South Carolina State Housing Authority, (Ct. C.P., 11th Jud. Dist., Aug. 28, 1975), rev'd on other grounds, 267 S.C. 1, 225 S.E.2d 847, 848 (S.C. 1976).25

The New Hampshire case, Opinion of the Justices, 96 N.H. 517, 83 A.2d 738 (N.H. 1950), involved the question whether a reorganization statute violated the state constitution. The statute provided that the reorganization plan proposed by the governor would become law if the two legislative houses did not disapprove it by concurrent resolution. The court concluded that the statute violated the enactment provisions of the New Hampshire Constitution:

> The procedure which [the reorganization statute] provides is in distinct contrast to that contemplated by the Constitution. Consent is to be manifested by silence or adjournment, and disapproval by "concurrent resolution" . . . . The contemplated procedure violates the constitutional provisions requiring separate action by each house of the Legislature . . . . The act would dispense with the "passage" of any measure, as that word is commonly used, and with the requirement of presentation to the Governor. In a sense the act provides for a reversal of the democratic processes required by the Constitution, for under it the Governor would propose the legislative action, rather than approve or disapprove of action taken. 83 A.2d at 741.

In Reith v. South Carolina State Housing Authority, (Ct. C.P., 11th Jud. Dist., Aug. 28, 1975), rev'd on other grounds, 267 S.C. 1, 225 S.E.2d 847, 848 (S.C. 1976), the South Carolina Court of Common Pleas considered, inter alia, the validity of a statutory provision stating that regulations promulgated by the Housing Authority shall be "null and void unless approved by a concurrent resolution of the General Assembly at its

session following such promulgation." The court held that this provision violated the constitutional enactment requirements because "the General Assembly may not perform a legislative function by means of a concurrent resolution."26 The court also concluded that the provision impermissibly infringed on the executive's power to administer and enforce the laws.27 On appeal, neither ruling was challenged, but the state supreme court reversed on the grounds that the legislative veto provision was not severable and, therefore, the whole act was unconstitutional.28 The appellate court accepted the lower court's ruling on the veto provision as the law of the case and did not pass on the issue.29

Atkins v. United States, 556 F.2d 1028, 214 Ct. Cl. 186 (Ct. Cl. 1977), cert denied, 434 U.S. 1009, 98 S. Ct. 718, 54 L. Ed. 2d 751 (1978) involved a statute empowering the President to make recommendations for judicial salary increases and transmit them to Congress; the recommendations would become effective after thirty days unless disapproved by either House. It was claimed that this mechanism was unconstitutional because it contravened article I, section 1 of the United States Constitution, which vests the legislative power of the United States in a bi-cameral Congress, article I, section 7, which grants veto power to the President, and the principle of separation of powers. The Court of Claims, en banc, in a four-to-three decision upheld the statute.

Atkins is not strong authority in this case, for the following reasons. First, the majority took pains to confine its opinion to the narrow issue before it, emphasizing that Congress' special role in the establishment of judicial salaries shaped its reasoning and conclusion. Id. at 1058-60, 1063, 1065, 1068. Moreover, the United States Constitution does not contain detailed directions for legislative action similar to those set forth in the Alaska Constitution, discussed supra, pp. 7-10. Thus the Court of Claims was able to say, speaking of article I, section 1 of the United States Constitution:30 "The clause does not itself, as a textual matter, mechanically direct the manner in which Congress must exercise the legislative power." Id. at 1062. Such a statement could not be made with reference to Article II of the Alaska Constitution. Further, the court stressed that no change in the law was accomplished by the one-House veto, because the President's recommendations never had the effect of law. Id. at 1063. The court implied that for one House to have the authority to make such a change would be unconstitutional: "Nor could one House do anything more than preserve existing law . . . ." Id. at 1064. In contrast, the annulment provisions of AS 44.62.320(a) permit the legislature to void administrative regulations which are in effect. Such regulations are laws in every meaningful sense,31 and annulling any one of them effects a change in the law.

IV

We turn now to a discussion of the major arguments of Appellee and the Amici.

The first is that since AS 44.62.320(a) was passed by the first state legislature, several members of which had served in the Alaska Constitutional Convention, and was approved by Governor Egan, who had been chairman of the Convention, a stronger than usual presumption of constitutionality should be applied.32 We need not pause to debate that point. Whatever the strength of the presumption might be, it will be overcome if the statute cannot be squared with a reasonable reading of the constitution. That, in our opinion, is the situation here.

The Amici argue that since the legislature may delegate law-making power to an administrative agency, it follows that it may reserve to itself a part of the delegable power, and that a delegation can be made subject to a condition that the legislature may

later change the terms of the delegation by informal action. The answer to this argument, in our opinion, is that while the legislature can delegate the power to make laws conditionally, the condition must be lawful and may not contain a grant of power to any branch of government to function in a manner prohibited by the constitution. The legislature is bound to act in accordance with the constraints provided in article II of the constitution. The fact that it can delegate legislative power to others who are not bound by article II does not mean that it can delegate the same power to itself and, in the process, escape from the constraints under which it must operate.33

To illustrate this point we may assume that the legislature has the power to establish an independent agency which would have the power to disapprove of agency regulations. Since the agency would be a part of the executive department the article II constraints on legislative action would not govern its functions. Could the legislature instead convey to its own members the power to act as such an agency free from these constraints? The answer, we think, is clearly no for that would amount to dual officeholding, prohibited by article II, section 5,34 and would infringe on the executive appointment power set out in article III, section 26.35 While the power to void agency regulations could be exercised by either the legislature, or by an agency, when the legislature exercises such power it must do so while acting as a legislature. It may not grant itself the power to act as an agency.

It might be supposed that if the legislature could condition the validity of a regulation upon the subsequent disapproval by both of its houses by concurrent resolution, it could condition the same upon disapproval by a committee,36 or a single legislator. Using the theory, propounded by the Amici, that a veto is merely a condition there is no principled distinction between these cases. It is therefore worth observing that most authorities have rejected the validity of laws conferring either affirmative or negatory legislative powers on individual legislators or legislative committees.

In State ex rel. Judge v. Legislative Finance Committee, 168 Mont. 470, 543 P.2d 1317 (Mont. 1975), at issue was a statute empowering an interim legislative committee to approve budget amendments. The statute was held invalid. The court pointed out that the power to approve budget amendments could be exercised by the entire legislature in making an appropriation, or by an executive agency acting on a proper delegation from the legislature, but the legislature could not delegate the power to so act to one of its subdivisions. Id. at 1321.37 The same reasoning was employed in People v. Tremaine, 252 N.Y. 27, 168 N.E. 817 (N.Y. 1929), where the Court of Appeals struck down a statute granting certain legislative committee chairmen the power to disapprove of the allocation of lump sum appropriations to an executive agency. The court acknowledged that the legislature might itself legislate the allocation, or it could delegate the responsibility to an executive agency. It could not, however, delegate the responsibility to one, or more than one, of its members: "The Legislature might make the segregation itself, but it may not confer administrative powers upon its members without giving them, unconstitutionally, civil appointments to administrative offices. It might by general law confer the power of segregation or approval of segregation upon any one but its own members . . . . but the Constitution . . . . makes its own members ineligible to such an appointment." Id. at 822. See also, Stockman v. Leddy, 55 Colo. 24, 129 P. 220, 223 (Colo. 1912); Bramlette v. Stringer, 186 S.C. 134, 195 S.E. 257, 264 (S.C. 1938). Contra, Opinion of the Justices, 110 N.H. 359, 266 A.2d 823 (N.H. 1970).

The Appellee also argues that legislative oversight of administrative regulations is desirable and that such oversight cannot take place effectively if it must follow the path of legislation prescribed by article II. There are two answers to this argument. First, and most important, the question of whether the legislature might perform a task more efficiently if it did not have to follow article II is essentially irrelevant. Since article II applies, the question of whether efficiency takes primacy over other goals must be taken to have been answered by our constitutional framers. Second, at least according to a recent case study, the legislative veto has been unimpressive in practice. See Bruff & Gellhorn, Congressional Control of Administrative Regulation: A Study of Legislative Vetoes, 90 Harv. L. Rev. 1369 (1977). That study concludes, essentially, that the legislative veto encourages secretive, poorly informed, and politically unaccountable legislative action. Id. at 1409-20. It is consequences such as these that the enactment provisions of our constitution are designed to guard against. See discussion, supra, slip op. at pp. 7-10.

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

Appellee finds it significant that the Alaska Constitution contains no provision like that in section 7, clause 3 of article I of the United States Constitution38 which authorizes the executive to veto legislative resolutions, and argues that executive involvement in the enactment of resolutions was not deemed necessary by the framers of the state constitution. This point, how ver, does not advance Appellee's case. Under the United States Constitution joint resolutions are one means by which laws are enacted;39 they are therefore naturally included among those legislative acts subject to Presidential veto. However, under the state constitution resolutions are not an alternative law enactment process, and therefore there is no need to make them subject to an executive veto.

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

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

DISSENT

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

I

I believe that the legislative power to annul administrative regulations by concurrent resolution is constitutional. In my opinion, the majority reasoning is fallacious in equating regulations with laws passed by the legislature. The litany of constitutional requirements outlined in the majority opinion is indeed mandated for the passage of a bill into law. The constitution, however, makes none of those requirements applicable to regulations. In fact, the constitution is silent as to the practice of delegating authority by the legislature to the executive or administrative agencies for promulgation of regulations.1 Regulations may be promulgated without having each regulation confined to one subject, a descriptive title, a specific form of enactment clause, three readings on three separate days, the vote of each member adopting the regulation recorded, a majority vote of each house of the legislature, a public record of the vote cast, being subject to veto by the governor, a 90-day waiting period before becoming effective.2 Nevertheless, the majority does not question the authority of the legislature to delegate the power to promulgate regulations without these safeguards. It seems to me that if the legislature, in authorizing regulations, cannot condition that authority with a reasonable provision for oversight because the annulment of a regulation is equated with repeal of a statute, then the regulation itself must be considered invalid as not having been passed with the requirements necessary for enacting a bill into law.

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

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

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

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

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

legislature, must annually review all agency regulations to determine if the legislative intent is being correctly followed.

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

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

II

The advent of the industrial revolution vastly increased and complicated the tasks of legislatures. Due to limits of time and specialized expertise, legislatures have found it impossible to prescribe laws adequately covering the tremendously varied and intricate forms of social relationships arising out of the proliferation of business, manufacturing, trade, transportation, communication and commercial enterprises.3 Of necessity, legislative authority had to be delegated to administrative agencies. Nevertheless, both in England and in the United States, efforts were initiated to maintain some controls over broad delegations of authority.4

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

Parliamentary control over administrative rules and regulations . . . . is asserted principally through provisions in enabling statutes that rules made under them shall be laid before Parliament. This is customarily combined with a provision in the statute, either that the rule shall not be operative until it is approved by resolution, either of both Houses or of the House of Commons alone . . . ., or that, if within forty days a resolution is passed by either House for annulling the rule, the rule is to be void 5

In the United States, the issue of whether a legislature can reserve to itself the power to disapprove administrative regulations has been brewing for more than forty years.6 The early stages of the dispute involved the Reorganization Acts of the 1930's and 1940's which provided that executive reorganization plans became effective sixty days after transmission to Congress, unless within that period Congress disapproved by resolution.7 Federal acts incorporating similar provisions have proliferated in recent years.8 Yet no federal court has squarely evaluated the validity of provisions reserving to Congress the power to disapprove administrative regulations.9

III

I agree with the majority that there is scant case authority on the specific issue in the United States. Our court, however, has favorably discussed the legislative veto in Boehl. The holding in Atkins v. United States, 214 Ct. Cl. 186, 556 F.2d 1028 (Ct. Cl. 1977) (en banc) (per curiam), cert. denied, 434 U.S. 1009, 98 S. Ct. 718. 54 L. Ed. 2d 751 (1978), supports the position taken in this dissent. Atkins upheld a statute allowing either House of Congress to veto judicial salary increases recommended by a presidential commission. In Buckley v. Valeo, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976), the majority of the United States Supreme Court did not reach the issue of whether regulations

promulgated by the Federal Election Commission would become effective within thirty days of filing if either House of Congress did not disapprove them. In his concurrence, Justice White did approve the oversight provision, stating:

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

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

The majority cites Reith v. South Carolina State Housing Authority, (Ct. C.P., 11th Jud. Dist., Aug. 28, 1975), rev'd on other grounds, 267 S.C. 1, 225 S.E.2d 847, 848 (S.C. 1976), but appropriately concedes that the Supreme Court of South Carolina did not reach the issue with which we are concerned.

Also cited is the New Hampshire case, Opinion of the Justices, 96 N.H. 517, 83 A.2d 738 (N.H. 1950), an advisory opinion on whether a reorganization statute violated the state constitution. The statute provided that the reorganization plan proposed by the governor would become law if the two legislative houses did not disapprove it by concurrent resolution. The court concluded that the statute violated the state constitution. Id. at 741. Three of the five justices felt the procedure violated the principle of bicameralism because each house "has undertaken in advance to surrender to the other its constitutional authority to veto or refuse assent to action taken or approved by the other." Id. at 741-42.

It is also significant that twenty years later the New Hampshire Supreme Court examined a statute requiring certain salary increases to be approved by a legislative committee prior to submission to the governor for final approval. Opinion of the Justices, 96 N.H. 517, 266 A.2d 823 (N.H. 1970). The court, without analysis of its earlier opinion, found no violation of separation of powers, reasoning that since the legislature could delegate its power to fix salaries, it could impose conditions upon the exercise of such delegated authority. Id. at 826. In conclusion, it seems to me that what case authority exists is more supportive than not of the concept of legislative annulment.

IV

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

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

executive, where, as here, the annulling action is taken at the first session of the legislature following promulgation of the regulation.11

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

V

As the majority correctly notes, there are two provisions in our constitution which deal specifically with the legislative veto. These are article III, section 23, concerning executive reorganization, which provides that the legislature may veto a reorganization plan by a resolution "in joint session,"13 and article X, section 12, concerning local boundaries, which provides that the legislature may veto by resolution local boundary changes proposed by an executive branch commission.14

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

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

Adopting the majority's logic, however, it might be said with equal force that the delegation of any rule-making powers to the executive by the legislature would also be unconstitutional. It might be argued that where the constitutional drafters intended to create rule-making power in the executive branch they created it expressly, with specificity, as they did in these two provisions, and that other rule-making powers created by statute cannot be implied.

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

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

Finally, the majority argues that where a veto power by resolution exists, it must also specify time limits, the method of voting and so forth. This argument is unconvincing. Having allocated a specific rule-making power to the executive branch, it was appropriate for the constitutional drafters to define in the constitution a specific legislative check to that power. This would seem to be a virtual necessity, because any statute that the

legislature might pass to circumscribe these executive powers otherwise would in all likelihood be unconstitutional. But where the legislature delegates rule-making power by statute, the constitutional drafters might well presume that the legislature could also design an appropriate system of checks and balances by statute law, as they have done here in AS 44.62.320(a).

VI

It is also of significance that the Administrative Procedure Act, chapter 143, SLA 1959, containing an annulment provision, was passed shortly after the drafting of the constitution at the first session of the Alaska State Legislature. Many of the delegates to the Constitutional Convention were among the members of the legislature.15 In fact, two of the more active delegates, Hellenthal and Taylor, introduced House Bill 13 which was enacted as chapter 143, SLA 1959.16 The bill was passed by a House vote of 37 to 1,17 and by a unanimous Senate vote.18

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

> I am signing into law HOUSE BILL NO. 13, the administrative procedures bill. I wish to call attention to the Attorney General's statement that Section 1, Article VI of Chapter 1 thereof may be unconstitutional in its seeking to impose new duties on local governing bodies.
>
> Because of the bill's separability clause, however, I do not consider this flaw of such seriousness that the bill should not be signed and utilized.19

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

What was said by the United States Supreme Court about legislation passed by Congress shortly after the enactment of the United States Constitution is apropos here:

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

Myers v. United States, 272 U.S. 52, 174-75, 47 S. Ct. 21, 71 L. Ed. 160, 189-90 (1926) (citation omitted).

Finally, I note that the policy of authorizing legislative annulment of regulations is becoming increasingly widespread in Alaska, in other states, and in the federal government.21 Such a practice, affording a practical means of supervision of the broad delegation of legislative powers required by the complexities of modern society, should not be hastily voided.

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

OPINION FOOTNOTES

1 For excellent histories of the legislative veto, see Ginnane, The Control of Federal Administration by Congressional Resolutions and Committees, 66 Harv. L. Rev. 569 (1953); Newman & Keaton, Congress and the Faithful Execution of Laws - Should Legislators Supervise Administrators? 41 Cal. L. Rev. 565 (1953); and Watson, Congress Steps Out: A Look at Congressional Control of the Executive, 63 Cal. L. Rev. 983 (1975).

2 AS 05.15.100.

3 AS 05.15.120, .210(15).

4 AS 05.15.150.

5 AS 05.15.060(11).

6 The regulation was designated 15 AAC 05.410(4). It provided:

In holding, operating, and conducting raffles or lotteries, no permittee shall raffle prizes of personal property in excess of the sum or value of $15,000.00 in any one calendar year and real property in excess of the sum or value of $30,000.00 in any one calendar year.

7 As amended the regulation reads:

(4) In holding, operating and conducting raffles or lotteries, a permittee may not raffle prizes of personal property, including cash or a negotiable instrument, the aggregate total of which is in excess of the sum or value of $30,000 in any one calendar year and real property in excess of the sum or value of $50,000 in any one calendar year.

8 Legislative Resolve No. 79, in full, states:

Annulling a regulation of the Department of Revenue pertaining to the value of prizes awarded in raffles and lotteries.

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

WHEREAS under AS 44.62.320 the legislature by concurrent resolution adopted by a vote of both houses may annul a regulation of an agency or department; and

WHEREAS 15 AAC 05.410(4), adopted by the Department of Revenue, restricts the value of prizes which may be awarded in a single year by a qualified organization in a raffle or lottery to $30,000 in personal property and $50,000 in real property; and

WHEREAS the prevention of high-stakes gambling sought by this regulation could be achieved more effectively through less restrictive means; specifically, the value of prizes awarded in individual raffles or lotteries could be limited or the prize limit could be related to the amount required to participate in the raffle or lottery; and

WHEREAS this regulation would frustrate the intent of AS 05.15.150, which specifies permissible uses for net proceeds of raffles and lotteries, by preventing qualified

organizations from garnering net proceeds in sufficient amounts for uses specifically mentioned in AS 05.15.150, such as erecting or maintaining public buildings or works, or lessening the burden on government;
BE IT RESOLVED by the Alaska State Legislature that administrative regulation 15 AAC 05.410(4) is annulled.
9 That is, since 1960. Legislative Resolve No. 79 purported to annul not merely the 1976 amendments to the regulation, but the regulation in its entirety. See note 8, supra.
10 Art. II, § 13 provides:
Form of Bills. Every bill shall be confined to one subject unless it is an appropriation bill or one codifying, revising, or rearranging existing laws. Bills for appropriations shall be confined to appropriations. The subject of each bill shall be expressed in the title. The enacting clause shall be: "Be it enacted by the Legislature of the State of Alaska."
Art. II, § 14 provides:
Passage of Bills. The legislature shall establish the procedure for enactment of bills into law. No bill may become law unless it has passed three readings in each house on three separate days, except that any bill may be advanced from second to third reading on the same day by concurrence of three-fourths of the house considering it. No bill may become law without an affirmative vote of a majority of the membership of each house. The yeas and nays on final passage shall be entered in the journal.
11 See 3 Proceedings of the Alaska Constitutional Convention 1746-48 (January 11, 1956).
12 See 3 Proceedings of the Alaska Constitutional Convention 1751-54 (January 11, 1956).
13 Art. II, §§ 15, 16 and 17.
14 See 4 Proceedings of the Alaska Constitutional Convention 3110 (January 25, 1956).
15 We also referred to the Art. II, §§ 14 and 15 safeguards in North Slope Borough v. Sohio Pet. Corp., 585 P.2d 534, 543 n. 11 (Alaska 1978), stating: "Our constitution imposes certain requirements of formality on legislative action . . . . The legislature enacts laws by the passage of bills meeting the foregoing formalities. It may not enact a law or change one by committee report."
16 Watrous v. Golden Chamber of Commerce, 121 Colo. 521, 218 P.2d 498 (Colo. 1950) is perhaps an exception. At issue there was a statute allowing certain tax proceeds to be pledged as security for bonds to pay for construction of state turnpikes under the condition "that any such pledge shall first be approved by joint resolution of the Senate and House of Representatives." Id. at 502. The court upheld the statute, finding that such a resolution was not legislative in character, but "relat[ed] solely to the transaction of the business of the two houses." Id. at 510. One proponent of the legislative veto has remarked that the reasoning of this case is "so unsatisfactory as to destroy its value as a precedent." Schwartz, Legislative Control of Administrative Rules & Regulations, 30 N.Y.U. L. Rev. 1031, 1043 n.56 (1955).
17 The other alternative holding was that the statute had not authorized termination by resolution.
18 To the same effect are: Becker v. Detroit Sav. Bank, 269 Mich. 432, 257 N.W. 853 (Mich. 1934); Cleveland Terminal & V.R. Co. v. State ex rel. Attorney General, 85 Ohio St.. 251, 97 N.E. 967, 973 (Ohio 1912) ("[A] joint resolution is not an act of legislation and . . . . it cannot be effective for any purpose for which an exercise of legislative power

is necessary . . . .); Scudder v. Smith, 331 Pa. 165, 200 A. 601, 604 (Pa. 1938) ("The subject matter of this joint resolution is legislative in its nature. It is not a mere formal expression of legislative opinion [and is therefore invalid]); State ex rel. Todd v. Yelle, 7 Wash. 2d 443, 110 P.2d 162, 165 (Wash. 1941) ("It is . . . . clear that a house resolution is not a law. A law must be enacted either by popular initiative or by the legislature, and, when by the legislature, must be by bill . . . ."); Rowley v. City of Medford, 132 Ore. 405, 285 P. 1111, 1114 (Or. 1930) ("The power of the Legislature to effectively legislate by resolution is confined within very narrow limits. It may provide for expenses incident to its sessions, such as employing clerks and stenographers and procuring supplies, and other matters incident to the carrying on of its own business, but it cannot go outside and legislate generally on matters involving property or other rights. As to such matters, its resolutions have only the effect of an expression of opinion and no more."); Hawks v. Bland, 156 Okla. 48, 9 P.2d 720, 721 (Okla. 1932) ("[a] resolution is the mere expression of an opinion and not an enactment of law."); Newport News Fire Fighters Ass'n, Local 794 v. City of Newport News, 307 F. Supp. 1113, 1115 (E.D.Va. 1969) ("The resolution expresses only the opinion of that legislative body.").

19 Art. III § 23.

20 Art. X § 12. We do not agree with the dissent's characterization of the power granted in these two provisions as rule-making power, which we see as the power to interpret and implement statutes. Rather, the power contained in these provisions is the power to change statutes; therefore, the expression of these extraordinary powers in the constitution cannot be regarded as carrying an implication that general administrative rule making was meant to be forbidden.

21 Art. III, § 23.

22 Art. X, § 12.

23 Art. II, § 1.

24 The dissent suggests that our comment in Boehl v. Sabre Jet Room, Inc., 175 Cal. App. 2d 123, 345 P.2d 585 (Alaska 1960), supports an affirmative answer to this question. We stated that "[the legislature] has the power by resolution to annul any agency or department rule or regulation." However, the constitutionality of annulment was not argued in that case, and our statement obviously was not a judgment on this issue.

25 The Amici would add Sibbach v. Wilson, 312 U.S. 1, 61 S. Ct. 422, 85 L. Ed. 479 (1940) to this list; however, the type of veto discussed there apparently entailed formal law enactment and, therefore, the case has no relevance to the question before us. See Atkins v. United States, 556 F.2d at 1060 and n. 21. In Buckley v. Valeo, 424 U.S. 1, 140 n. 176, 96 S. Ct. 612, 46 L. Ed. 2d 659, 757 n. 176 (1976), the United States Supreme Court found it unnecessary to pass on the validity of a legislative veto, but Justice White in a concurring opinion indicated he thought it was constitutional. 424 U.S. at 284-85, 46 L. Ed. 2d at 838-39. Subsequently, the Court of Appeals for the District of Columbia avoided the same issue, Clark v. Valeo, 559 F.2d 642, 182 U.S. App. D.C. 21 (D.C. Cir.) (en banc) aff'd mem. sub nom. Clark v. Kimmitt, 431 U.S. 950, 97 S. Ct. 2667, 53 L. Ed. 2d 267 (1977), but Circuit Judge MacKinnon reached the merits in a vigorous dissent criticizing Justice White's conclusion in Buckley. 559 F.2d at 685.

26 Reith v. South Carolina State Housing Authority, Op. at 9.

27 Id. at 10.

28 225 S.E.2d at 848-49.
29 225 S.E.2d at 848.
30 U.S. Const. art. I, § 1 provides:
All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.
31 1 Mezines, Stein & Gruff, Administrative Law § 1.02[2] at 1-45 (1977); 2A Sutherland, Statutes and Statutory Construction § 49.05 at 240 (4th ed. Sands 1973), which states:
An administrative agency may be vested with the power to promulgate legislative interpretive rules which have the force and effect of law. Such powers must be limited by a standard, and, when exercised, the ensuing regulations, if within the standards, have the same efficacy as an original statute enacted by the legislature. [Footnote omitted].
32 The same argument was unsuccessfully made in Bradner v. Hammond, 553 P.2d 1, 4 nn. 4 & 5 (Alaska 1976).
33 "A delegation which disperses power is not necessarily constitutionally equivalent to one which concentrates power in the hands of the delegating agency." Watson, Congress Steps Out: A Look at Congressional Control of the Executive, 63 Cal. L. Rev. 983, 1067 n.430 (1975).
34 Art. II, § 5 provides in relevant part:
Disqualifications. No legislator may hold any other office or position of profit under the United States or the State.
35 Art. III, § 26 provides:
Boards and Commissions. When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law. They shall be citizens of the United States. The board or commission may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the governor.
See, e.g., Buckley v. Valeo, 424 U.S. 1, 118-43, 96 S. Ct. 612, 46 L. Ed. 2d 659, 744-58 holding that Federal Elections Commission members were necessarily "Officers of the United States" because, among other reasons, of their administrative rule-making power, and therefore could not be appointed by Congress; People v. Tremaine, 252 N.Y. 27, 168 N.E. 817 (N.Y. 1929) discussed infra, slip op at pp. 25-26.
36 In fact, under AS 24.20.445(a), the Administrative Regulation Review Committee, a permanent joint committee of the legislature, is granted the power to suspend the operation of any regulation adopted after adjournment of the legislature until thirty days after the legislature reconvenes.
37 The people of Alaska recently rejected a constitutional amendment which, like the law struck down in Montana, was designed to vest the power to approve budget revisions in an interim legislative committee. See Alaska Const. art. II, § 11 (proposed amend. 1978 Supp.).
38 This clause provides:
Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of

the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill. [Emphasis added].

39 United States ex rel. Levey v. Stockslager, 129 U.S. 470, 9 S. Ct. 382, 32 L. Ed. 785 (1889).

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

DISSENT FOOTNOTES

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

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

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

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

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

6 Clark v. Valeo, 182 U.S. App. D.C. 21, 559 F.2d 642, 649-50 (D.C. Cir.) (en banc) (per curiam), aff'd mem. sub nom., Clark v. Kimmit, 431 U.S. 950, 97 S. Ct. 2667, 53 L. Ed. 2d 267 (1977).

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

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

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

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

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

12 United States v. Rock Royal Co-Operative, Inc., 307 U.S. 533, 574-78, 59 S. Ct. 993, 83 L. Ed. 1446, 1470-72 (1939) (upholding federal statute delegating to Secretary of Agriculture authority to issue marketing orders for specified commodities, if approval of producers was secured); Currin v. Wallace, 306 U.S. 1, 15-18, 59 S. Ct. 379, 83 L. Ed. 441, 451-52 (1939) (upholding statute authorizing Secretary of Agriculture to regulate marketing of tobacco if two-thirds of growers in a market requested, by referendum, such action).

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

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

14 Article X, section 12, provides:

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

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

16 1959 House Journal 52.

17 1959 House Journal 427.

18 1959 Senate Journal 708.

19 1959 Senate Journal 1092.

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

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

For a review of laws from other states relating to annulment of regulations, see Jackson, Legislative Review of Administrative Rules and Regulations 1 (July 1977) (papers

prepared for Southern Legislative Conference). A chart at the end of Professor Jackson's paper indicates that the following states allow regulations to be annulled by means of resolution: Alaska, Connecticut, Idaho, Michigan, Montana, Oklahoma, Tennessee, and Vermont. A New York report gives slightly different figures, stating that fourteen of the twenty-two states with legislative review mechanisms have procedures which can "cause an agency rule to be promulgated, approved, amended, modified, or annulled." Task Force on Critical Problems, Senate Research Service, New York State Legislature, Administrative Rules . . . . What is the Legislature's Role?, 7 (June 1976). Appellant states that eight states allow nonstatutory legislative annulment -- six by concurrent resolution, two by one-House vetoes.
The states which do not allow annulment of the regulation generally provide that a legislative committee may review regulations to determine if they are consistent with legislative intent, hold hearings on questionable regulations, notify the agencies of its doubts, and sometimes, recommend statutory action by the legislature.
For a discussion of federal laws on the subject, see note 8 supra.

Glen Giddings
2201 W Stephen Circle
North Pole AK 99705
(907) 488-2313

March 6, 1998

Attention: Jeanette James

House State Affairs Committee

Jeanette

House bill..HB 338. I truly hope this bill passes. It has been a long time in coming. No agency should have the right or power to make a law other than the people we vote into office. I truly hope I read into this bill that "any" agency instead of "an" agency (line three, page one) will apply. It most certainly is a step in the right direction. Now if only you and Al Vezey could think of a way to get the EPA. DEC. from passing laws, simply by being on the National register for six month. This would make everyone happy.

I hope Al Vezey can count on your support concerning this bill. Also just for the record, not that my thoughts amount to much. I thought you did the State of Alaska a great injustice when you censored my representative Al Vezey. If we voted people in office so they would vote in block form, then we deserve what we get. I think the Republicans may be cutting their noses a tad bit to short. We didn't vote anyone in to follow along. We voted people in who had there own opinions. Or at least I did. Anyway, my soap box slats just gave way, I thank you for your time in reading this. This bill will be good for our State.

Glen Giddings

POM for Representative Vezey

From: Mr. Walter Violett
1078 Aztec Rd

North Pole, AK 99705 Constituant

Telephone: 488-2516

Registered Voter: Y

Bill: HB 338 Title: ANNUL ALL ADMIN. REGS; REPEAL APA
Message:

I SUPPORT THIS BILL. THANK YOU.

Entered in FBX on 2/19/98 POMID: 1478

Distribution: 60

BUD VIOLETT

1078 AZTEC ROAD, NORTH POLE, AK 99705 (907)-488-2516

February 27, 1998

Representative Jeannette James
Alaska State Legislature
State Capitol, Room 102
Juneau, AK 99801-1182

Dear Representative James:

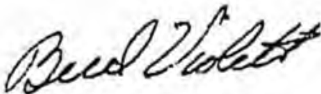
Representative Vezey has been trying since 1993 to get the legislature to recognize what regulations are doing to Alaskans. Regulations are written by state employees and imposed by state agencies. These regulations are laws that can not be challenged in court without exhausting all the administrative appeal options. This is very costly for people who are wrongfully punished by regulations written by a non-elected state employee.

I don't believe there is a single Alaskan whose life has not been affected by regulations. The people Alaskans elect to represent them can't change the injustice of regulations easily because of the Court's 1980 ruling. This is unfair.

Politicians can avoid dealing with the problems regulations bring into our lives by saying "gee, it's out of my grasp, these are regulations." I want my elected officials to vote on all laws enforced in this state and HB 338 will make sure that elected officials are held accountable for all laws on the books.

I fully support Rep. Vezey's legislation and would encourage legislators to stop delegating their powers to bureaucrats. The legislature needs to take back it's Constitutional responsibility to make laws; not pawn those duties off to unelected officials. Stand up and be responsible!!!!

Sincerely,



Bud Violett

ALASKA CONTRACTING & CONSULTING, INC.

P.O. BOX 56536
NORTH POLE, ALASKA 99705
(907) 488-4524 FAX (907) 488-2822

March 6, 1998

House State Affairs Committee
Attention: Jeannette James

Testimony on HB 338

Dear Representative James,

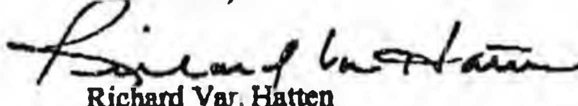
My wife and I are a small minority business owner in the North Pole area. Our company has been in operation for over twenty years and participated in the building of many roads in the Interior during that time.

In 1990 the Employment Security Department issued us a determination that we had no employees after processing the paperwork they required to be completed. We operated our company under that determination and sub-contracted all work out to owner/operators. Several years later, the Employment Security Department decided they didn't like their original determination and called for an audit on our books. One of their auditors determined he believed we had employees which led to a department hearing with an ESD officer. The outcome of the hearing was in our favor and any taxes, interest and penalties were determined Null and Void.

We continue to operate in the same manner as prior to the audit and this agency continues to demand more audits and hearings. This agency relies on their interpretation of their regulations which gives them the right to this continued harassment. We have a Supreme Court determination that we have no employees with regard to Workers Compensation Insurance. The Department of Wage and Hour recognizes owner/operators but Employment Security disagrees. This has caused this company sever loss due to enormous attorney fees.

The passing of HB 338 would hopefully stop this mistreatment and small businesses such as ours would not have to constantly worry whether or not their future would be in jeopardy due to a new regulation passed by some agency.

Thank You,



Richard Van Hatten

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Alaska Conservation Voice

Speaking Out for Alaska's Future

Juneau
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fax: 907-463-3312
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Testimony Regarding HB 338

The Alaska Conservation Voice is comprised of twenty-four member groups, which represent over 10,000 households statewide. ACV is opposed to HB 338.

Judging from our review of the sponsor statement, this bill hopes to turn a State Supreme Court decision on its head. That decision--as the sponsor statement itself explains so clearly--held that the legislature does not have the authority to ratify, nullify or otherwise pass judgement on regulations promulgated by state agencies.

This bill presumes that many existing regulations are invalid, improper, or petty bureaucratic meddling, and that the only way to fix them is to bring them to the Legislature. This is a terrible insult to thousands of working Alaskans, families, local governments and civic organizations who have worked hard to develop these regulations to address legitimate, well-documented needs. Needs which the legislature has already agreed exist, because they passed the laws which the regulations were written to implement!

If passed, it will be challenged for its constitutionality.

We are categorically opposed to HB 338.

1213 Coppet St.
Fairbanks, Ak 99709
March 9, 1998

House State Affirs Committee
Alaska StateLegislature
Juneau, Ak 999801-1182
ATTENTION: Representative James Subject: House Bill No. 338

Dear Representative James:

We were not able to attend the public testimony session at our LIO office, but wish to go on record as in favor of Bill No. 338.

We are placer gold mining people and as such have been governed by bureau- adopted regulations that - in effect - become law without the formality of being made by duly elected members of the Alaska Legislature, but by bureaucrats who are appointed to their positions. The so-called "hearings" that are legally required to be held prior to adoption of their regulations are a complete farce and an insult to the intelligence of the people being regulated.

Further, and probably just as important is the fact that these people cannnot be "voted" out of office or have no fear of the general public moving them out of office.

Currently the Legislature is handing their responsibility to implement the Laws that they pass into the hands of Bureaucrats that quite often have a biased opinion of what the original "intent" of any given legislation might be We agree whole-heartedly with Chief Justice Boochever in his dissenting opinion to the landmark 1980 decision revoking the Legislature's authority to annul or veto regulations.

Think of the outrageof the 1980 action by the Supreme Court of the State of Alaska!

. The State Legislature makes the laws for the State of Alaska and the Supreme Court says, "Oh, that's fine but you don't have any control over the regulations that are promulgated by non-elected Bureaucrats. These people know more than you do about implenting the basic Law that you have passed." And further: "You are prohibited from reviewing their work and throwing it out if it does not implement the basic law."

There is a good deal wrong with the way the system is working. We should return to the checks and balances under the system that was doing a good job for 21 years.

We wish to say that Alaska's Mining Department generally comes up with more workable "regulations ne law" but if the Feds do their thing, then the State must comply or we are blackmailed by the Federal Government to comply with their regulations no matter how stupid or onerous.

Very truly yours,

Glen D. Franklin Patricia S. Franklin

BARRY DONNELLAN
ATTORNEY AT LAW
551 Second Avenue Suite 215
P.O. Box 73795 Fairbanks Alaska 99707
FAX 907/456-2308 Phone 907/456-2309
barryd@alaska.net

FAX TRANSMISSION

To: Hon. Jeanette James
House State Affairs Committee

FAX: 907/465-2381

Date: March 7, 1998

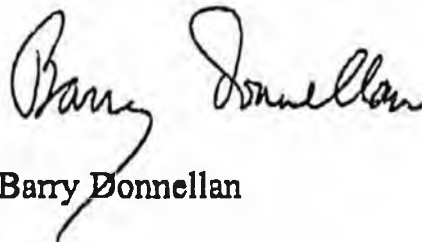
Re: HB 338

This is to document my unqualified support of HB 338.

Legislators are elected by the people of the State of Alaska to pass laws. Delegating that responsibility to the executive branch is at best "lazy legislation". The bureaucrats who promulgate regulations do not have to run for office or otherwise subject their ideas to public scrutiny.

It is difficult to suppress the suspicion that some bureaucrats use (or should I say "misuse") the regulatory process to foist their own agenda on the people of this state.

The passage of HB 338 would be a giant step toward restoring the destiny of the State of Alaska to the people.



Barry Donnellan

Alaska State Legislature

House of Representatives

Interim Address:
119 N. Cushman, Suite 211
Fairbanks, AK 99701
(907)-456-5081
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Session Address:
Room 13
(907)-465-3719
FAX# (907)-465-3258
State Capitol
Juneau, AK 99801-1182

E-Mail: Representative Al_Vezey@LEGIS.state.ak.

Representative Al Vezey

Date: January 23, 1998

To: Rep. Jeannette James, Chairperson
House State Affairs Committee

From: Rep. Al Vezey AV
Sponsor of HB 338

Re: HB 338

I am requesting that HB 338, "An Act relating to the repeal of provisions of the Administrative Procedures Act, prohibiting the adoption of regulations by an agency of the executive branch of state government, annulling all regulations adopted by an agency of the executive branch, and relating to additional legislation to carry out the purposes of this Act; and providing for an effective date" be scheduled for hearing in the House State Affairs Committee.

I have prepared and attached a sponsor statement for this bill and a sectional is being prepared by Legal.

Not Yet 2/25/98

Yes! 2/26/98

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HB 338

Revision Date (Note if correction) .
Title An Act relating to prohibition and annullment of regulations.
Sponsor Rep. Vezey
Requester House State Affairs Committee

Dept. Affected All departments
BRU
Component
Component Serial No.

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*****	*****	*****	*****	*****	*****
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	*****	*****	*****	*****	*****	*****

Estimate of any current year (FY98) cost:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

The fiscal impacts of this bill are virtually impossible to calculate, but it is safe to say that the cost of this bill would be HUGE, REEEEAAALLLYY HUUUUUUUGE!

Prepared by Jack Kreinheder [signature] Phone 465-4676
Division Office of Management and Budget [signature] Date 2/27/98
Approved by Commissioner David Ramseur, Dep. Chief of Staff Date
Agency Office of the Governor

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HB
359

0-LS1116\B
Ford
3/5/98

Ordered Final 3/10/98

CS FOR HOUSE BILL NO. 359( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE RYAN

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to regulation of health insurance plans; and providing for an**
2 **effective date."**

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

4 * **Section 1.** AS 21 is amended by adding a new chapter to read:
5 **Chapter 07. Regulation of Health Insurance Plans.**
6 **Sec. 21.07.010. Required filing with director.** (a) An insurer that offers a
7 health insurance plan to residents of this state shall file a form, as prescribed by the
8 director, with the director. The form must contain at least
9 (1) the official address and telephone number of the place of business
10 of the insurer; and
11 (2) a description of the insurer's internal patient appeals process
12 available to cover persons to contest a denial, reduction, or termination of benefits, if
13 any.
14 (b) A health maintenance organization that holds a certificate of authority

1 under AS 21.86.020 is exempt from the filing requirements of this section but shall
2 comply with the other provisions of this chapter.
3 **Sec. 21.07.020. Required plan disclosure.** (a) An insurer shall disclose in
4 writing to a subscriber the terms and conditions of the insurer's health insurance plan
5 and shall promptly provide the subscriber with written notification of a change in the
6 terms and conditions before the effective date of the change. The insurer shall provide
7 the required information at the time of enrollment and on request thereafter.
8 (b) The information required to be disclosed by this section includes a
9 description of
10 (1) covered services and benefits to which the subscriber or other
11 covered person is entitled;
12 (2) restrictions or limitations on covered services and benefits,
13 including physical and occupational therapy services, clinical laboratory tests, hospital
14 and surgical procedures, prescription drugs and biologics, radiological examinations,
15 and behavioral health services;
16 (3) financial responsibility of the covered person, including copayments
17 and deductibles;
18 (4) prior authorization and other review requirements with respect to
19 obtaining covered services;
20 (5) where and in what manner covered services may be obtained;
21 (6) changes in covered services or benefits, including an addition,
22 reduction, or elimination of specific services or benefits;
23 (7) the covered person's right to appeal and the procedure for initiating
24 an appeal of a utilization review decision made by or on behalf of the insurer with
25 respect to the denial, reduction, or termination of a health care benefit or the denial of
26 payment for a health care service;
27 (8) the procedure to initiate an appeal through the director; and
28 (9) other information that the director may require.
29 (c) The insurer shall file the information required under this section with the
30 director.
31 **Sec. 21.07.030. Managed care plan disclosure and notice.** (a) In addition

to the disclosure requirements provided under AS 21.07.020, an insurer that offers a managed care plan shall disclose to a subscriber, in writing, the following information at the time of enrollment and annually thereafter:

(1) a current participating provider directory providing information on a covered person's access to primary care physicians and specialists, including the number of available participating physicians, by provider category or speciality; the directory shall include the professional office address of a primary care physician and any hospital affiliation the primary care physician has; the directory shall also provide information about participating hospitals;

(2) general information about the financial incentives between participating physicians under contract with the insurer and other participating health care providers and facilities to which the participating physicians refer their managed care patients;

(3) the percentage of the insurer's managed care plan's network physicians who are board certified;

(4) the insurer's managed care plan's standard for customary waiting times for appointments for urgent and routine care; and

(5) the availability through the director, on request of a member of the general public, of independent consumer satisfaction survey results and an analysis of quality outcomes of health care services of managed care plans in the state.

(b) On request of a covered person, an insurer shall promptly inform the person whether a particular network physician is

(1) board certified; and

(2) currently accepting new patients.

(c) An insurer shall

(1) promptly notify each covered person before the termination or withdrawal from the insurer's provider network of the covered person's primary care physician; and

(2) provide a prospective subscriber with information about the provider network, including hospital affiliations, and, on request, other information specified in this section.

1 (d) The insurer shall file the information required by this section with the
2 director.
3 **Sec. 21.07.040. Managed care medical director.** (a) An insurer that offers
4 a managed care plan or uses a utilization review system in a health plan shall designate
5 a licensed physician to serve as medical director. The medical director shall be
6 designated to serve as the medical director for medical services provided to covered
7 persons in the state and is required to be licensed to practice medicine in this state.
8 The medical director shall be responsible for treatment policies, protocols, quality
9 assurance activities, and utilization review decisions of the insurer. The treatment
10 policies, protocols, quality assurance program, and utilization review decisions of the
11 insurer shall be based on generally accepted standards of health care practice. The
12 quality assurance and utilization review program shall be consistent with standards
13 adopted by regulation of the director.
14 (b) The medical director shall ensure that
15 (1) a utilization review decision to deny, reduce, or terminate a health
16 care benefit or to deny payment for a health care service because that service is not
17 medically necessary shall be made by a physician; in the case of a health care service
18 prescribed or provided by a dentist, the decision shall be made by a dentist;
19 (2) a utilization review decision may not retrospectively deny coverage
20 for health care services provided to a covered person when prior approval has been
21 obtained from the insurer for those services unless the approval was based on
22 fraudulent information submitted by the covered person or the participating provider;
23 (3) in the case of a managed care plan, a procedure is implemented
24 whereby participating physicians and dentists have an opportunity to review and
25 comment on all medical and surgical and dental protocols, respectively, of the insurer;
26 (4) the utilization review program is available on a 24-hour basis to
27 respond to authorization requests for emergency and urgent services and is available,
28 at a minimum, during normal working hours for inquiries and authorization requests
29 for nonurgent health care services; and
30 (5) in the case of a managed care plan, a covered person is permitted
31 to choose or change a primary care physician from among participating providers in

1 the provider network and, when appropriate, choose a specialist from among
2 participating network providers following an authorized referral if required by the
3 insurer and subject to the ability of the specialist to accept new patients.
4 **Sec. 21.07.050. Employment of health care providers.** (a) An application
5 for participation by a health care provider that is submitted to an insurer that offers a
6 managed care plan shall be reviewed by a committee of the insurer that includes
7 appropriate representation of health care professionals with knowledge of the
8 applicant's scope of professional practice.
9 (b) An insurer that offers a managed care plan shall establish a policy
10 governing removal of a health care provider from the provider network that includes
11 the following:
12 (1) the insurer shall inform a participating health care provider of the
13 insurer's removal policy at the time the insurer contracts with the health care provider
14 to participate in the provider network and at each renewal of the contract;
15 (2) if a health care provider's participation will be terminated before the
16 date of the termination of the contract, the insurer shall provide the health care
17 provider with a 90-day written notice of the termination and notice of a right to a
18 hearing; if requested by the health care provider, the insurer shall provide the reasons
19 for the termination in writing and shall hold a hearing within 30 days of the date of
20 the request; the hearing shall be conducted by a panel appointed by the insurer and
21 consisting of at least three persons, at least one of whom is a clinical peer in the same
22 discipline and the same or similar speciality as the health care provider whose
23 participation is being terminated; the panel shall decide whether the health care
24 provider shall be terminated, reinstated, or provisionally reinstated, subject to
25 conditions set out by the panel; the panel's determination shall be in writing and shall
26 be made in a timely manner;
27 (3) the notice and opportunity for a hearing required under (2) of this
28 subsection do not apply when
29 (A) the contract expires and is not renewed;
30 (B) the termination is for breach of contract;
31 (C) in the opinion of the medical director, the health care

1 provider represents an imminent danger to an individual patient or the public
2 health, safety, or welfare; or
3 (D) there is a determination of fraud;
4 (4) if the insurer finds that a health care provider represents an
5 imminent danger to an individual patient or to the public health, safety, or welfare, the
6 medical director shall promptly notify the appropriate state licensing board.
7 **Sec. 21.07.060. Managed care provider and patient protection.** A contract
8 between a participating health care provider and an insurer that offers a managed care
9 plan
10 (1) must state that the health care provider may not be penalized or the
11 contract terminated by the insurer because the health care provider acts as an advocate
12 for the patient in seeking appropriate, medically necessary health care services;
13 (2) may not provide financial incentives to the health care provider for
14 withholding covered health care services that are medically necessary; and
15 (3) must protect the ability of a health care provider to communicate
16 openly with a patient about all appropriate diagnostic testing and treatment options.
17 **Sec. 21.07.070. Required contract provisions.** A health insurance plan
18 offered to residents of the state must provide that
19 (1) coverage for a medical procedure that has been preapproved by the
20 insurer may not be denied if denial occurs less than 96 hours before the medical
21 procedure is scheduled to commence; and
22 (2) if the insured has coverage under more than one health insurance
23 plan, the primary insurer may not coordinate benefits with the secondary insurer if the
24 coordination reduces the benefits the insured is eligible to receive under the primary
25 or secondary health insurance plan.
26 **Sec. 21.07.080. Choice of health care provider.** (a) An insurer that offers
27 a managed care plan shall offer to every contract holder a point-of-service plan option
28 that would allow a covered person to receive covered services from an out-of-network
29 health care provider without obtaining a referral or prior authorization from the insurer.
30 The point-of-service plan option may require that a subscriber pay a higher deductible
31 or copayment and higher premium for the plan.

1 (b) An insurer shall provide each subscriber in a plan whose contract holder
2 elects the point-of-service plan option with the opportunity at the time of enrollment
3 and during the annual open enrollment period to enroll in the point-of-service plan
4 option. The insurer shall provide written notice of the point-of-service plan option to
5 each subscriber in a plan whose contract holder elects the point-of-service plan option
6 and shall include in that notice a detailed explanation of the financial costs to be
7 incurred by a subscriber who selects that option.
8 (c) The requirements of this section do not apply to an insurer contract that
9 offers a managed care plan that provides health care services to Medicaid recipients
10 or to a federally qualified, nonprofit health maintenance organization.
11 **Sec. 21.07.090. Health Care Appeals Board.** (a) The director shall appoint
12 a Health Care Appeals Board to provide independent medical necessity or an
13 appropriateness of service review of a final decision by an insurer to deny, reduce, or
14 terminate benefits when the final decision is contested by the covered person. The
15 board may not review decisions regarding benefits not covered by the covered person's
16 health insurance plan.
17 (b) The director shall appoint at least seven, but no more than 15
18 representatives, to the board. Members shall serve two-year terms and may be
19 reappointed. Board members may not be compensated except for per diem and travel
20 expenses authorized for boards and commissions under AS 39.20.180.
21 (c) The director shall appoint members of the board from individuals who are
22 advocates for health care consumers, persons with mental illnesses, children, persons
23 with disabilities, senior citizens, public assistance, persons who are eligible to receive
24 medical assistance under 42 U.S.C. 1396 - 1396p (Social Security Act), and from other
25 persons who have demonstrated a knowledge of the effect of the health care delivery
26 system on consumers in the state. Members shall be chosen to reflect the diversity of
27 consumers, including race, sex, age, economic status, disability, and health status.
28 However, members may not include a person with a financial or other conflict of
29 interest, a person who is directly and substantially involved in the delivery of health
30 care, an employee or principal of a health insurer, a health care plan supplier, a
31 manufacturer of medical care goods and services, or a health care provider.

New Text Underlined [DELETED TEXT BRACKETED]

1 (d) The board shall meet at least four times a year. The board shall elect its
2 own officers and shall designate its own committees and other organizational
3 structures.
4 (e) The director shall appoint a technical advisory board to assist the board.
5 The technical advisory board must include representatives of state agencies with
6 responsibility for areas of interest to the board.
7 (f) A covered person may apply to the Health Care Appeals Board for a
8 review of a decision to deny, reduce, or terminate a benefit if the person has already
9 completed the insurer's appeal process, if any, and the person contests the final
10 decision by the insurer. The person shall apply to the board within 60 days after the
11 date the final decision was issued by the insurer in a manner determined by the
12 director.
13 **Sec. 21.07.100. Insurance benefit review.** (a) If a covered person applies
14 for an insurance benefit review under AS 21.07.090(f), the board shall promptly
15 review the pertinent medical records of the person to determine the appropriate,
16 medically necessary health care services the person should receive based on applicable,
17 generally accepted practice guidelines developed by the federal government, national
18 or professional medical societies, boards or associations, and any applicable clinical
19 protocols or practice guidelines developed by the insurer. The board shall complete
20 its review and make its determination within 90 days of receipt of a completed
21 application for a review or within less time, as prescribed by the director.
22 (b) On completion of a review, the board shall state its findings in writing and
23 make a determination of whether the insurer's denial, reduction, or termination of
24 benefits deprived the covered person of medically necessary services covered by the
25 person's health care insurance plan. If the board determines that the denial, reduction,
26 or termination of benefits deprived the person of medically necessary covered services,
27 it shall make a recommendation to the covered person and insurer regarding the
28 appropriate, medically necessary health care services the person should receive. On
29 receiving the board's recommendation, the insurer shall promptly notify the covered
30 person and the director of what action the insurer will take with respect to the
31 recommendation. If the covered person is not in agreement with the board's findings

1 and recommendation or the insurer's action on the recommendation, the person may
2 seek the desired health care services outside of the person's health benefits plan, at the
3 person's own expense.
4 (c) If the director determines that an insurer exhibits a pattern of
5 noncompliance with the findings and recommendations of the board, the director shall
6 review the insurer's utilization management program to ensure that the insurer is in
7 compliance with all relevant state laws and regulations, including utilization
8 management standards. If the director determines that the insurer is in violation of
9 patient rights and other applicable regulations, the director may impose penalties and
10 sanctions on the insurer, as provided by law.
11 (d) The director shall require the board to establish procedures to provide for
12 an expedited review of an insurer's denial, reduction, or termination of a benefit
13 decision when a delay in receipt of the service could seriously jeopardize the health
14 or well-being of the covered person.
15 (e) A covered person's medical records provided to the board and the findings
16 and recommendations of the board are confidential and shall be used only by the
17 director, the board, and the affected insurer for the purposes of this chapter. The
18 medical records, findings, and recommendations may not otherwise be divulged or
19 made public in a manner that discloses the identity of a person to whom they relate
20 and may not be included under materials available for public inspection.
21 (f) The cost of an insurance benefit review shall be paid by the insurer under
22 a schedule of fees established by the director.
23 **Sec. 21.07.110. Immunity under appeal program.** (a) A member of the
24 board who participates in an insurance benefit review may not be held liable for civil
25 damages for an action taken within the scope of the member's function on the board.
26 (b) An insurer that is the subject of an insurance benefit review is not liable
27 for civil damages to a person for an action taken to implement a recommendation of
28 the board.
29 **Sec. 21.07.120. Required report.** The director shall annually report to the
30 legislature and to the governor on the status of the health care insurance benefit review
31 program. The report must include

1 (1) a summary of the number of reviews conducted and medical
2 specialties affected;
3 (2) a summary of the findings and recommendations made by the
4 board;
5 (3) a list of actions taken by the director against an insurer; and
6 (4) any other information and recommendations determined appropriate
7 by the director.
8 **Sec. 21.07.130. Consumer surveys.** An insurer that offers a managed care
9 plan shall comply with the director's reporting requirements with respect to quality
10 outcome measures of health care services and independent consumer satisfaction
11 surveys. The director shall make available to a member of the general public, on
12 request, the results of the independent consumer satisfaction survey and the analysis
13 of quality outcome measures of health care services provided by managed care plans
14 in the state, prepared by the director.
15 **Sec. 21.07.140. Employer notice.** An employer who provides a
16 comprehensive self-funded health insurance plan to employees or their dependents, or
17 both, in the state shall annually, and on request of an employee at other times during
18 the year, notify the employees that they are covered by a self-insured plan that is not
19 subject to regulation by the state and specify those mandated health insurance benefits
20 established by law that are not covered by the self-insured plan. The director shall
21 notify the commissioner of labor of any health insurance mandates enacted into law,
22 and the commissioner of labor shall notify employers in a timely manner of the health
23 insurance mandates subject to the provisions of this section.
24 **Sec. 21.07.150. Enforcement; penalty.** The director shall establish
25 enforcement procedures to ensure compliance with this chapter. Material violations
26 of a standard or requirement may be punished by a civil penalty of up to $2,000. In
27 the case of conduct constituting a pattern of repeated, material violations, the director
28 may also rescind approval of or limit the operation of a plan. Before imposing a
29 sanction, the director shall provide a managed care plan with an opportunity to be
30 heard in connection with the alleged violations and the possible sanctions.
31 **Sec. 21.07.500. Definitions.** In this chapter,

1 (1) "board" means the Health Care Appeals Board;
2 (2) "health care provider" means an acupuncturist licensed under
3 AS 08.06; an audiologist licensed under AS 08.11; a chiropractor licensed under
4 AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under
5 AS 08.36; a marital or family therapist licensed under AS 08.63; a direct-entry
6 midwife licensed under AS 08.65; a nurse licensed under AS 08.68; a dispensing
7 optician licensed under AS 08.71; a naturopath licensed under AS 08.45; an
8 optometrist licensed under AS 08.72; a pharmacist licensed under AS 08.80; a physical
9 therapist or occupational therapist licensed under AS 08.84; a physician's assistant
10 certified under AS 08.64; a physician licensed under AS 08.64; a podiatrist licensed
11 under AS 08.64; a psychologist and a psychological associate licensed under AS 08.86;
12 a clinical social worker licensed under AS 08.95; an emergency medical technician
13 certified under AS 18.08.082; a mobile intensive care paramedic trained as required
14 under AS 18.08.082; a hospital as defined in AS 18.20.130, including a governmentally
15 owned or operated hospital; and an employee of a health care provider acting within
16 the course and scope of employment;
17 (3) "health insurance" has the meaning given in AS 21.12.050;
18 (4) "managed care contractor" means a contractor who establishes,
19 operates, or maintains a network of participating health care providers, conducts or
20 arranges for utilization review activities, and contracts with an insurer, a hospital or
21 medical service plan, an employer or employee health care organization, or another
22 entity providing coverage for health care services to operate a managed care plan;
23 (5) "managed care entity" includes an insurer, hospital or medical
24 service plan, health maintenance organization, an employer or employee health care
25 organization, or a managed care contractor that operates a managed care plan;
26 (6) "managed care plan" means a health care plan operated by a
27 managed care entity; "managed care plan" does not include an integrated medical
28 group contracting with a health care plan for the direct provision of health care
29 services to a health care plan enrollee;
30 (7) "participating health care provider" means a health care provider
31 who has entered into an agreement with a managed care entity to provide services or

1 supplies to a patient enrolled in a managed care plan;
2 (8) "provider" means a health care provider;
3 (9) "utilization review" means a system of reviewing the medical
4 necessity, appropriateness, or quality of health care services and supplies provided
5 under a managed care plan using specified guidelines, including preadmission
6 certification, the application of practice guidelines, continued stay review, discharge
7 planning, preauthorization of ambulatory procedures, and retrospective review.
8 * **Sec. 2.** RECOMMENDATIONS FOR LEGISLATION. (a) The director of the division
9 of insurance shall develop recommendations for legislative action to address the issue of
10 regulating health care or managed care entities that seek to contract directly with employers
11 or other purchasers on a risk-assuming basis. The recommendations must identify the type
12 of health care or managed care entities and the scope of activities of these entities that should
13 be subject to regulation by the state. In preparing the recommendations, the director shall
14 consider the current state statutory and regulatory requirements for health maintenance
15 organizations and insurance companies issuing health benefits plans in the state, as well as
16 federal legislation and laws and court rulings, to determine how these health care and managed
17 care entities that assume risk should be regulated.
18 (b) The director shall report to the legislature and to the governor as required by (a)
19 of this section within one year of the effective date of this Act.
20 * **Sec. 3.** This Act takes effect July 1, 1998.

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: January 28, 1998 FURTHER REFERRALS: Labor and Commerc

Date of Committee Action: 3/10/98

The STATE AFFAIRS Committee considered: HB 35

HOUSE BILL NO. 359 HEALTH INSURANCE REGULATIO

"An Act relating to regulation of health insurance plans; and providing for an effective date."

recommends it be replaced with the following committee substitute CS HB 359 (STA) [ ] the same title [ ] a new title

[ ] additional referral to ________ Committee
[ ] attached amendment(s)

ADOPTS: ________ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[✓] fiscal note(s) CED [ ] fiscal note(s)

[✓] zero fiscal note(s) 1/SE STA [ ] zero fiscal note(s)

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
Jeannette James			✓	
[signature]			✓	
[signature]			✓	
[signature]			✓	
[signature]	✓			
[signature]	✓			

CHAIR'S SIGNATURE Jeannette James

Held until Tues.
Vozey Moved
Adopt STA Zero
Fiscal note HB 359 -
Objection - Elton -
Passed 4 - 1
Jeannette will report on tapes.

Alaska State Legislature
House of Representatives

COMMITTEE ASSIGNMENTS:

LABOR & COMMERCE
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PHONE (907) 465-3875

Representative Joe Ryan
1 800-922-3875 http://www.akrepublicans.org

Sponsor Statement for

House Bill 359

This bill is offered to impose requirements on managed care providers to enhance patient care, including advocacy of patient care and prohibiting financial incentives to withhold health care.

Requires insurer to disclose terms and conditions of the health insurance plan upon enrollment, annually and upon request. This information shall provide for but not be limited to a current provider directory and referral information.

Provides for a designated medical director and imposes his/her duties and responsibilities and provides for the establishment of a notice and hearing procedure for the termination of a health care provider.

Requires the option to allow covered persons to receive health care from any non-participating health care provider.

Establishes an appeals board to review decisions by an insurer to reduce, deny or terminate benefits and requires written decisions.

Legislative Research Report 98.041
February 20, 1998

An Overview of Managed Care in the United States

Legislative Research Services
Division of Legal and Research Services
Legislative Affairs Agency
Alaska State Legislature

Prepared for Representative Joe Ryan
Prepared by Paul Brandt, Legislative Analyst

Legislative Research Services
130 Seward Street, Room 218
Juneau, AK 99801
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SUMMARY 1

DEFINING MANAGED CARE 1

COMPARING MANAGED CARE AND TRADITIONAL FEE-FOR-SERVICE CARE 2

MANAGED CARE – THE DOMINANT FORM OF HEALTH CARE TODAY 3

In the Midst of Tumult: A Consumer and Provider Backlash 3

SUMMARY

You asked us for a revised version of a Legislative Research report written in 1996.[1] You were interested in a general discussion of managed care but not a review of model laws and regulations used in other states. This report deletes those sections that were of no interest to you and presents the remaining information in basically the same form as it appeared in the original report.

This report provides a brief discussion of managed care, the dominant form of health care for employed Americans. Although it prevails elsewhere, managed care as it is generally defined, does not abound in Alaska. There are no health maintenance organizations in this state and most private medical care here is "fee-for-service," a system in eclipse in many other states. This memorandum begins by comparing managed care with fee-for-service care. It notes managed care's growing dominance elsewhere and cites observers' warnings that these changes are "cataclysmic" and the stuff of which fortunes are made and lost. The memorandum ends with a list of some of the issues facing policymakers who wish to regulate the evolving health care industry.

DEFINING MANAGED CARE

The words "managed care" are used so often and so loosely that they defy definition. Even *Health Affairs* editor John K. Iglehart, who seldom fails to translate jargon into limpid prose, cannot subdue this hackneyed term:

> Managed care is a system that, in varying degrees, integrates the financing and delivery of medical care through contracts with selected physicians and hospitals that provide comprehensive health care services to enrolled members for a predetermined monthly premium.[2]

Legislative Research Report 96.020, "Model Laws Regulating Health Maintenance Organizations," Maureen Weeks, February 21, 1996.

2 *New England Journal of Medicine*, Vol. 331, No. 17, October 27, 1994.

If the concept resists broad definition, it is also beyond the reach of writers who rely on details to define: their efforts swamp the reader in acronyms and esoterica.[3] With this in mind, we forego a formal definition. Instead, we will describe managed care by saying what it is *not*. That is, we will contrast "managed care" with traditional "fee-for-service" medicine.

COMPARING MANAGED CARE AND TRADITIONAL FEE-FOR-SERVICE CARE

The first important difference between managed care and fee-for-service care is the manner in which the provider is paid. In a fee-for-service system, providers earn money each time they treat a patient. Under managed care, providers are paid a lump sum upfront for each person enrolled in the health care plan, whether or not the person ever receives care (this is called *capitation*). In other words, a managed care company gets the same amount of money for a person the doctor never sees as it does for a very sick patient who requires expensive care. Very simply put, under traditional fee-for-service medicine, each service or treatment adds to the provider's bread and butter, bringing with it the possibility of "overutilization" of medical care. Under managed care, each service or treatment eats into the provider's potential bread and butter, bringing with it the possibility of "underutilization" of medical care.

The second major difference is in how the two systems deal with the matter of health insurance. In fee-for-service medicine, health care is delivered under one roof, and insurance is delivered under another; under managed care, health care and insurance are under the same roof. With fee-for-service medicine, physicians decide how much care to deliver and, if the patient is insured, insurance companies pay at least part of the cost. Patients generally perceive that the physician's primary concern is their health needs. With managed care, managers look at the health plan's financial picture and make decisions that directly affect the way the plan's doctors deliver health care (for example, "inexpensive" doctors may get year-end bonuses, while "expensive" doctors may face year-end fines). The plan acts as a health care provider when its doctors treat patients; it acts as an insurer when it bears the risk that the patients might be expensive. With this system, the patient may perceive that the doctor has two masters: the plan and the patient.

The prototype for managed care is the *health maintenance organization* (HMO), a system which traditionally requires patients to get their care from providers who are employed by or who contract with the HMO plan. Increasingly, HMOs are allowing patients to go to doctors who are "outside" the plan, if the patient is willing to pay an additional cost (this variation on the theme is called *point-of-service* or POS). Other health insurers manage care by requiring patients to go to providers named on a list made up by the insurance company (*preferred provider organizations* or PPOs). This is but one mutation of the HMO template; there are many others, with more predicted.

---

[3] Consider, for example, this alphabet soup of acronyms describing managed care systems: HMOs, PPOs, IPAs, PHOs, POS, IDS, FFS and MSOs (translations: health maintenance organizations, preferred provider organizations, independent practice associations, physician hospital organizations, point-of-service plans, integrated delivery systems, fee-for-service and management services organizations).

Managed Care – The Dominant Form of Health Care Today

Managed care has become the dominant form of health care in the United States.[4] In 1995, 69 percent of all persons whose health insurance was provided by an employer were enrolled in managed care plans, up from 47 percent in 1991.[5] Managed care enrollment more than doubled between 1986 and 1994, growing from 50 million people to almost 120 million.[6] The portion of Americans whose care is "managed" becomes far larger when the concept is defined to include fee-for-service health insurance plans in which the payer (the health insurer) second-guesses the physician about the need for intended or completed care (a process known as *utilization review*). A January 1996 *Business Week* article describing the upheaval in the health care industry reviews these statistics and concludes that in numbers alone, "managed care now calls the shots."

In the Midst of Tumult: A Consumer and Provider Backlash

Observers describe medicine's changes from cottage industry to today's commercial networks as "cataclysmic," "unprecedented," "irreversible," and "stunning." One health lawyer warns that "fortunes are being made and lost, careers changed forever" in the tumult.[7] Aware that the stakes are high, consumers and providers are asking state lawmakers for protection. Industry analyst Sue Laudicina predicts that this year no region of the country "will escape the provider and consumer backlash against the spread of managed care arrangements"[8] and health care lawyers predict a stream of cases challenging managed care organizations' decisions to refuse to pay for certain treatment.

Lawmakers and regulators in several states are paying close attention to changing aspects of managed care, among them:

- Financial incentives that lead providers to deny needed care.
- Grievance procedures for patients who feel they are denied coverage and for providers who are denied entry into managed care networks.
- The notion of "risk" and whether states should regulate all plans which act as insurers (that is, plans which "bear the risk" of the expense of patient care).
- Certification of firms that oversee provider practices ("utilization review").

---

[4] In this section, "managed care" is defined as care delivered through HMOs, PPOs and POS plans.

[5] *Healthcare Trends Report*, "1996 Industry Outlook," January 1996, p. 3.

[6] Agency for Health Care Policy and Research, U.S. Department of Health and Human Services, "Managed Care and Integrated Delivery Systems," introduction to a workshop, September 1995.

[7] These quotations from K. H. Hammonds, "The Patient is Stable – For Now," *Business Week*, January 8, 1996, p. 102 and from *Managed Care Reporter*, "Predictions for 1996," Bureau of National Affairs, January 10, 1996, p. 36 (citing health care lawyer Douglas Hastings, Epstein Becker & Green, Washington, D.C.).

[8] *Managed Care Reporter*, "States Drop Comprehensive Reforms, Take Up 'Anti-Managed Care' Efforts," Bureau of National Affairs, February 7, 1996, p. 123.

- "Any willing provider" laws which require plans to include any provider who is willing to play by the plan's rules.

- "Point-of-service" options: should states require them?

- Quality of care provided under managed care: how to measure it?

- Solvency: regulating managed care companies to assure that they remain solvent.

- Marketing: regulating how managed care organizations market their plans.

We hope this overview of managed care in the United States today has been useful to you. If you have any further questions please don't hesitate to call this office.

Alaska State Legislature
House of Representatives

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Representative Joe Ryan
1 800-922-3875 http://www.akrepublicans.org

MEMORANDUM

TO: Representative Jeannette James, Chairwoman
State Affairs Committee

FROM: Representative Joe Ryan

RE: HOUSE BILL NO. 359

DATE: 12 February 1998

Please schedule a hearing for House Bill No. 359 at your earliest convenience. Thank you for your consideration.

Yes

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HB 359

Revision Date (Note if correction):

Dept. Affected: Commerce & Economic Development

Title: An Act relating to Health Insurance Plans

BRU: Insurance

Component: Insurance

Sponsor: Representative Ryan

Requester: (H) STA

Component Serial No. 354

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	51.3	51.3	52.3	52.3	53.3	53.3
Travel	34.3	48.3	48.3	48.3	48.3	48.3
Contractual	10.0	12.0	12.0	12.0	12.0	12.0
Supplies	1.0	2.0	2.0	2.0	2.0	2.0
Equipment	5.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	101.6	113.6	114.6	114.6	115.6	115.6
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 GF	101.6					
1005 GF/Program Receipts		113.6	114.6	114.6	115.6	115.6
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	101.6	113.6	114.6	114.6	115.6	115.6

Estimate of any current year (FY98) cost: 0.0

POSITIONS

POSITIONS	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Full-time	1	1	1	1	1	1
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

Expenditures are based on the addition of one full time Insurance Analyst II who will act as the support for the Health Care Appeals Board plus the nominal associated costs related to the position and to the four board meetings throughout the year.

Prepared by: Marianne K. Burke, Director

Phone: 465-2515

Division: Insurance

Date: 3/2/98

Approved by: Commissioner Deborah B. Sedwick

Date: [illegible]

Agency: Commerce & Economic Development

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(Rev 9/97) 98fnform xls/OMB

Author: Barbara Cotting at LAA_TRANS
Date: 2/26/98 1:34 PM
Priority: Normal
TO: shari_kochman@gov.state.ak.us at CC2MHS1
Subject: details

I have scheduled the following for hearing on Tuesday, March 3, 1998, and need fiscal notes.

HJR 1	Limit session to 90 days	Elections
HB 359	Health Insurance Regulation	Commerce
HJR 59	Desecration of U.S. Flag	Admin
HB 338	Annul All Admin Regs;Repeal APA	Admin
HB 413	Initiative Petition Comp.	Elections

at 9:30 a.m. Monday 3/2/98 when packets must be prepared, none of the requested fiscal notes had been received.

B Cotting

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HB359

Revision Date:
Title: An Act relating to Health Insurance Plans
Sponsor: Representative Ryan
Requester:

Dept. Affected
BRU
Component
Component Serial No.

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1091 Designated Program Receipts						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

Prepared by: Representative Jeannette James
Division: House State Affairs
Approved by: [illegible]
Agency:

Phone
Date 3/7/98
Date

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HB 359

Revision Date (Note if correction)

Dept. Affected Commerce & Economic Development

Title: An Act relating to Health Insurance Plans

BRU: Insurance

Component: Insurance

Sponsor: Representative Ryan

Requester: (H) STA

Component Serial No. 354

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	51.3	51.3	52.3	52.3	53.3	53.3
Travel	34.3	48.3	48.3	48.3	48.3	48.3
Contractual	10.0	12.0	12.0	12.0	12.0	12.0
Supplies	1.0	2.0	2.0	2.0	2.0	2.0
Equipment	5.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	101.6	113.6	114.6	114.6	115.6	115.6

CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
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1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	101.6	113.6	114.6	114.6	115.6	115.6

Estimate of any current year (FY98) cost: 0.0

POSITIONS

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

Expenditures are based on the addition of one full time Insurance Analyst II who will act as the support for the Health Care Appeals Board plus the nominal associated costs related to the position and to the four board meetings throughout the year.

Received 3/3/98 4:30pm.

Prepared by: Marianne K. Burke, Director *Marianne K. Burke*

Phone: 465-2515

Division: Insurance

Date: 3/2/98

Approved by: Commissioner Deborah B. Sedwick

Date: [illegible]

Agency: Commerce & Economic Development

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HB

362

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Bannister
3/6/98

CS FOR HOUSE BILL NO. 362( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE SPECIAL COMMITTEE ON MILITARY AND VETERANS' AFFAIRS

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the use of space for military lounges in state-owned or state-**
2 **controlled airports."**

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

4 * Section 1. AS 02.15.090(a) is amended to read:
5 (a) In operating an airport or air navigation facility owned or controlled by the
6 state, the department may enter into contracts, leases, and other arrangements covering
7 periods not exceeding 55 years with a person, municipality, or the United States,
8 granting the privilege of using or improving an airport or air navigation facility or a
9 portion of it or space in it for commercial, governmental, or other public purposes,
10 including private plane tie down; or conferring the privilege of supplying goods,
11 commodities, services, or facilities at an airport or air navigation facility. The
12 department may establish the terms and conditions and fix the charges, rentals, and
13 fees for the privileges or services that are reasonable and uniform for the same class
14 of privilege or service. Charges, rentals, or fees authorized by this subsection may be

1 fixed for the international airports by order of the commissioner or by negotiated or
2 competitively offered contract. Notwithstanding AS 37.10.050(a), the fixing of
3 charges, rentals, or fees as permitted under this subsection is not subject to the
4 adoption of regulation provisions of AS 44.62 (Administrative Procedure Act). The
5 terms, conditions, charges, rentals, and fees shall be established with due regard to the
6 property and improvements used and the expense of operation to the state. However,
7 use of state land and buildings by the Alaska Wing, Civil Air Patrol and its squadrons
8 shall be permitted without rental charges. **If the department permits space in state-**
9 **owned or state-controlled airports to be used as lounges for members of the**
10 **United States armed forces, the Alaska National Guard, the Alaska Naval Militia,**
11 **or the Alaska State Militia and if the lounges are operated by persons exempt**
12 **from taxation under 26 U.S.C. 501(c)(3) (Internal Revenue Code), rent may not**
13 **be charged for the use of the space.** The department shall provide for public notice
14 and an opportunity to comment before a charge, rental, or fee is fixed by order of the
15 commissioner as permitted under this subsection. The public may not be deprived of
16 its rightful, equal, and uniform use of the airport, air navigation facility, or a portion
17 of them.

0-LS1110\B

HOUSE BILL NO. 362

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE SPECIAL COMMITTEE ON MILITARY AND VETERANS' AFFAIRS

Introduced: 1/28/98
Referred: House Special Committee on Military and Veterans' Affairs, State Affairs

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the use of space for military lounges in state-owned or state-**
2 **controlled airports."**

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

4 * **Section 1.** AS 02.15.090(a) is amended to read:
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6 state, the department may enter into contracts, leases, and other arrangements covering
7 periods not exceeding 55 years with a person, municipality, or the United States,
8 granting the privilege of using or improving an airport or air navigation facility or a
9 portion of it or space in it for commercial, governmental, or other public purposes,
10 including private plane tie down; or conferring the privilege of supplying goods,
11 commodities, services, or facilities at an airport or air navigation facility. The
12 department may establish the terms and conditions and fix the charges, rentals, and
13 fees for the privileges or services that are reasonable and uniform for the same class
14 of privilege or service. Charges, rentals, or fees authorized by this subsection may be

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1 fixed for the international airports by order of the commissioner or by negotiated or
2 competitively offered contract. Notwithstanding AS 37.10.050(a), the fixing of
3 charges, rentals, or fees as permitted under this subsection is not subject to the
4 adoption of regulation provisions of AS 44.62 (Administrative Procedure Act). The
5 terms, conditions, charges, rentals, and fees shall be established with due regard to the
6 property and improvements used and the expense of operation to the state. However,
7 use of state land and buildings by the Alaska Wing, Civil Air Patrol, and its squadrons,
8 **and the use of space in state-owned or state-controlled airports as lounges for**
9 **members of the United States armed forces, the Alaska National Guard, the**
10 **Alaska Naval Militia, or the Alaska State Militia, if the lounges are operated by**
11 **persons exempt from taxation under 26 U.S.C. 501(c)(3) (Internal Revenue Code),**
12 shall be permitted without rental charges. The department shall provide for public
13 notice and an opportunity to comment before a charge, rental, or fee is fixed by order
14 of the commissioner as permitted under this subsection. The public may not be
15 deprived of its rightful, equal, and uniform use of the airport, air navigation facility,
16 or a portion of them.

Then [illegible] will insert permissive language.

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: February 25, 1998 FURTHER REFERRALS:

Date of Committee Action: 3/7/98

The STATE AFFAIRS Committee considered: HB 362

HOUSE BILL NO. 362 AIRPORT MILITARY LOUNGES

"An Act relating to the use of space for military lounges in state-owned or state- controlled airports."

recommends it be replaced with the following committee substitute CS HB 362(STA)

[✓] the same title
[ ] a new title

[ ] additional referral to ______ Committee
[ ] attached amendment(s)

ADOPTS: ______ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal note(s) ______

[ ] zero fiscal note(s) ______

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) ______

[✓] zero fiscal note(s) DOT+PF

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
[signature]	✓			
[signature]	✓			
[signature]			✓	
[signature]	✓			
[signature]			✓	
[signature]			✓	

CHAIR'S SIGNATURE [signature]

Alaska State Legislature

Representative Beverly Masek
Chair, Military & Veterans Affairs
Vice Chair, Transportation
Vice Chair, Resources
Legislative Council

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907-376-6180 (fax)

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Juneau, AK 99801-1182
907-465-2679
907-465-4822 (fax)
1-800-505-2678

SPONSOR STATEMENT – HOUSE BILL 362
Regarding the Use of Military Lounges in State Owned & Controlled Airports

House Bill 362 amends A.S. 02.15.090(a) by adding language to allow the State of Alaska to provide space within its airports for use as military lounges free of rental charges, if those lounges are operated by non-profit agencies.

Even though only token rent is now being collected, this arrangement skirts on the periphery of FAA regulations. The Anchorage International Airport Director is doing a balancing act by dividing the square footage cost for the lounge between the other airport tenants. The Federal Aviation Administration frowns upon these arrangements and without codifying the "no rent" provision, the potential exists for this arrangement to change should the FAA decide to push the issue.

For many years, the Anchorage Armed Services YMCA have operated the Military Courtesy Lounge on Concourse B at the Anchorage International Airport. This operation is conducted at no expense to the State. More than 23,000 travelers took advantage of the lounge's services in 1996. A squadron booster club provides volunteers to staff the lounge.

Given that thousands of military personnel travel to and from Alaska each year, and that the total economic contribution to the State from military activities exceeds $2.7 billion, it is the best interest of the State to protect the continued operation of rent free courtesy lounges in our state airports.

Passage of HB 362 will provide airport directors with the statutory justification to continue the "no rent" arrangements, which have served us so well in the past.

ANCHORAGE

ARMED SERVICES YMCA OF THE USA

Post Office Box 272
Elmendorf Air Force Base, Alaska 99506
Telephone: (907) 753-2121
FAX (907) 552-4651

Honorary
Life Member
Robert B. Atwood
Alvin H. Fleetwood

February 2, 1998

Representative Beverly Masek
State Capitol
Juneau, AK 99801-1182

Dear Representative Masek,

For more years than anyone knows, the Armed Services YMCA has been quietly and competently serving the traveling military through the Military Courtesy Lounge located on Concourse B at Anchorage International Airport. A safe and secure place has been dedicated to the Armed Forces, at no expense to the State or to the Military. Reaching over 22,000 visitors in 1997, squadron booster clubs provide volunteers to staff this lounge 365 days a year, meeting the needs of domestic and international traveling military members and their families. Alaska continues to be of strategic importance in the training of our military and defense of the nation. The military has always been there for us. we should not shirk our duties to them.

The existing statute does not allow the Armed Services YMCA to provide these services without a rental charge. So that we may continue to meet the needs of the traveling military in Alaska, the Armed Services YMCA supports House Bill No. 362, "An Act relating to the use of space for military lounges in state-owned or state-controlled airports" with the amended changes to Section 1. AS 02.15.090(a).

This change will allow us to continue our work and at the same time, authorize the Anchorage International Airport to offer the space rent free.

Please contact us if the "Y" can offer any assistance.

Serving Those Who Serve America

Tom Morgan
Executive Director

ja/tm

Alaska State Legislature

Representative Beverly Masek
Chair, Military & Veterans Affairs
Vice Chair, Transportation
Vice Chair, Resources
Legislative Council

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1-800-505-2678

HOUSE SPECIAL COMMITTEE FOR MILIATRY & VETERANS' AFFAIRS

Jeannette

To: Representative Jeannette James, Chair
House State Affairs Committee
Fr: Representative Masek, Chair Beverly
Re: Request for Hearing on HB 362
Dt: February 25, 1998

Please consider this my formal request for hearing on House Bill 362 as soon as possible. My hope is that HB 362 could be heard the week of March 2 – 6, 1998.

HB 362 amends AS 02.15.090(a) by adding language to allow the State of Alaska the authority to provide space within its airports for use as military lounges free of rental charges, if those lounges are operated by non-profit agencies.

HB 362 passed out of the House Special Committee for Military & Veterans' Affairs with unanimous consent on February 24, 1998.

Should you have any questions, contact Don Stolworthy in my office at extension 2811.

Yes

No: 1

FISCAL NOTE

Version: HB 362

(H) Publish Date: 2/25/98

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Revision Date		Dept. Affected	DOT&PF
Title	Airport Military Lounges	BRU	Office of the Commissioner
		Component	Commissioner's Office
Sponsor	HS. Spec. Cmte. MVA		
Requester	HS. Spec. Cmte. MVA	Component Serial No.	530

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: 0.0

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: *(Attach a separate page if necessary)*
At this time, the Department has only one military lounge. It is located at Anchorage International Airport. The Department also currently has no requests to establish military lounges. This fiscal note assumes that any requests for a military lounge would be filled with available space. The Department also will not displace current airport tenants to establish military lounges.

Prepared by	Dennis Poshard	Phone	465-3904
Division	Office of the Commissioner	Date	2/20/98
Approved by:	[signature], Commissioner	Date	2/20/98
Agency	Department of Transportation and Public Facilities		

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COMMITTEE COPY

HB
376

0-LS1209\A.1
Glover
3/6/98

A M E N D M E N T

OFFERED IN THE HOUSE   BY REPRESENTATIVE CROFT

TO: HB 376

1 Page 1, line 1, following "**information**":
2 Insert "**; and providing for an effective date**"

3 Page 2, line 23, following "not":
4 Insert "knowingly"

5 Page 2, line 29:
6 Delete "knowingly"

7 Page 3, line 5, following "campaign,":
8 Insert "public service,"

9 Page 3, following line 10:
10 Insert a new bill section to read:
11 "* **Sec. 5.** This Act takes effect February 1, 1999."

Passed.
Ordered Final 3/10/98

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: February 2, 1998

FURTHER REFERRALS: Judiciary
Finance

Date of Committee Action: 3/10/98

The STATE AFFAIRS Committee considered: HB 376

HOUSE BILL NO. 376 LIMIT USE OF VOTER REGISTRATION INFO

"An Act limiting the use of voter registration information."

recommends it be replaced
with the following committee substitute CS HB 376 (STA)

[✓] the same title
[ ] a new title

[ ] additional referral to ____________ Committee
[ ] attached amendment(s)

ADOPTS: ____________ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[✓] fiscal note(s) GOV

[ ] zero fiscal note(s)

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s)

[ ] zero fiscal note(s)

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
Jeannette James	✓			
[illegible signature]	✓			
[illegible signature]	✓			
[illegible signature]	✓			
[illegible signature]	✓			

CHAIR'S SIGNATURE Jeannette James

Representative Eric Croft

Sponsor Statement
HB 376

Information people divulge when filling out voter registration forms could land them on commercial mailing lists peddling credit cards or trips to Las Vegas.

Presently, the only way to avoid this sales pitch is **not** registering to vote, a high price to pay to keep personal information confidential. Alaska law does not prohibit the commercial use of this private information. Mail houses provide their clients with lists of names and addresses that can be easily obtained from the Division of Elections by calling or phoning in a request and paying $20 per district or $160 for a statewide list.

Alaska's ballots are secret, thus voter registration information should be private and confidential when a person chooses it to be. States such as Montana, Oregon and Washington protect their residents by prohibiting the commercial use of voter information records.

House Bill 376 would extend to Alaskans the power to choose how their voter information is used. People who don't mind mailboxes clogged with advertisements may opt to have their names and addresses released to commercial interests. However, those who do mind the advertising should be able to check a box on their voter registration form to indicate that their identity should be omitted from any list designated for commercial purposes.

January-May: State Capitol • Juneau, Alaska 99801-1182 • (907) 465-4998 • (800) 689-4998 • Fax (907) 465-4419
June-December: 716 W. 4th Avenue • Anchorage, Alaska 99501 • (907) 258-8162
Representative_Eric_Croft@legis.state.ak.us

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM March 9, 1998

SUBJECT: Sectional Summary of HB376

TO: Representative Eric Croft
Attn: Amanda

FROM: Richard A. Glover -RAG
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 of the bill requires voter applicants to indicate if the other information supplied to register to vote is not to be used for commercial purposes.

Section 2 of the bill requires the director of the division of elections to indicate on the lists of voters if a voter has indicated on their application to register or reregister that the other information supplied is not to be used for commercial purposes.

Section 3 of the bill prohibits use of voter registration information for commercial purposes if the source of the information indicates the voter desires that the information is not to be used for commercial purposes. A violation is made a class B misdemeanor. Actions prohibited are broad, and do not require payment or profit. Exceptions are made for law enforcement, political campaign, election or legitimate governmental purposes.

RAG:jdr
98-142.jdr

REPRESENTATIVE ERIC CROFT

3 March 1998

Representative Jeannette James
Chair of State Affairs Committee
State Capitol, Room 102
Juneau, AK 99801

Dear Representative James,

I am writing to ask you to consider hearing HB 376—a bill that would ease the amount of junk mail that plagues busy Alaskans as well as take one of the barriers away from people discouraged from voting. An opportunity to choose to whom one's private information is sold, is an opportunity each Alaskan should and could have. Alaskans have a right to vote and Alaskans have a right to privacy, but under current law, Alaskans must give up their right to privacy in order to exercise their right to vote.

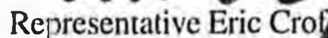
I understand how busy you must be with 68 bills in your committee waiting to be heard, but I respectfully request your support on this bill in the name of good public policy.

Right now the Division of Elections sells lists of Alaskan voters to anyone willing to pay the nominal fee. HB 376 would eliminate from those lists the names of people who choose not to have their name sold to commercial interests. I have it on good authority that the bill has a very small, probably zero, fiscal note. I am also told that it would take a simple computer modification to add an extra field to the voter registration form allowing people to check a box indicating whether or not they would have their name sold for commercial purposes. This uncomplicated change would make a big difference in the lives of Alaskans tormented by mounds of junk mail and pesky sales calls at dinner-time.

The state would not have to print all new voter registration forms due to this law, it could be phased in and any new form printed after the law becomes effective would contain the check box.

Please read, at your leisure, the attached sponsor statement and letters of support. I would be happy to submit any additional information you might request. Thank you for your consideration and please call my office if you have any questions.

Sincerely,



Representative Eric Croft

cc: Representative Fred Dyson

Yes

PLEASE NOTE:

A SECTIONAL ANALYSIS IS EXPECTED TO BE AVAILABLE IN A FEW DAYS. SORRY FOR THE DELAY.

January-May: State Capitol • Juneau, Alaska 99801-1182 • (907)
June-December: 716 W. 4th Avenue • Anchorage
Representative_Eric_Croft@le

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM September 9, 1997

SUBJECT: Limiting the use of voter registration information in electronic media format

TO: Representative Eric Croft
ATTN: Tom Atkinson

FROM: Jack Chenoweth
Legislative Counsel

In the course of the afternoon I was able to turn up some examples in which states impose, or have tried to impose, limitations on the commercial use of voter registration information. It appears that just about two-fifths of the states make some provision for limited or restricted access to or use of compiled voter registration information, but there may still be others that my initial review didn't uncover.

__Illinois:__ Illinois distinguishes between voter registration information in card or paper record format and voter registration information compiled in the form of a tape, disc, or other electronic media form. The former--the card or paper record--is a public record, subject to inspection and copying. An Illinois statute, 10 ILCS 5/4-8, treats voter registration records in electronic form differently. It provides as follows:

> . . . The [State Board of Elections] shall furnish copies of such tapes, discs, other electronic data or compilations thereof to state political committees registered pursuant to the Illinois Campaign Finance Act or the Federal Election Campaign Act at their request and at a reasonable cost. Copies of the tapes, discs, or other electronic data shall be furnished by the county clerk to local political committees at their request and at a reasonable cost. . . . The individual representing a political committee requesting copies of such tapes shall make a sworn affidavit that the information shall be used only for bona fide political purposes, including by or for candidates for office or incumbent office holders. **Such tapes, discs, or other electronic data shall not be used under any circumstances by any political committee or individuals for purposes of commercial solicitation or other business purposes.** . . . Any person who violates this provision shall be guilty of a class 4 felony [i.e. the least onerous felony ranking under Illinois law].

(Emphasis added.)

An employee of the Illinois State Board of Elections who is responsible for administration of this law related that, in her view, the provision has generally been effective to prevent use of the information for commercial solicitations or other business purposes. She knows of only one violation of it since enactment in 1979. She identified one "open" or unresolved question as this: Political committees and candidates receiving these lists generally make them available to marketers who, for profit, analyze and process the information and, in turn, make it available in modified format to parties and candidates for election campaign purposes. She questions whether this use of intermediaries is a violation of the ban against use for "business purposes" but, in any event, emphasized that the marketers who process the lists for profit have limited the resale of these lists to parties and candidates for election-related purposes. She was unaware of any instance in which the marketer, receiving a list from a political committee or candidate used the list for purposes of commercial solicitation.

There are no annotated cases indicating that this approach has been the subject of litigation.

Oklahoma: An effort with a different approach than that approved in Illinois was passed about seven years ago by the Oklahoma Legislature, but was then vetoed by the Governor, Henry Bellmon. Lance Ward, secretary of the Oklahoma State Election Board, described the Oklahoma proposal as one that did not restrict access to or distribution of the registration records in electronic form--anyone could ask for and obtain tapes or discs--but rather simply limited the uses of the registration records obtained in this form to politically related purposes and to academic research. Since the Oklahoma effort did not become law, Mr. Ward was good enough to provide copies of the material in bill form. He noted that the principal objections to the enactment arose from that state's press association, but also related a belief that the president of that association at the time did not understand the distinctions between permissible and impermissible uses of the material and thought that the association's objections, based on the president's apparent misunderstanding, was the critical factor that caused the governor to veto the measure.

Pennsylvania: The Pennsylvania approach seems to more closely approximate the Oklahoma effort. The Pennsylvania statute appears to cover all voter registration lists without regard to form or format. 25 P.S. [Pa.Stat.] 961.704(a) authorizes the state's voter registration commission to "make available for inspection a printed or computerized public information list containing the name, address, date of birth, and voting history of each registered voter in the county." Under sec. 961.704(b)(3),

> No individual who inspects the list or who acquires names of registered voters from the list may use information contained in the list for purposes unrelated to elections, political activities, or law enforcement. ....

Finally, as to copies, sec. 961.704(c)(1) authorizes release of paper copies of the public information lists as well as "copies in some other form" to any Pennsylvania voter but, under (c)(2),

> An individual who inspects or acquires a copy of a public information list may not use any information contained in it for purposes unrelated to elections, political activities, or law enforcement.

The Pennsylvania provisions took effect July 1, 1995. As with the Illinois statute, there are no reported cases concerning implementation of these provisions.

*

The following is a sample of the approach or language used in other jurisdictions imposing limitations on the commercial use of voter registration records and information:

Florida: Fla. Stat. 98.095(2) provides for limited distribution of records and disallows use for commercial purposes (i.e. not related to elections. political or government activities, voter registration, law enforcement, or jury selection).

Hawaii: Haw. Rev. Stat. 11-14.6(c)(3) bars release of lists or registers "to any commercial firm, or . . . for any commercial purpose. **provided that service bureaus may charge a fee for furnishing data processing services where such services are rendered solely for election or government purposes.**" (Emphasis added.)

Idaho: Idaho Code 34-437(3): records not to be used "for commercial purposes".

Iowa: Iowa Code 48A.39: "not for commercial purposes".

Kansas: Kansas Stat. Ann. 25-2320a bars use of lists for commercial purposes, **except that, "[f]or purposes of this section, compiling, using, giving, receiving, selling, or purchasing the information on or derived from voter registration lists, solely for political campaign or election purposes, shall not constitute a commercial use of voter registration lists."** (Emphasis added.)

Maryland: Ann. Code Md. art. 33 sec.3-22(c) bars use for purposes of commercial solicitation or other business purposes.

Minnesota: Minn. Stat. 201.091 distinguishes between the content of information on master voter registration lists and public information lists and limits to whom information may be disclosed and use of the disclosed information.

Missouri: Mo. Rev. Stat. 115.158(1): centralized voter registration system records not to be used for commercial purposes.

Montana: Mont. Code Ann. 13-2-122(1) authorizes furnishing "for noncommercial use".

Nebraska: Rev. Stat. Neb. 32-330(2): Authorized use of the lists is specified and lists are not to be used for commercial purposes.

Oregon: ORS 247.955 bars use of the information on a voter registration list for commercial purposes, but **"[a] person shall not be considered to use for commercial purposes any information contained in a list . . . if the person obtains the list of electors for the purposes of resale to candidates or political committees for political purposes only."** (Emphasis added.)

Rhode Island: Gen. Laws R.I. sec. 17-6-5(b) limits use of furnished lists to party chairpersons "for political purposes" and to candidates "only in the furtherance of candidacy for political office . . . and for no other purpose."

Tennessee: Tenn. Code Ann. 2-2-138(d)(1) provides that computerized voter registration system lists made available on computer diskette are limited to use for political purposes.

Virginia: Va. Code 24.2-405 and -406 spell out to whom lists of voters may be provided and the permissible uses of those lists.

Washington: Because its approach is quite direct, the Washington statute, RCW 29.04.120, dating from 1974, deserves quotation:

> (1) Any person who uses registered voter data . . . for the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product, or service or for the purpose of mailing or delivering any solicitation for money, services, or anything of value shall be guilty of a felony . . . and shall be liable to each person provided such advertisement or solicitation, without the person's consent, for the nuisance value of such person having to dispose of it, which value is herein established at five dollars for each item mailed or delivered to the person's residence; provided, that any person who mails or delivers any advertisement, offer, or solicitation for a political purpose shall not be liable under this section, unless the person is liable under subsection (2) of this section. . . . Merely having a mailbox or other receptacle for mail on or near the person's residence shall not be any indication that such person consented to receive the advertisement

> or solicitation. A class action may be brought to recover damages under this section . . . .
>
> (2) It shall be the responsibility of each person furnished [voter registration] data . . . to take reasonable precautions designed to assure that the data is not used for the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product, or service or for the purpose of mailing or delivering any solicitation for money, services, or anything of value. Provided, that such data may be used for any political purpose. Where failure to exercise due care in carrying out this responsibility results in the data being used for such purposes, then such person shall be jointly and severally liable for damages under the provisions of subsection (1) of this section along with any other person liable under subsection (1) of this section for the misuse of such data.

(Washington's legislators appeared to want to leave nothing to chance.)

West Virginia: W. Va. Code 3-2-30(b) allows purchase of printed lists of registered voters "for noncommercial use."

Wyoming: Wyo. Stat. Ann. sec. 22-2-113(a) spells out to whom computerized voter registration lists may be provided:

> . . .to any candidate for a political office in the state, candidate's campaign committee, political party central committees and officials thereof, elected officials, political action committees, and to organizations which promote voter participation.

to be used for "political purposes only and not . . . for commercial use," but "[t]he lists, labels, or tapes may be reproduced for political purposes." Interestingly, in addition to voter registration information, under Wyo. Stat. Ann. sec. 22-2.113(c)

> Information copied from campaign receipts and expenditures reports filed by state and local candidates may be used for political purposes but shall not be used for commercial purposes.

*

I hope this helps. Please call if my comments prompt questions.

Because the Legislature's FY 98 appropriation shortfunded the amount available for personal services in the Legal Services Division, necessitating mandatory leave without pay for most of the division's attorneys, I have decided to seek other work. I will very soon be leaving

Agency employment. While I will try to answer questions you have about information in this memo, I regret that I will not be available to do additional work on this issue.

JBC:pl
97-198.plm

Enclosure [Oklahoma bill]

cc:Mail for: amanda bohman

Subject: H.B. 376
From: No_Spam_Allowed_@compuserve.com (Kenneth Brewster) at CC2MHS1 2/25/98 1:13 PM
To: Amanda Bohman at LAA_TRANS

I urge you to pass legislation outlawing use of public records (such as voter registration and tax assessment roles) by commercial organizations for other than valid political purposes or demographic studies.

Last year, through a variety of means, I was able to preclude giving my name & address to mailing lists I did not specifically approve, and thereby eliminate most junk mail. One of my methods was to call the originators of junk mail, ask where they got my name and address, ask them to take me off their mailing list; and then do the same with the original source list.

This technique failed, however, with the Boulder Station gambling casino in Las Vegas and the Flamingo in Reno. Oh, they readily disclosed their source: Speedy Mail here in Anchorage (which I quickly determined uses the voter registration roles). But when I explained to a Boulder Station marketing executive (Donna) that this is an abuse of public records and asked if they would limit themselves to legitimately purchased mailing lists, she answered that what they are doing is legal so they would not stop. Well, I responded, in Nevada prostitution is legal. Does that make it morally right? Alas, these people have no shame.

Speedy Mail was worse. It was the manager, Debra, who at least informed me of their use of the voter registration roles, but made the same excuse about it not being illegal (shades of R.J. Reynolds?). Then please code your lists to not give out my name & address any more, I asked. Their software does not have that capability. So why don't they upgrade their sc tware? Their software is "approved by the Postal Service" (I did not verify this with the Postal Service). End of discussion. They even stonewalled the Better Business Bureau (letter to me from Juanita Barth, Dispute Resolution Manager, 10/31/97).

I have also become increasingly infuriated at the continuing offers to loan me 125% of the value of the mobile home I sold last August. The recent public warning of the exorbitant interest rates and sheer financial folly of these scams did not reach my girlfriend, whose ex left her with $20,000 in debts and an income just enough to disqualify her from public assistance. It was up to me to explain to her why falling for such a come-on would only make matters worse. The source of the mailing lists used for this is, of course, the Municipal tax assessment roles. This also constitutes an egregious misuse of public records.

In cases like these, we must deprive these con artists of the cloak of legality.
You will, of course, have to make some concessions to assure the bill passes the muster of constitutionality and wins the approval of House and Senate leadership. My specialty as a paralegal is in public land law, not constitutional law, so I can't offer any suggestions here. But please do your best.

Thank you.

Grace & peace =
Kenneth Brewster

201 Heintzleman Drive
Anchorage 99503-2034
(907) 274-0149

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CSHB 376(STA)

Revision Date (3/12/98

Dept. Affected: Office of the Governor

Title: Limiting the use of voter registration information

BRU: Elective Operatic .is

Component: Elections

Sponsor: Representative Croft

Requester: House State Affairs Committee

Component Serial No. #21

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual	5.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	5.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 GF	5.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	5.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost:

POSITIONS						
Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

The amount reflects DIS costs for reprogramming and testing the Voter Registration Election Management System.

Received 3/13/98

Prepared by: Dana LaTour — Phone: 465-5347

Division: Division of Elections — Date: 3/12/98

Approved by C: Lt. Governor Fran Ulmer — Date: 3/12/98

Agency: Office of the Lieutenant Governor

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FISCAL NOTE

STATE OF ALASKA **BILL NO.** HB376
1998 LEGISLATIVE SESSION

Revision Date (Note if correction)		Dept. Affected	Office of the Governor
Title information	Limiting the use of voter registration	BRU	Elective Operations
		Component	Elections
Sponsor	Representative Croft		
Requester	House State Affairs Committee	Component Serial No.	#21

Expenditures/Revenues (Thousands of Dollars)

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CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	5.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	5.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
The amount reflects DIS costs for reprogramming and testing the Voter Registration Election Management System.

Prepared by	Dana LaTour	Phone	465-5347
Division	Division of Elections	Date	3/6/98
Approved by C	Lt. Governor Fran Ulmer	Date	3/6/98
Agency	Office of the Lieutenant Governor		

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