

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

5089 HSTA HB 420 - HB 450

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pended them, as it clearly has the power to do. *LKC v. Brown, supra*, SB 294(2).

## 2. TRUST AND AGENCY FUND TRANSFERS

[7] Under a traditional statutory scheme, the General Assembly has created what are called "trust and agency funds." Basically, when any affected agency, board, commission, or other entity of state government receives fees, rental, sales, bond proceeds, gifts, or other income, those monies are specifically appropriated by the General Assembly to those units of government. *Budget, Part II, Trust and Agency Funds*; KRS 45.273.

In the present budget bill, and based on the same premise of the financial condition of the state, the General Assembly provided for the "suspension" of enumerated statutes to "provide for the transfer of certain agency and special funds to the general fund." *Budget Memorandum, at i*.<sup>9</sup> Not only does the budget document provide for the transfer but they are also authorized by statute. KRS 48.315.<sup>10</sup>

In each of the challenged transfers of funds, the enabling act created a reduction in the funds available to the affected agency. The trial court upheld the validity of these transfers, declaring that the General

Assembly has the authority under Section 15 of the Kentucky Constitution and under KRS 48.315 "to suspend, for the duration of the biennium, sections of the Kentucky Revised Statute that pertain to trust and agency funds." We agree in part.

We repeat ourselves when we say that the General Assembly has, constitutionally speaking, the power in a budget bill to repeal or amend in the manner in which public funds are used. Ky. Const. Sec. 51, the "title" section, has not been violated by the matters clearly relating to appropriations. What we decide is simply that the transfers of funds which are merely temporary, determinable suspensions of the operation of the statutes relating to appropriations of public funds are within the legislative authority as set out in SB 294 and Ky. Const. Sec. 51, the amendment section.

However, the transfers of funds which relate to appropriations of private contributions cannot be termed suspensions or modifications of the operation of the statute. Because the General Assembly has no authority to transfer private funds to the general fund, the transfer of money from agencies in which public funds and private employee contributions are commingled and cannot be differentiated, is unconstitutional. Diversions from the Kentucky Em-

9. In the interest of brevity, we will not discuss these at length. Suffice it to say that the Attorney General complains of the following items—Kentucky Development Finance Authority, required lapsing of \$100,000 each fiscal year to the General Fund; University of Kentucky, transfer of \$500,000 from the Tobacco Research Trust Fund to the General Fund; Department of Banking and Securities, transfer of \$1,000,000 to the General Fund; Fish and Wildlife Resources, lapsing \$1,128,000 in 1984-1985 and \$1,150,000 in 1985-86; and a general transfer of various amounts to the General Fund. See Budget Document, Item 19, 35, 49, 63. For anyone who desires to read the 47 specific authorized transfers, see Budget Bill, Item VIII.

10. KRS 48.315 is as follows: "(1) The general assembly may provide in a budget bill for the transfer to the general fund for the purpose of the general fund all or part of the agency funds, special funds, or other funds established under the provisions of KRS 15.430, 16.565, 21.347, 21.540, 21.560, 42.500, 47.010; 48.010(g); 56-

100; 61.470; 61.580, 64.345; 64.350; 161.420; 161.430, 164A.110; 164A.020, 164A.800; 164A.810; 216A.110; 230.218; 230.398, 230.400; 230.770; 235.330; 248.540; 248.550; 278.100; 278.150, 287.485; 304.35-030, 311.450; 311-610, 312.019, 313.350; 314.161; 315.195; 316-210, 317.530; 317A.080, 319.131; 320.360; 321-320; 322.290, 322.330, 322.420, 323.080, 323-190, 323.210, 323A.060; 323A.190, 323A.210; 324.286; 324.410; 325.250, 326.120, 327.000; 330.050, 334.160; 334A.120, 335.140, 342.122, 342.480, etc.

(2) The transfer of moneys from the agency funds, special funds, or other funds to the general fund provided for in subsection (1) of this section shall be for the period of time specified in the budget bill.

(3) Any provisions of any statute in conflict with the provisions of subsections (1) and (2) of this section are hereby suspended or modified. Such suspension or modification shall not extend beyond the duration of the budget bill. (Enact. Acts 1984, ch. 410 § 6, effective July 14, 1984.)"

ployees Retirement System, County Employees Retirement System, State Police Retirement System, and Teachers' Retirement System fall within this category, as do Workers' Compensation and Workers' Claims Special Fund. The employee contributions and the insurance company assessments constitute private, mandatory donations." To the extent that private funds were transferred, we reverse.

## 3. TRANSPORTATION PROVISIONS

[8] The budget bill directs that the Secretary of the Transportation Cabinet shall expend fund resources to meet lease requirements to the Kentucky Turnpike Authority. It further provides that in the event such resources are insufficient to meet payments, the shortage shall be met by transferring coal severance tax receipts to cover the obligation". *Budget Document, Part IV, Road Fund, Item I*.

The bill also provides that the capital construction and equipment purchase contingency fund may be used to advance funds to projects authorized to be financed by bonds and may further be used to finance feasibility studies for future projects. *Budget, Part V, Capital Construction, L, Transportation*.

The Attorney General argues that the first provision is in conflict with KRS 143.090 and that the second provision is in conflict with KRS 45.770. The trial court disagreed and found no inconsistency between the provisions and existing statutory law. We agree with the result, but not the reasoning of the trial court.

It is clear that the first provision which creates, albeit temporarily and for the same reason as all of the challenged provisions of the budget bill, funds from the purpose set out in KRS 143.090<sup>11</sup> does conflict with

<sup>11</sup> Following are the agencies and special funds which have private contributions:

Kentucky Employees Retirement System (KRS 61.540), County Employees Retirement System (KRS 78.650), State Police Retirement System (KRS 16.563), Teachers' Retirement System (KRS 161.420), Workers' Compensation

that statute. As we have said previously, the "conflict" is authorized by SB 294.

The same reasoning applies to the second contested provision in this section. In addition, this action of the General Assembly was authorized by a 1984 statute. KRS 45.760(12) is as follows:

"(12) The general assembly may provide in a budget bill for the capital construction and equipment purchase contingency fund to be used to advance funds to projects authorized to be financed by bonds, and to finance feasibility studies for projects which may be contemplated for future funding."

The General Assembly thereby specifically authorized by another statute, the action which it took in the budget document. We find no inconsistency, even if such were relevant to our decision.

## 4. FUNDING FOR TEXTBOOKS

[9] The General Assembly, also through the budget bill, permitted local school districts to rent textbooks and further imposed a minimum six year period on the use of textbooks selected by the Textbook Commission. *Budget, Part I, General Fund, D, Education and Humanities, Item 29(c), 1b*. It is argued that this section of the budget conflicted with KRS 156.400 and KRS 156.435(4). The trial court disagreed. We agree with the trial court.

In this section of the budget bill—as in all the questioned sections—the General Assembly was basing its action on the financial condition of the state and its various entities. It was acting on the authority granted in SB 294. In this instance, local boards of education can now—at their option—rent textbooks to students. All books shall now be used for six years. Both of these objects are economy moves. They allow local school boards to make

tion (KRS 342.480), and Workers' Claims Special Fund (KRS 342.122).

12. KRS 143.090 provides a scheme for the expenditure of Road Fund Resources. It does not authorize the use of such funds for the payment of rent to the Kentucky Turnpike Authority.

appropriate individual decisions as to whether textbooks shall be loaned or rented to students. Whether one agrees with this infringement on the traditional use of "free" textbooks, one cannot challenge the General Assembly's right to make such a policy decision. The same logic applies to extending the use of books for a period of six years.<sup>13</sup>

We believe therefore that not only is the action of the General Assembly in the budget bill valid as a suspension or modification of existing statutes, we also believe that, there is, in effect, no real conflict.

### 5. FUNDS FOR MEDICAL CONTRACTS

[10] The budget bill provided \$900,000 fund for medical service contracts for county jails. It also provided a condition, that that fund be maintained in an individual account specifically for medical contracts, and furthermore that a county must be "certified" before it received its share of the funding. In order to be so certified, the county must attest that it has investigated and obtained the "most feasible medical contract or contracts possible." The contract(s) is subject to approval by the Corrections Cabinet. *Budget, Part I, General Fund, C. Corrections, Item 37d, Local Jail Support.*

It is claimed by appellant that such provision is in conflict with KRS 441.045.<sup>14</sup> It is argued that the budget bill contains "substantive law" and that such a requirement is not an appropriation. The trial court disagreed and so do we.

It is an altogether too familiar litany that the premise of this provision is to react to the financial crunch of the state and that such directive is only temporary. It is also too familiar to say that this attempt of the General Assembly to regulate even temporarily, the procurement by medical services

13. Although the statute permits the Superintendent of Instruction to authorize the use of textbooks for more or less than six years (KRS 156.400), the statute specifically allows the General Assembly to make its own period in a budget bill. KRS 156.440.

contracts—in an economical manner—clearly a subject of an appropriation. The General Assembly is saying to counties in effect, "we will give you \$900,000 in aid but you don't qualify unless the contract you obtain is the most economical and feasible one." It cannot be seriously argued that this is not appropriation and therefore germane.

There is no need to "wrap up" this opinion with a lengthy summary. The General Assembly has the basic constitutional power and responsibility to tax and to spend the public's money. This power, as we have seen in prior decisions, is exclusive to the General Assembly and includes the power to use a budget bill to repeal, amend, modify and suspend existing statutes. Such power must be exercised within all constitutional proscriptions, including those of Section 51. The General Assembly, in the questioned statute heretofore described and relying on its own specific statutory authority, did precisely that.

The judgment of the trial court is affirmed.

STEPHENS, C.J., and GANT, LEHSON, STEPHENSON, WHITE and WINTIE, SHEIMER, JJ., concur.

VANCE, J., dissents, and files a dissenting opinion.

VANCE, Justice, dissenting.

Section 51 of the Kentucky Constitution provides:

"No law enacted by the General Assembly shall relate to more than one subject, and that shall be expressed in the title; and no law shall be revised, amended, or the provisions thereof extended or conferred by reference to its title only, or so much thereof as is revised, amended, extended or conferred, shall be recited and published at length."

14. KRS 441.045 sets out the procedure by which counties are to obtain money from the state for medical contracts. Nothing is therein about the certification procedure.

This section contains two important restrictions that relate to the transaction of the business of the General Assembly in an orderly and intelligent fashion. The provisions relating to title and the provisions relating to republication in full of amended statutes preserve the significant purpose of preventing confusion in the minds of legislators as to the effect of proposed legislation.

The court some time ago, expressed the purpose of this amendment. In *Talbot v. Commonwealth*, 217 Ky. 773, 79 S.W.2d 244 (1935), we said:

"Section 51 of our Constitution, and like provisions in Constitutions of other States of comparatively modern origin, were the purpose of the people in incorporating it as a part of their fundamental law was to prevent the evil that had grown up of legislating in one act upon wholly distinct and wholly disconnected subjects as the legislative body saw fit, without any indication in the title of the act as to what its contents might be. In the adoption of such a provision, the title of an act might clearly indicate that it related to a specifically named subject or to a number of named subjects within the body of it containing provisions for a wholly distinct and unrelated subject or subjects than what was mentioned in the title. It was then competent for the Legislature to legislate upon a multiplicity of unrelated subjects which were neither remotely germane to, nor in any wise connected with, the one or two named in the title, and which, as we have said, is yet true with reference to the present legislation. To circumvent the restrictive practices resulting in defective, selfish, and other baleful consequences, the provision was inserted in the Constitution requiring, inter alia, that the title shall relate to more than one subject, and that shall be expressed in the title."

217 Ky. 773.

In *Board of Education v. Mescher*, 310 Ky. 220, 229 S.W.2d 1016 (1949), we said:

"The purpose of the provision have been stated many times. Among them is the important purpose to prevent surprise or fraud, and the enactment of vicious legislation under an innocent and misleading title. Therefore, the title must give fair and reasonable notice of the nature and provisions of the Act so that a member of the legislature or any other interested person reading the title may obtain a general notice or knowledge of the contents of the Act or what it proposes to do. The title must be a true although not a detailed index of the contents. If it is restrictive, then the Act must not exceed the specification or include what is not reasonably and properly connected with or germane to it." *Id.* at 229 S.W.2d 1019.

In *Board of Penitentiary Com'rs v. Spruicer*, 159 Ky. 255, 166 S.W. 1016 (1914), this court considered the requirements of Section 51 of the constitution and its purposes as it regards the republication of amended statutes. After discussing some of the practices attempted before the adoption of Section 51 of the present constitution, we said:

"It can readily be seen that, under this practice, no person, by reading an act the provisions of which had been extended or conferred in the manner indicated, could obtain any idea of the meaning or effect of it, without reading it in connection with the old law the provisions of which had been carried into the new law, by reference to the title of the old law; nor could any person, by reading an old law that had been revised or amended, by adding to it certain words or taking from it certain words, understand the meaning and effect of the old law without reading it in connection with the new one that amended or revised it in this manner. And it was largely to prevent this deceptive and misleading manner of legislating, which afforded so many opportunities for fraud, as well as to make the laws more convenient and accessible, that this section was adopted. As aptly said on this subject by Mr. Spalding, the chairman of the legislative committee, in

volume 3, p. 3792, of the Debates of the Constitutional Convention. The members of the General Assembly did not know what they were voting for half the time, and this section in the report provides when an act is amended it shall not be amended in that way, but that the act, as amended, shall be set out in full, so every man will understand what it is when voting on it, and the people will know what change has been made when they see it."

"This was the whole purpose of this provision in the Constitution, and that it is a wise provision is not open to doubt. When any person, lawyer or layman, takes up an act of the Legislature, to read and understand what changes have been made in an old law, he ought to have before him in the act that he is reading the whole of the law as it appears when amended or revised by the new act, and so the convenient and the proper way to revise or amend an old law, by either adding to it or taking from it, or extending its provisions, is to set forth in the new act the law as it will read when revised amended or extended."

*Id.* at 166 S.W. 1023-1024.

In *Board of Penitentiary Com'rs v. Spencer, supra*, the court also established guidelines concerning the republication of amended statutes as follows:

"(a) That it is not necessary, when the body of the new act repeals, or has the effect of repealing, all or part of an existing act, to republish or set forth the parts repealed, although the title of the repealing act may purport to be an amendment to the existing act.

"(b) That when it is proposed to revise or amend one or more sections of the Kentucky Statutes, or an act, the body of the new act should contain the section or sections as they will read when revised or amended, if it is proposed to re-enact or leave in force any part of the section or sections that are amended or revised. If, however, it is intended to repeal one or more sections, then it is not necessary to set forth in the body of the act the section or sections repealed.

"(c) That when the act does not purport to be an amendment to an existing law, but a new act, it is not necessary to set out or republish any part of any old law that may be changed or repealed by the new law.

"(d) When the new act purports to amend an existing act by extending, revising, or amending it, and no particular section or part of it is specified, then the body of the new act must set forth the whole of the existing act as it will appear when extended, revised, or amended, but, if only a section or several sections of an act are extended, revised, or amended, it is only necessary to specify and republish the section or sections that are extended, revised, or amended.

"(e) That, when it is desired to confer or carry into a new law provisions of an old law, then so much of the old law as is thus conferred or carried into the new law must be published at length."

*Id.* at 166 S.W. at 1022-1023.

It seems to me that the purposes which impelled the framers of the constitution to place the limitations imposed upon the General Assembly by Section 51 of the constitution were inherently sound and ought not to be eroded to the vanishing point by judicial interpretation.

Let us examine the legislation in question. Senate Bill 294 is entitled "AN ACT relating to the relationship of the latter bill to the Kentucky Revised Statutes declaring an emergency." This innocuous title would scarcely inform an unsuspecting legislator that it is really an act providing for the amendment, repeal, suspension or modification of existing statutes through various provisions to be included in a separate budget bill. In my view, the title of the bill is misleading.

Even worse is the text. Section 6 of Senate Bill 294 provides:

**SECTION 6. A NEW SECTION OF KRS CHAPTER 48 IS CREATED TO READ AS FOLLOWS:**

"(1) The general assembly may provide in a budget bill for the transfer of

Cite as, Ky., 709 S.W.2d 437

of the general fund for the purpose of the general fund all or part of the agency special funds, or other funds established under the provisions of KRS 134.50, 163.65; 21.347; 21.540; 21.560; 42.500; 47.010; 48.010(g); 56.100; 61.100; 61.580; 61.345; 61.350; 61.355; 78.200; 95A.220; 136.392; 138.510; 150.150; 154.150; 161.420; 161.430; 164A.110; 164A.020; 164A.600; 164A.810; 218A.100; 230.218; 230.308; 230.400; 230.700; 245.330; 248.540; 248.550; 278.100; 278.130; 287.485; 301.35-030; 311.000; 311.610; 312.019; 313.350; 314.161; 315.105; 316.210; 317.530; 317A.050; 319.100; 320.500; 321.320; 322.290; 322.200; 323.120; 323.050; 323.190; 323.210; 323A.020; 323A.190; 323A.210; 324.286; 324.410; 325.250; 326.120; 327.030; 330.050; 341.160; 334A.120; 335.140; 342.100; 342.450, etc.

"(2) The transfer of monies from the agency funds, special funds, or other funds to the general fund provided for in subsection (1) of this section shall be for the period of time specified in the budget bill."

"(3) Any provisions of any statute in conflict with the provisions of subsections (1) and (2) of this section are hereby suspended or modified. Such suspension or modification shall not extend beyond the duration of the budget bill."

Section 7 of Senate Bill 294 provides:

**SECTION 7. A NEW SECTION OF KRS CHAPTER 48 IS CREATED TO READ AS FOLLOWS:**

"To the extent that the provisions of a budget bill are in conflict with any provisions of KRS Chapters 12, 42, 56, 152, 177, or 311, the provisions of those chapters are hereby suspended or modified. Such suspension or modification shall not extend beyond the duration of the budget bill."

No member of the General Assembly could possibly have any idea by reading the language of Senate Bill 294 what agency funds were created by the 70 enumerated statutes and could not possibly know what

funds were subject to transfer upon the passage of Senate Bill 294. The inclusion of "etc." at the end of the string of enumerated statute numbers would seem to make even more uncertain what transfers were to be authorized. Such uncertainty with regard to the effect of legislation is precisely the evil that Section 51 of our constitution was designed to prevent.

An entirely separate bill, House Bill 474, the budget bill, enacted into law the transfers authorized by Senate Bill 294. House Bill 474 was entitled "AN ACT relating to appropriations for the operation, maintenance, support, and functioning of the government of the Commonwealth of Kentucky and its various officers, cabinets, departments, boards, commissions, institutions, subdivisions, agencies, and other state supported activities."

With respect to the transfers of funds, it provided for a transfer from the agency and special funds to the general fund certain enumerated dollar amounts from certain enumerated agencies. In most cases, the agency from which funds were transferred was designated by an existing K.R.S. number which identified the agency and which designated the fees and monies which were appropriated to the agency by the existing statute, and the purposes and the manner in which those fees and funds were to be used.

No legislator could tell from a reading of House Bill 474 the purposes for which the transferred funds were required to be used by the existing statute. In a session limited to 60 days each biennium, in which hundreds of bills are introduced, it is not realistic to expect that an individual legislator could research each of the statutes enumerated in House Bill 474 to determine for himself the advisability of transferring funds away from that particular agency. In one instance, House Bill 474 purports to transfer \$3,980,000.00 from the "Insurance Association" to the general fund, but no reference is made to the statute which created the association or to the purpose and manner in which its funds are to be used.

Of necessity, the individual legislators would find it impossible to determine the full import of House Bill 474 from a reading of its express language, and could not, therefore, know the full import of their action in either voting for or against the bill. It is just such uncertainties that Section 51 of our constitution was designed to prevent.

Furthermore, under only the loosest interpretation does the transfer to the general fund of funds appropriated to an agency by an existing statute have anything to do with the subject of appropriation. These transfers do not appropriate money. They rescind appropriations under existing statutes by transferring money which was previously made available to an agency by a statute which still exists on the statute books of this state. In doing so, the existing statutes, in my opinion, were amended by the budget bill and were therefore required by Section 51 of the constitution to be republished as amended.

The majority opinion states that these were not amendments, but only suspensions or modifications of the existing statutes. The General Assembly, in Senate Bill 294, divested itself of the power to repeal or amend an existing statute by a budget bill, but granted unto itself the power to suspend or modify existing statutes.

It seems to me beyond question that repeal and amendment of statutes relate to permanent actions of the General Assembly, whereas a suspension of a statute for the duration of the biennium of the budget bill is in effect a *temporary repeal*. A modification of a statute, limited to the biennium of the budget bill is a *temporary amendment*.

If an amendment is not valid unless republished as amended, it follows that a temporary amendment must also be published in full.

The transfer of various agency funds to the general fund conflicts in many instances with the express purpose and manner in which existing law requires those funds to be used, and the transfer in the budget bill

does not suspend the existing statute. The existing statute is left intact, except to the extent that a portion of the funds for the use of the agency has been siphoned off for a different purpose. This does not suspend the existing statute but modifies it temporarily. Because a modification is in effect an amendment, albeit temporary, the full text of the existing law as modified is required to be published.

I do not doubt that the General Assembly has the power to control appropriations and expenditures, nor that it has the power to repeal or to amend statutes which appropriate money and provide the manner in which it shall be used.

It can, as an example, abolish the Department of Fish and Wildlife Resources Commission by repeal of the statute which created it. It has the power to direct that money derived from licenses issued by the commission be used for a different purpose than that provided by K.R.S. 150.150, but it must be done by amending K.R.S. 150.150 and republishing it in full as amended.

K.R.S. 150.150 provides:

"(1) Except as provided in this chapter, all moneys derived from the sale of licenses or from any other source connected with the administration of this chapter shall be promptly paid over to the state treasurer, who shall deposit such moneys in a special fund, known as the game and fish fund. The game and fish fund shall be used to carry out the purposes of this chapter and any law or regulation for the protection of wild animals, birds or fish, and for no other purpose.

"(2) All funds received under K.R.S. 150.110, 150.510 and 150.520 shall be used by the department for the purpose of enforcing those sections and for the protection and propagation of muskrat beds. Any surplus remaining in the fund at the close of each calendar year shall be turned into the general fund of a department. (1954d-10, 1954d-6d, amend. Acts 1942, ch. 68, § 15; 1952, ch. 200, § 22; 1968, ch. 38, § 6; 1978, ch. 384, § 33, effective June 17, 1978.)"

This statute provides that the game and fish fund be used for purposes specified in the statute and for no other purpose. The budget bill purports to transfer \$225,000.00 of the funds of the Department of Fish and Wildlife Resources Commission to the general fund with no limitation on the manner of spending. The budget bill does not repeal K.R.S. 150.150 because, except for the funds transferred, the statute will continue to be operative. The budget bill does, however, amend K.R.S. 150.150 because it takes away funds which were designated for a specific purpose and diverts them to another purpose. Because K.R.S. 150.150 was amended, but its text was not republished or amended as required by the constitution, Section 51, a legislator would not know the effect that the budget bill would have upon the operation of the Department of Fish and Wildlife Resources Commission. The same thing is true of all other cases where the transfer of funds from commissions and agencies by the budget bill contravenes the express provisions of existing statutes.

I remain convinced that the intent and purpose of Section 51 of the constitution is sound and that erosion of its effectiveness by judicial interpretation will in the long run lead to unfortunate consequences.

Recent events teach us the danger of eroding the constitution. Sections 49 and 50 of our constitution prohibit the creation of public debt in excess of \$500,000 except upon the vote of a bonded indebtedness by the people, accompanied by the enactment of a tax for the specific purpose of liquidating the principal and interest on the indebtedness. Notwithstanding this salutary economic principle, the state has issued millions of dollars of revenue bonds without a vote of the people and without enactment of a specific tax to retire the bonds. The bonds have been upheld by the courts upon the theory that they are to be retired from revenues derived from projects financed by the bonds and that such bonds do not constitute an indebtedness of the state. Many of the projects financed by these bonds produce no revenue at all apart from money taken

from current state revenues. Revenue bonds are used to finance road construction projects, and the transportation department then leases the roads, and the lease payments are used to retire the principal and interest on the bonds.

Although not technically an indebtedness of the state, these bonds have created an obligation which must, as a practical matter, be satisfied out of current revenues because a default would ruin the credit of the state. The expenditure of current funds to pay for the leases necessary to retire interest and principal on revenue bonds is substantially responsible for a current critical shortage of funds available to the transportation department for other purposes.

One purpose of Sections 49 and 50 of our constitution is to prevent a current administration from obligating the tax revenues of a future administration. What has happened is that Sections 49 and 50 of the constitution have been circumvented, and as a practical matter, past administrations have been permitted to obligate the tax revenues of the present and of future administrations. We now begin to feel the consequences. I mention this as an example because it is easy to become impatient with restrictions imposed by our constitution. Section 51 serves a sound and prudent purpose, and in my view, it is important that we interpret it to prevent the very abuses it was designed to prohibit.

I would hold all of the contested sections of Senate Bill 294 and House Bill 474 unconstitutional to the extent they violate Section 51 of the Kentucky Constitution in the manner expressed in this dissent.



THE PRECEDING PAGES WERE TREATED AS  
A UNIT IN THE ORIGINAL FILE.

# STATE OF ALASKA

STEVE COWPER, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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February 18, 1988

Honorable Fran Ulmer  
Chair  
House State Affairs Committee  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99801

Re: HB 420 (and SB 384) --  
adoption of regulations  
and presumption of val-  
idity of regulations

Dear Representative Ulmer,

A copy of my February 8, 1988 letter to Senator Jay Kerttula, chair of the Senate Judiciary Committee, regarding this bill, is attached. As I mentioned there, this bill (identical bills in the house and senate) presents some interesting issues.

At the Senate Judiciary Committee hearing, February 9, 1988, Dave Gray, assistant to Senator Hensley and the Administrative Regulation Review Committee, mentioned that there were two basic parts to the bill: provisions dealing with the executive branch itself and provisions for the legislature. Although the comments in my letter to Senator Kerttula are not organized along those lines, I have offered a section-by-section commentary instead.

The gist of my comments is that the bill raises significant constitutional and practical problems, and it would enact legislation on points that could adequately be covered by a letter or phone call to the regulations attorney in the Department of Law. HB 420 (and its Senate counterpart) evidences a general frustration with the details of government -- in this instance, administrative regulations -- and with the tension built into the three-branch system of American government. If we can identify the precise problem sought to be solved by this bill, and if you should wish it, I would be happy to work with you and your committee in drafting any necessary legislation. However, as I mentioned in my letter to Senator Kerttula, there is no adequate, constitutional shortcut. Although litigating some of these issues would be fun for us lawyers, I would rather avoid the costly litigation that some statutory proposals invite.

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: Relating to adoption of regulations & presumption of validity of Rules by request of ARRC  
Sponsor: Rep. Fran Ulmer  
Requestor: Rep. Fran Ulmer

Agency Affected: Office of the Governor  
BRU: \_\_\_\_\_  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONNEL SERVICES	-0-	-	-	-	-	-0-
TRAVEL	-0-	-	-	-	-	-0-
CONTRACTUAL	-0-	-	-	-	-	-0-
SUPPLIES	-0-	-	-	-	-	-0-
EQUIPMENT	-0-	-	-	-	-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-	-	-	-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-	-	-	-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-	-	-	-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The enactment of this legislation will have no affect on the Office of the Lieutenant Governor

Prepared by: Sally R. Hanson Phone: 465-3520  
Division: Office of the Lieutenant Governor Date: 2-16-88

Approved by Commissioner: [Signature] Date: 2-16-88  
Agency: [Signature]

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor ✓  
Office of Management and Budget  
Impacted Agency(ies)

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Office of the Governor  
 Title: An Act relating to adoption of BRU: Executive Operations  
regulations and the presumption...  
 Sponsor: Rules Committee Components: Executive Office  
 Requestor: Illmer

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

See attached.

Prepared by: Michael A. Nizich, Director Phone: 465-3616  
 Division: Administrative Services Date: 2/12/88  
 Approved by Commissioner: [Signature] Date: 2/16/88  
 Agency: Office of the Governor

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

# STATE OF ALASKA

STEVE COWPER, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX K—STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3663

February 18, 1988

Honorable Fran Ulmer  
Chair  
House State Affairs Committee  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99801

Re: HB 420 (and SB 384) --  
adoption of regulations  
and presumption of val-  
idity of regulations

Dear Representative Ulmer,

A copy of my February 8, 1988 letter to Senator Jay Kerttula, chair of the Senate Judiciary Committee, regarding this bill, is attached. As I mentioned there, this bill (identical bills in the house and senate) presents some interesting issues.


At the Senate Judiciary Committee hearing, February 9, 1988, Dave Gray, assistant to Senator Hensley and the Administrative Regulation Review Committee, mentioned that there were two basic parts to the bill: provisions dealing with the executive branch itself and provisions for the legislature. Although the comments in my letter to Senator Kerttula are not organized along those lines, I have offered a section-by-section commentary instead.

The gist of my comments is that the bill raises significant constitutional and practical problems, and it would enact legislation on points that could adequately be covered by a letter or phone call to the regulations attorney in the Department of Law. HB 420 (and its Senate counterpart) evidences a general frustration with the details of government -- in this instance, administrative regulations -- and with the tension built into the three-branch system of American government. If we can identify the precise problem sought to be solved by this bill, and if you should wish it, I would be happy to work with you and your committee in drafting any necessary legislation. However, as I mentioned in my letter to Senator Kerttula, there is no adequate, constitutional shortcut. Although litigating some of these issues would be fun for us lawyers, I would rather avoid the costly litigation that some statutory proposals invite.

You have indicated that it might be helpful if I were to attend your committee's hearing on this bill, scheduled for tomorrow. Thank you for this opportunity to comment.

Yours truly,

Grace Berg Schaible  
Attorney General

By:   
Arthur H. Peterson  
Assistant Attorney General

GBS:AHP:cb

Attachment

cc w/o att.: Hon. Willie Hensley  
Chair  
Administrative Regulation Review Committee  
Alaska State Legislature

Hon. Stephen McAlpine  
Lieutenant Governor

Bob Evans  
Legislative Liaison  
Office of the Governor

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Office of the Governor  
 Title: Relating to adoption of regulations & presumption of validity of  
BRU: \_\_\_\_\_  
Sponsor: Rules by request of ARRC  
 Receptor: Rep. Fran Ulmer Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	-0-	-	-	-	-	-0-
TRAVEL	-0-	-	-	-	-	-0-
CONTRACTUAL	-0-	-	-	-	-	-0-
SUPPLIES	-0-	-	-	-	-	-0-
EQUIPMENT	-0-	-	-	-	-	-0-
LAND & STRUCTURES						
GRANT'S, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-	-	-	-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-	-	-	-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-	-	-	-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The enactment of this legislation will have no affect on the Office of the Lieutenant Governor

Prepared by: Sally R. Hanson Phone: 465-3520  
 Division: Office of the Lieutenant Governor Date: 2-16-88

Approved by Commissioner: [Signature] Date: 2-16-88  
 Agency: [Signature]

Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor ✓  
 Office of Management and Budget  
 Impacted Agency(ies)

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Office of the Governor  
 Title: An Act relating to adoption of BRU: Executive Operations  
regulations and the presumption...  
 Sponsor: Rules Committee Components: Executive Office  
 Requestor: Ulmer

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

See attached.

Prepared by: Michael A. Nizich, Director Phone: 465-3616  
 Division: Administrative Services Date: 2/12/88  
 Approved by Commissioner: [Signature] Date: 2/16/88  
 Agency: Office of the Governor

Distribution (by preparer):

Legislative Finance  
 Legislative Sponsor  
 Requestor   
 Office of Management and Budget  
 Impacted Agency(ies)

CONTINUATION OF FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 420

Section 1 of this bill amends AS 44.62.040(b) to include the Governor's signature on regulations. "The signature of the governor approving adoption of the regulation as required by AS 44.62.065 must accompany the regulation."

While the addition of the signing of regulations to the Governor's duties will not have any specific fiscal impact on the Office of the Governor, it is likely that such a requirement will result in some delays in the approval process due to scheduling conflicts.

Section 3 of this bill adds a new section to AS 44.62. "Sec. 44.62.065. GOVERNOR'S SIGNATURE. A regulation or order of repeal is not valid unless the governor has approved its adoption in writing."

While the additional responsibilities of review and approval of regulations will add to the workload of the Office of the Governor, it is not anticipated that the additional activities will require funding for new staff or result in other operational costs beyond what can be met within the current budget. As with Section 1, the addition of this final review to existing procedures will increase the time required for approval of regulations.

STATE OF ALASKA  
THE LEGISLATURE

FOUCHY STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 19, 1988

SUBJECT: Sectional analysis of SB 384 & HB 420  
(Adoption of regulations)

TO: Senator Willie Hensley, Chairman  
Administrative Regulation Review Committee

FROM: Teresa B. Cramer *TBC*  
Legislative Counsel

You have requested a sectional analysis of SB 384 and HB 420 (Adoption of regulations and presumption of validity of regulations).

Sections 1 and 3 require that, under the Administrative Procedure Act, the governor approve a regulation before it becomes valid. The requirement extends to regulations that do not have to be submitted to the lieutenant governor under AS 44.62.040(a). That subsection exempts from filing a regulation that

- (1) establishes or fixes rates, prices or tariffs;
- (2) relates to the use of public works, including streets and highways, under the jurisdiction of a state agency if the effect of the order is indicated to the public by means of signs or signals; or
- (3) is directed to a specifically named person or to a group of persons and does not apply generally throughout the state.

Under sec. 7 of the bill, regulations that were adopted before the effective date of the Act would remain valid without the governor's signature.

Senator Willie Hensley  
Pate 2  
February 19, 1988

Section 2 requires that the drafting manual for administrative regulations contain instructions and examples for summaries of proposed actions.

Sections 4 and 5 address the presumption of validity of regulations. Under AS 44.62.100(c), added by sec. 5, the legislature can, by special concurrent resolution, remove the presumption of validity of a regulation if the legislature finds that the regulation is not within the procedural or substantive authority delegated to the agency. This section raises constitutional issues.

The section permits the legislature to change the legal standard under which a hearing or case will be decided by resolution. The Alaska Supreme Court held, in State v. A.L.I.V.E. Voluntary, 606 P.2d 769 (Alaska 1980), that the legislature may not use resolutions to affect the rights of others. The court stated, at 773 that

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.

Section 5 permits the legislature to take a binding action by resolution and therefore probably violates the provisions of the state constitution that set out requirements for enactment of bills, Article II, sections 13 - 17.

Section 6 changes the requirement concerning notice of proposed action which an agency is required to give before adopting, amending, or repealing a regulation. The section requires the agency to summarize the effect of the proposed change. For a repealed regulation, the agency must describe the substance of the regulation and analyze the effect of the repeal. Under section 7, the new requirement applies to notices of proposed actions published on or after the effective date of the Act.

Section 7 addresses the application of sections 1 and 3 and of section 6, as discussed above.

If I may be of further assistance, please advise.

TC:bb  
wkb3/001

HB

447

HOUSE STATE AFFAIRS COMMITTEE

NEXT COMMITTEE: FINANCE

BILL: HB 447

CURRENT VERSION:

SCHEDULED: MARCH 4, 1988

SPONSOR: HOFFMAN

PHONE NO: 4453

CONTACT FILE: \_\_\_\_\_

BILL SUBJECT: RELATING TO APPLICATIONS FOR PERMANENT FUND DIVIDENDS

SPONSOR BACKUP: Hold over to 3/7/88

AFFECTED AGENCIES:

<u>DEPARTMENT</u>	<u>CONTACT/PHONE</u>	<u>COMMENT</u>
REVENUE	ROYCE WELLER/2300	-

FISCAL NOTES

<u>AGENCY</u>	<u>REQUESTED</u>	<u>DATED</u>	<u>FY 88 AMT</u>	<u>FY 89 AMT</u>
REVENUE	2/25/88	3/3/88	Ø	Ø

ACTION

<u>DATE</u>	<u>COMMENT</u>

FISCAL NOTE

REQUEST

Revision Date: \_\_\_\_\_  
Title: An act relating to applications for Permanent Fund Dividends  
Sponsor: Hoffman  
Requestor: House State Affairs

Agency Affected: Revenue  
BRU: Permanent Fund Dividend Operations  
Components: Permanent Fund Dividend Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
<b>OPERATING</b>						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
<b>TOTAL OPERATING</b>	*	-	-	-	-	-
<b>CAPITAL</b>	-	-	-	-	-	-
<b>REVENUE</b>	*	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
<b>TOTAL</b>	*	-	-	-	-	-

POSITIONS:

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

ANALYSIS: \* (Please see attached.)

Prepared By: Ervin Jones  
Division: Permanent Fund Dividend Division

Phone: 465-2323  
Date: March 3, 1988

Approved by Commissioner: Hugh Malone  
Agency: Revenue

Date: March 3, 1988

Distribution (by preparer):

Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

Department of Revenue  
Permanent Fund Dividend Division  
Fiscal Note Analysis

HB 447

March 3, 1988

Recognizing the desire of the sponsor that qualified dividend applicants be paid earlier than under the current process, and recognizing the sponsor's interest and intent that the Department explore the use of Automated Clearing House techniques to accomplish the objective, we have discussed the concept with various Alaska banks, with the Treasury Division of the Department of Revenue and with the Department of Health and Social Services. We also reviewed the related study proposed by the Department in 1986 relative to a request by then Governor Sheffield to pay all applicants on October 1 (copy attached).

The status of Automated Clearing House (ACH) in Alaska is that it is brand new. The banking industry developed the capability for such processing in January, 1988. To date, no one in Alaska is using ACH for direct deposit. The Treasury has been promoting the concept for several years and is very supportive of the idea in general. Treasury has requested that the Department of Administration design the new state payroll system to take advantage of ACH, but at this point, all state agencies (e.g. payroll and retirement) that provide direct deposit do so by mailing warrants to the individual banks. There is no particular advantage to either the applicant or the department in attempting to follow that procedure.

The department is very supportive of any procedure which will allow us to speed up the payment of permanent fund dividends. As you can see from the attached report however, the cost of paying everyone on October 1 is several millions of dollars to both the dividend fund and to the general fund.

The Commissioner of Revenue has directed the Permanent Fund Dividend Division to pursue alternatives which would speed up the payments (including ACH) and reduce the impact of the Hold Harmless program on the value of dividends. I would respectfully suggest that in lieu of HB 447, the House adopt intent language in the Department of Revenue's operating budget that the Department study the alternatives discussed and report back to the next legislature in January 1989 on both of the above two issues.

5276C

# MEMORANDUM

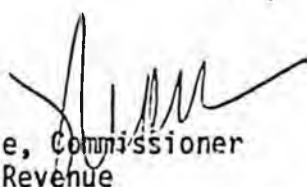
State of Alaska

TO: The Honorable Bill Sheffield  
Governor

DATE: March 20, 1986

FILE NO:

TELEPHONE NO:

FROM:  Mary A. Nordale, Commissioner  
Department of Revenue

SUBJECT: One-day distribution of  
Permanent Fund Dividends

Attached are copies of the study of the feasibility of same-day distribution of permanent fund dividends and the cover memorandum to me summarizing the conclusions.

In view of the extraordinary administrative costs which would be incurred by the Department of Health and Social Services, the potentially grave harm caused clients of DHSS, and the increased expense caused the Department of Revenue, we recommend that this idea be discarded.

I was not involved with the Department of Revenue during the distribution of the 1982 dividend, the first such distribution. The stories I have heard from people familiar with the pressures brought to bear on the Governor's office, legislators and this department suggest that we ought not to subject these offices to similar pressures.

People have accepted the present system and we have remarkably few problems considering the number of eligible applicants.

Attachments

# MEMORANDUM

# State of Alaska

TO: Mary A. Nordale  
Commissioner of Revenue

DATE: March 19, 1986

FILE NO:

TELEPHONE NO:

FROM:  Ervin Jones, Director  
Administrative Services Division

SUBJECT: Impact of Mass  
Distribution of PFD Checks

Attached is the report you requested analyzing the impact of issuing the bulk of the PFD checks in one mass mailing. I have reviewed the report and agree with its conclusions that a mass distribution would be "prohibitively costly, both in terms of actual dollars spent or lost, and in harm done to existing State operations."

In summary, the report finds the following:

1. "Hold harmless" costs, which are paid for out of the dividend fund, would increase by an additional \$3.5 - \$4.0 million.
2. The incentive to file early would be destroyed, resulting in an increase in the number of applications filed close to the deadline. This would affect the department's ability to process them in time for an October 1 declaration of the dividend amount.
3. The Enforcement Division would lose potential review cases and be faced with the costlier problem of collecting erroneous payments.
4. The three Revenue Public Service Centers have neither the phone lines nor the staff to handle the inquiries from the thousands of applicants who would not receive a check in the mass distribution.
5. By reducing the amount of time available to invest the dividend fund, a mass distribution could result in a direct loss to the general fund of \$1,135,890.51 in interest earnings.
6. In supplies and labor, a mass distribution using Moore's Compurite Service would cost the State nearly \$22,000.00 more than the current distribution system.

Because of its fiscal impact of well over five million dollars, a mass mailing of dividend checks is not in the best interests of the State.

Attachment

EJ:CB:ms

IMPACT OF MASS DISTRIBUTION  
OF PERMANENT FUND DIVIDEND CHECKS

by Colleen C. Brown  
Management Analyst III  
March 18, 1986

Under the current Permanent Fund Dividend distribution program, the State of Alaska issues dividend checks to its half million residents on a weekly basis beginning the first week of October and continuing until all checks are issued. Beginning with the 1983 program, the department issued approximately 34,000 checks a week. After four weeks, this number was increased to an average of 48,000 to 50,000. Consequently, the majority of dividend checks for the 1983, 1984, and 1985 programs was distributed during the three month period October through December. Checks issued after that period included payments that had been held up for review or garnishment, reissues after cancellation primarily due to address changes, and payments on reversals of appeals of a denial notice.

Department managers have intermittently discussed, but never thoroughly analyzed, the possibility of issuing the bulk of the checks in one mass mailing to take place in early October. On April 29, 1985, Moore Business Forms proposed that the State do just that through Moore's Compurite Service. Combining the two processes of forms manufacturing and computer printing of variable data, Moore is capable of producing a complete dividend check and pamphlet inserted in an envelope, ready for mailing, in one process. Because of the lead time needed to order check stock and envelopes for the 1985 check distribution, there was not enough time to consider Moore's proposal for the 1985 program.

## MASS MAILING NOT ECONOMICALLY JUSTIFIED

Information gathered while researching this proposal for the 1986 dividend check distribution makes it abundantly clear that a mass mailing is not an economically sound proposal. Such a move would, in fact, cost the State millions of dollars. A mass mailing would have a negative impact on a number of programs and adversely affect both the public and private sectors. This report examines those areas that would be affected if the State distributed the majority of the dividend checks in one mass mailing.

### I. Department of Health and Social Services - "Hold Harmless" Program

In Alaska as many as 50,000 people receive or are the beneficiaries of federal and/or state assistance payments based on financial need. In many cases the individual would lose that assistance for the month in which the dividend was received except for specific provisions in the law. Under AS 43.23.075 and AS 43.23.085, the Department of Health and Social Services is instructed to not consider the dividend as either income or as a resource for all state programs, and where it must be considered for federal programs, the affected individual becomes eligible for State assistance in the same amount as that which was lost. The administration of these provisions is generally known as the "hold harmless" program. For the 1985 dividend program, the "hold harmless" costs were calculated at \$3,644,300.00, including payments and administrative costs.

In the arena of public assistance, eligibility is most often determined by looking at prospective income. When a State or federal agency can reasonably anticipate that a payment will be received during a specific month, the agency must consider that amount in determining the individual's eligibility. It is a fundamental matter of accountability; if the Social Security Administration knows in advance that someone is ineligible for assistance, that agency can't simply go ahead and issue a check just because it's inconvenient to do otherwise. However, under the current dividend distribution system, it is impossible to reasonably predict the month of receipt of the dividends for individual households.

"Any change to the distribution system that results in a predictable date of receipt of the benefit will result in significant negative effects on 25,000 Alaskan households and will cost the State a minimum of an additional \$3.5 - 4.0 million in hold harmless costs plus an as yet undefinable but staggering administrative burden. Additional prospective fiscal sanctions would be in the multi-million dollar category."

John Taber, Director, Division of Public Assistance, Department of Health and Social Services, February 24, 1986

#### A. Federal Food Stamp Program

Food Stamp Program rules require that both income and resource eligibility be determined prospectively each month. The Food Stamp Program's resource limit, as of May 1, is \$2,000. Permanent Fund Dividend checks are considered resources in the Food Stamp Program; therefore, if receipt of these checks can be reasonably anticipated, this money must be considered as a resource when determining eligibility.

Under the current system, food stamp households receiving dividend checks

rarely lose eligibility for the Food Stamp Program. This is because the Division of Public Assistance does not know ahead of time, so cannot anticipate, when a particular household will receive the checks. By the time the household must report receipt, the money is already spent; therefore, no action needs to be taken by the State. During the 1985 dividend program, only 17 households were impacted by the Food Stamp Program "hold harmless" provision. Consequently, the "hold harmless" costs for this particular program were very low.

Issuing all checks at one particular time would affect all households that would have resources, including their anticipated dividend checks, totaling over \$2,000 in the expected month of receipt. For example, a household with four people each receiving a dividend check of over \$500, with no other resource in their possession, would become ineligible for the Food Stamp Program for at least the anticipated month of receipt. All the households that fall into this category of "resources over \$2,000 in conjunction with the dividend program" would have to be covered by the State's "hold harmless" program. It is projected that although less than half of the caseload would be impacted, more than half of the monthly benefit amount of \$2 million would be affected.

Additionally, a mass distribution would be an administrative catastrophe for the Department of Health and Social Services. The State would have to put all the cases of those affected households in a pending status for one month, open a State Food Stamp Supplemental Program case for them, issue a State warrant for the amount of food stamps they would have received, request information on

how and when these households spent their dividend checks to determine when they dropped under the resources limit, close the supplemental program when this occurred, and then reactivate the Federal Food Stamp Program case.

B. Federal SSI - Old Age Assistance, Aid to the Blind, Aid to the Disabled

Under the federal SSI programs, the dividend check is counted as income during the month it is received. The SSI check also received that month is later declared to be an overpayment. Since the inception of dividend payments in 1982, the State has had an agreement with the federal government whereby the State pays a portion of the administrative costs for the federal government to do a case-by-case review at their leisure. In cases where an overpayment is determined to have occurred as a result of the dividend check distribution, the State then pays to SSI the amount of money that was overpaid. This agreement is informally referred to as a "buy-out" agreement. The "buy-out" does not save the State "hold harmless" benefit payment costs, but it does save enormous administrative costs that would be incurred if the agreement did not exist.

The main argument that convinced the federal government to accept this agreement is the impossibility of predicting the month of receipt of the dividend checks for individual households. The issue, once again, is accountability. If the dividend checks were all to be issued at a predictable time, the Social Security Administration would have to suspend virtually its entire caseload (3200 cases) within 30 days, and then reopen them the following month. Under the "hold harmless" program, the State's Division of Public Assistance would have to open case files and issue the actual checks to these 3200 clients to make up for the amount lost to SSI. Currently the State

sends just one check to SSI. Any dividend of more than about \$340 makes the recipient ineligible for SSI in the month of receipt.

C. Medicaid Program - 50/50 State and Federally Funded

Eligibility for medicaid is always prospective, so because the month of receipt of a dividend check cannot be anticipated, an individual does not lose benefits under the current system. A planned mass mailing would throw nearly all medicaid benefits for that month into the "hold harmless" program which would cost the State roughly \$2-1/2 million. Additionally, if the State failed to close a medicaid case timely, and that case was drawn in a quality control sample, the error factor would be applied to the whole medicaid program. This system of projecting sample errors over the entire medicaid caseload creates the risk that sanctions of over \$1 million could be applied due to a single high medical cost case.

D. AFDC - Aid to Families with Dependent Children - 50/50 State and Federally Funded

For the AFDC program, an unanticipated payment one month counts as income two months later which then generally results in case closure or sometimes a reduced benefit. Recently the State was able to establish a "buy-out" agreement for AFDC that took two years to develop. Through a formula, the State is able to calculate to the federal government's satisfaction the number of households that would be ineligible for benefits for the income month. On a quarterly basis, the State decreases its claim of federal AFDC funds by a portion of the projected "hold harmless" amount, thereby paying for those

benefits under the "hold harmless" program. A significant advantage to the State is that because of the agreement, the State faces no dividend-related income quality control jeopardy on this program. An even bigger advantage is that the AFDC clients remain eligible for medicaid.

All that would change if the State issued dividend checks in one predictable mailing. Knowing that the prospective dividend payment would make the AFDC client ineligible for that month, the State would have to process all 6800 cases for closure or suspension in the receipt month. The State would also have to issue a check to each client to make up for the lost or reduced benefit. The cases would then have to be monitored to determine when and how the dividend checks were spent. Once that resource was gone, the State would have to reopen the case for AFDC payments. Because 90% of the AFDC clients spend the dividend check as soon as it is received, 90% of the cases would have to be reopened the following month. Furthermore, the dividend-related income would be subject once again to quality control sanctions, and clients' medical costs would have to be covered under the "hold harmless" program during the period of AFDC case closure, at a cost of more than \$700,000.00.

## II. Department of Revenue - Administrative Services Division

### A. Processing Dividend Applications - Incentive to File Early

Under the current dividend distribution program, applicants are paid in the order in which the applications are approved for payment. The Alaskan public is made aware of this as an incentive to file early during the three month filing period. It is generally known by the public that a person who files

early in April will receive his or her check in October whereas the person who files on the deadline of June 30 will have to wait until the end of December or even later for the dividend check. A mass mailing of dividends to the majority of the applicants would destroy this incentive to file early.

Early filing is of enormous benefit to the department because of the limited time it has in which to process all the applications. The department is required to declare the dividend amount on October 1 which is based on the number of eligible applicants. The large number of applications that would be filed in June that are now being filed in April would jeopardize the department's ability to meet this mandate. Furthermore, under the current system, the department can plan to fill its seasonal positions in early April knowing that the applications will be filed in large numbers that first month. Without the early payment incentive to file early, those plans would be disrupted. The department's ability to efficiently utilize its seasonal personnel through planning would be weakened.

#### B. Processing Dividend Checks

The department's Administrative Services Division, which is responsible for the work activity that results in the printing of the dividend checks, would realize no benefit if Moore Business Forms or any other firm made a mass distribution for the State. Because not all applicants would receive their dividend checks from that mass mailing, the department would still have to have all its systems in place to make weekly warrant runs. These weekly runs are necessary for payments released after review, checks reissued after cancellation (primarily due to name or address changes), and payments made on

reversal of appeal of a denial notice. The division's total workload would not change under a mass distribution plan.

Under the current system, the department creates a paper listing of every check to be issued in that week's warrant run containing a predetermined number of batches. For the average run of nearly 48,000 acceptable records in the 500 batches scheduled for check distribution, that list is about 1,000 pages long. In balancing this warrant run, the department checks it against the log of batch listings to make sure that the number of warrants to be issued matches the number of acceptable records on the batch listings. After the warrant run is balanced, a tape is created which is given to the Division of Data Processing in the Department of Administration. Under Moore's proposal, the only thing that would change for the Department of Revenue is that the tape would be sent to Moore Business Forms.

Preparing for a mass distribution would of course require balancing a warrant run of huge magnitude. Under the system in use for 1985, the balancing of each warrant run was usually done in one day but occasionally took longer. Marilyn Williams, the department's Document Processing Manager, estimates that balancing a warrant run with 500,000 records could have been done last year in 7-10 working days. Assuming the best case, following is a comparison of the 1985 warrant printing schedule with what would have happened under Moore's proposal.

1985 - ACTUAL

1985 - MOORE'S PROPOSAL

Sept. 27	Dividend amount declared	Sept. 27	Dividend amount declared
Sept. 30	Listing of warrants received	Sept. 30	Listing of warrants received
Oct. 1	Warrant run balanced	Oct. 8	Warrant run balanced
Oct. 2	Tape created/checks printed	Oct. 9	Tape created & sent to Moore
Oct. 3-7	49,973 warrants mailed from Juneau, Alaska	Oct. 10	Tape received by Moore
		Oct. 15	500,000 warrants mailed from Thurmont, Maryland

By October 15, 1985, the department had completed the printing of the second batch of 48,993 checks, and was ready to mail them. Mailing all of last year's checks in a mass distribution would have had the following results: roughly 49,000 Alaskans would have received their dividend checks one week later, another 49,000 residents would have received their checks at the same time, and 402,000 residents would have received their checks from one to eight weeks sooner.

The warrant run balancing will change with the 1986 program because of complications created by the need to account for those applicants who have chosen to contribute \$5.00 of their dividend check to the Alaska Winter Olympics Account. It is estimated that balancing the warrant runs will take twice as long. Under this scenario, a mass distribution could not take place until October 22, a delay of at least a week, whereas a smaller run of 50,000 warrants would be delayed by only a day.

C. Garnishment Program

An individual's permanent fund dividend may be garnished or attached because of a civil judgment entered in court, or because of amounts owed to state or federal government agencies. The Internal Revenue Service, any Alaska State

agency, including the Child Support Enforcement Division of the Alaska Department of Revenue, or the Court under orders of restitution may garnish or attach 100% of the dividend. All other types of attachments are limited to 50% of the dividend amount.

The Garnishment program is administered by the department's Administrative Services Division as a sub-system of the dividend warrant run procedures. A mass distribution would not reduce the workload of this program because garnishment checks would still have to be issued separately.

The majority of all garnishments are received prior to the first run of dividend checks. State agencies as well as private process servers realize that the individuals to be garnished may well be among the first 50,000 records. However, a garnishment can be served on the department at any time and the department continues to receive them well into the check distribution schedule. According to Document Processing Manager Marilyn Williams, approximately 5% of the 10,200 garnishments matched against the 1985 dividend file were received after the first batch of checks were distributed. That represents claims against 510 dividend checks that would not have been honored under a mass distribution of checks in early October.

### III. Enforcement Division - Reviewing Cases for Eligibility

The Enforcement Division's responsibilities include selecting cases for review, denying ineligible applicants, hearing appeals, and collecting erroneous payments. It is obviously in the State's interest for an applicant to be denied a dividend payment before it is issued, not after.

Under existing law, the department must pay or deny all dividends by April 30 of each year. As a practical matter, however, the department tries to pay the majority of applicants before the end of the year with only cases still under review held longer.

If an application has been selected for review, the Enforcement Division tries to have that review done before the document comes up for payment. In those cases that are released timely for payment, an applicant never knows that his or her application was examined. If the review cannot be done timely, the applicant does not receive a check when his or her record comes up for payment. Instead, a notice is sent explaining that the application is being reviewed and that eventually the applicant will receive either a check or a denial letter.

Enforcement's Permanent Fund Dividend Manager Sharon Lowe pointed out that during the 1985 program, the Enforcement Division placed more than 10,000 applications in review status. Of that number, only 2,989 received non-payment notices. The remainder were all timely reviewed, or reviewed after payment.

A breakdown of those notices shows that for the four warrant runs mailed in October, only 86 notices were sent. That number increased to 790 for the four November warrant runs, and the three December warrant runs generated 2,113 notices. This shows that the division was able to keep up with the caseload those first two months because of the time available to review applications before the department began issuing checks.

The point to be made here is that during that whole first month only 86 Alaskans may have been concerned because their applications were being reviewed. Only 86 Alaskans may have placed phone calls wanting more information about that review notice. And if at the end of the month those cases hadn't been resolved, there were potentially only 86 Alaskans angry that the department hadn't worked their cases yet.

On October 2, 1985, the date of the first warrant run, the Enforcement Division had a total of 5,579 cases in review. In a mass distribution, all of those cases would have received non-payment notices. That is a dramatic 87% increase in the number of people actively waiting for their cases to be resolved. Some people, of course, would have had their cases cleared right away, but the majority of people would have had to wait well over a month before hearing from the department again. These applicants would have placed enormous pressure on the department to speed that review process. Through repeated calls to Revenue offices, offices of the ombudsman, and legislators, Alaskans who thought their cases should have been handled faster, or not reviewed at all, would have disrupted the program.

This is exactly what happened with the 1982 dividend program when applications from thousands of people who expected to be paid without question were placed in review status. The department is certain that the higher number of erroneous payments made during the 1982 program was a direct result of the pressure brought to bear to issue those checks as quickly as possible. The department is currently trying to collect over 800 of those 1982 dividend payments, representing more than \$800,000 in accounts receivable.

A mass distribution would impact the Enforcement Division in still another way. Through various edit criteria, the Enforcement Division originally selected about 8,000 of the 1985 cases for review. According to Ms. Lowe, another 2,000 were added later as a result of fraud tips and general research undertaken while reviewing cases. Under a mass distribution those 2,000 would have been paid prior to their review. Since historically about 40% of the cases that are reviewed are actually denied payment of a dividend, that scenario represents 800 payments that would have been made erroneously.

#### IV. Revenue Public Services Division - Handling Public Inquiries

Glenis Dove, Field Services Manager of the Public Services Division, said "A mass distribution of PFD warrants would severely impact the Public Service Centers." As their name implies, the department's three Centers serve the public directly by answering inquiries from individuals who either have a problem with the department or who need to do business with the department. For the dividend program, the Center personnel primarily hear from applicants who have not received a check that was expected.

During the first two or three weeks of October in past years when checks were being issued, people called to ask, "When am I going to get my check?" This is a question that cannot be answered and the public soon learned that. Through news stories and conversations with friends, the public became aware of the time frame for check issuance and stopped calling with that question. They did, however, call with real problems.

When checks for all the members of a household do not arrive at the same time, the worried applicant contacts the department. When two friends file at approximately the same time, both checks had better arrive at the same time or the department will get a call. Checks get lost, stolen, or hung up in the postal system. Families break up and want checks issued with a different name or address. People who forget to file, or who do not hear of the program until checks start going out, call to ask about applying late. People whose applications were never received try to prove that they actually filed. There are dozens of reasons why the public contacts the department in connection with the dividend program.

From October through December of 1985, the Public Service Centers received a total of 89,384 inquiries regarding 1985 dividends. With a mass distribution, the majority of these applicants would be attempting to contact the Centers all at one time. Ms. Dove predicts that within two or three days after a mass mailing, the telephone lines and offices would be jammed with applicants who had not received their checks. The office space and number of phone lines are not anywhere near adequate to cope with such a crush. In fact, during the current three month check distribution period, the phone lines are generally busy all day every day and the Centers receive a steady stream of visitors.

Without the resources to add extra phone lines and staff, the crush caused by a mass distribution would not be over in a couple of weeks. It could be many weeks before a person was successful in contacting the department about their missing check or other problem. By that time they would be thoroughly disgusted and the personnel at the Centers would have to deal with that anger as well as the actual problem. Individuals whose applications were in review

status, as noted in the section on the impact to the Enforcement Division, would contact the Centers by the thousands. With each passing day after the date of the mass mailing, the situation would grow worse for the people who remained unpaid.

The department experienced these same type of problems with the 1982 dividend distribution program. While the impact of a mass distribution would not be as severe as the events were of 1982, there is no doubt by Public Services personnel that the impact would be disastrous.

It should be noted that the Public Service Centers deal with the public on all Revenue matters, particularly its many licensing and permit programs. With a mass distribution of dividend checks, individuals wishing to conduct business other than that related to dividends would be unable to get through on the telephone lines or would be forced to stand in line at the Centers. This would result in hundreds of complaints to the ombudsman, Governor's Office, Legislative Information Offices, and to individual legislators. Once again, the department is basing its expectations on what actually happened in 1982.

Even without the unpleasantness of complaints, the anticipated drop in the level of service to the public is not acceptable to the department. Delays in obtaining business licenses and permits, or in acquiring needed tax forms, would have a ripple effect throughout the department as well as impact other state agencies and the private sector.

## V. Theft of Dividend Checks

Each year a number of dividend checks are stolen outright or taken through deceit or familiar abuse. Managers from the Division of Public Assistance in the Department of Health and Social Services and Revenue's Public Services Division believe that the incidence of theft would rise dramatically in a mass mailing of dividend checks. Even the federal government urges the states to do a random mailout of food stamps because of problems encountered nationwide with theft. An increase in theft would of course have a negative impact on the public, but it would also impact the department's Public Service Centers and local law enforcement agencies.

### A. Outright Theft or Theft Through Deceit

Should a larcenous person currently consider the risks of rifling mailboxes or purse snatching, he or she would realize that the odds of finding a permanent fund dividend check are not particularly good on any one day. Those odds would improve at least tenfold if the department undertook a mass distribution. If it is known that nearly everyone in Alaska would have extra money during the same short time period, there would be unscrupulous persons thinking up ways to steal it. It has been noted by the Division of Public Assistance that there are now landlords who make a point of raising their rents when it is known that their tenants have extra money. They and others like them would certainly take advantage of a mass check distribution.

## B. Familial Theft

Sophisticated familial theft, which largely goes unreported, is known to be a problem now. There is a lot of coercion used against the elderly, the mentally disabled, and the mentally ill. If an uncaring family knew for certain that their confused Aunt Ida would be getting her check at a particular time, it is not at all unlikely to assume that they may pay her a visit expressly to get that check from her. Gordon Landes of the Division of Public Assistance was blunt in his assessment. "A mass check distribution will set up all of Alaska's 'have-nots'," he said, "as pigeons ripe for plucking."

## VI. Earned Interest on the Dividend Fund

Under AS 43.23.045, the dividend fund is established as a separate fund to be administered and invested by the Commissioner of Revenue. Each year the Permanent Fund Corporation transfers to the dividend fund 50% of the interest earnings of the Alaska Permanent Fund based on a five year rolling average. Until the funds are distributed to residents as permanent fund dividends, the money is invested and the interest earned accrues to the general fund. If the dividend checks were all issued at the same time in early October, there would be a substantial revenue loss as the funds would no longer be available for investment.

During the 1984 dividend distribution program, an average of 47,857 applicants were paid weekly for nine weeks. During the 1985 program, the average increased to 47,938 applicants paid weekly for ten weeks with a final run in the 11th week of 21,575 checks. This took care of the majority of all applicants. Under the current system, it is logical to assume that during the 1986 program, the department would continue to pay an average of 48,000 applicants each week.

At the present time, the department's Research Section estimates that \$268 million will be available for distribution to an expected 536,000 applicants. Based on prior year experience, the department anticipates that 510,000 of those applications would be acceptable for payment without further review. Under the current distribution plan those 510,000 checks would be issued over an eleven week period with the first group in the mail by October 7, 1986. Under a mass distribution plan, 510,000 checks would all be issued two weeks after that date, on October 22. (See section II.B for an explanation of this two week difference.)

The estimated dividend amount for 1986 is \$500 (\$268 million divided by 536,000 applicants). Assuming that each week during the distribution period the checks are redeemed at a steady rate, the department would be distributing \$24 million each week. According to the Treasury Division, by using present yields on short-term investment of 7.5%, the amount of interest income generated each week is readily calculable. (After the first week's distribution of \$24 million, \$244 million would be left to earn interest. Multiply that amount by .075 and divide by 365 to figure the interest earned each day. Multiply by 7 to figure the interest earned during a one week period.)

1986 Dividend Distribution Over Eleven Weeks

<u>WEEK</u>	<u>AMOUNT INVESTED</u> <u>(In million \$)</u>	<u>INTEREST EARNED</u>
1	\$ 244	\$ 350,958.93
2	220	316,438.36
3	196	281,917.79
4	172	247,397.29
5	148	212,876.72
6	124	178,356.15
7	100	143,835.65
8	76	109,315.08
9	52	74,794.51
10	28	40,273.94
11	4	5,753.44
		<u>\$1,961,917.86</u> TOTAL INTEREST EARNED

Under a mass distribution plan, most of that earned interest would be lost to the State. For a 15 day period, however, the entire \$268 million would be available for investment. Using the same calculations detailed above, the interest earned would be \$826,027.35. By subtracting that amount from the interest earned during the eleven week distribution period, it is clear that a mass distribution could result in a direct loss to the general fund of \$1,135,890.51. Only by delaying the mass distribution until November 12 could the potential loss be eliminated. Of course, it can also be determined that each day's delay past November 12 could increase interest earnings by \$55,068.49. The department does not believe the public would be agreeable to such a delay.

VII. Economic Impact

It is questionable whether or not there would be any real difference in distributing \$268 million across the state in one week or eleven. Either way, a large amount of money is being dropped into the economy in a very short time

period. However, there is basis for believing that the one week distribution would result in more of that money being spent rather than saved.

Should the State plan to distribute the checks all at one time, merchants would have good reason to advertise heavily during that period whereas now they either spread their advertisements over a three month period or not advertise at all. It is a fact that advertising, for a variety of reasons, is effective. The enticement or pressure of massive advertising, coupled with peer pressure, would undoubtedly lead more people to immediately spend their dividend checks.

#### VIII. Other Areas of Impact

##### A. Banks

According to the warrant redemption bank, the physical impact on banks of a mass distribution could be significant. That number of warrants would impact the banks' operations all the way from the bank tellers to the processing center for the warrant redemption bank. The comment made by the present warrant redemption bank is that they could handle it if advised in advance.

##### B. Child Support Enforcement Garnishments

During the three month check distribution period in 1985, the Child Support Enforcement Division received about 1500 checks as a result of the garnishment program. Sandy Beebe of that division said that receiving all those checks at one time would create an emergency work situation resulting in overtime and

temporary reassignment of personnel in order to process the checks through the system. This must be done the day of receipt so that the money can be deposited into the bank, both for investment and security purposes.

### C. Cancelling Returned Warrants

During the first three months of the 1985 check distribution period, more than 6,000 checks were returned and subsequently cancelled. Most of these checks were returned by the post office as undeliverable. In a mass check distribution, the majority of the returned warrants would arrive within a six week period. That would place a heavy burden on the department's Document Processing Section to cancel those warrants. Cancellation involves three separate data entry operations for each returned warrant. The information must be entered into the PFD master file, keyed into AKSAS, and then certified through AKSAS.

Warrant cancellations must be kept up to date because the Public Service Centers need that information on the PFD master file to be able to respond to inquiries about missing checks, and because checks cannot be reissued until the original warrant has been cancelled.

IV. Cost Analysis - Supplies and Labor to Issue Checks

A. Material Costs - Existing System vs. Compurite Service

Under the check distribution system used for the 1984 and 1985 dividend programs, three items were purchased: a warrant printed on continuous 100 lb. tag stock, a multi-colored pamphlet, and a window envelope.

1985 Dividend Program Materials - Actual Cost

<u>ITEM</u>	<u>QUANTITY</u>	<u>COST</u>	
Warrants	624,000	\$ 8,230.00	
Pamphlets	525,000	26,365.50	
Envelopes	600,000	<u>7,920.00</u>	
		\$42,515.50	TOTAL COSTS

Under a mass distribution system such as the Compurite Service proposed by Moore Business Forms, all three items would be produced by Moore for one price. However, additional warrants, brochures, and envelopes would be needed for the reissued checks, garnishment checks, and other warrants that would be issued after that mass distribution.

1985 Dividend Program Materials - Estimated Cost of Mass Distribution

<u>ITEM</u>	<u>QUANTITY</u>	<u>1985 BID PRICE</u>	<u>TOTAL COST</u>	
Compurite Service	500,000	\$150.00/M	\$75,000.00	
Additional Warrants	124,000	\$13.19/M	1,635.56	
Additional Pamphlets	25,000	\$50.22/M	1,255.50	
Additional Envelopes	100,000	\$13.20/M	<u>1,320.00</u>	
			\$79,211.06	TOTAL COST

The difference between the two systems is \$36,695.56. From purely a supplies and labor standpoint, the Compurite Service is only cost-justified if the data processing and distribution costs of the existing system exceed that amount.

#### B. Labor Costs - Data Processing and Distribution

Three divisions in the Department of Administration were involved in the actual printing and distribution of the 1985 dividend checks. The check stock was stored in the 5th floor vault in the State Office Building. The pamphlets and envelopes were stored in the warehouse used for storage of paper stock by the State's Central Duplication Services. In both cases this storage space was available at no additional cost to the State.

Each Friday two people from the Division of Finance would remove from the vault the exact number of warrants to be printed in accordance with the warrant release provided by the Department of Revenue, and deliver them to the Division of Data Processing. This procedure took thirty minutes, and involved employees working at range 20 and range 16 positions.

Data Processing personnel would print the checks over the weekend on an impact printer from a tape supplied by the Department of Revenue. This took from ten to twelve hours each week. The warrants would then be signed and burst which took an additional four to five hours. This work was performed by a permanent full-time employee working at a range 9 position.

Each Monday morning the printed warrants would be picked up by the State's Central Mailroom in the Division of General Services and Supply. Once every two weeks the Central Mailroom would pick up a supply of pamphlets and envelopes from the warehouse. During the week Central Mailroom employees inserted the warrants and pamphlets in the envelopes using high-speed postal equipment, pre-sorted the envelopes for the 4¢ per piece postage savings, and delivered them to the post office. In every week but one, the Central Mailroom was able to mail all the checks in three days. (At the end of each day, the warrants not yet mailed were put back into the vault for safe-keeping.)

In the divisions of Finance and Data Processing, the labor involved was simply absorbed by existing personnel. The Permanent Fund Dividend program does not pick up those costs. It is different for the Central Mailroom personnel. In that case the extra work involved was more than could be handled by the regular employees. In order to put two of their people on the sophisticated inserting/postal equipment, they needed help in doing their other routine operations. The cost of hiring this extra help for that three month period was picked up by the Permanent Fund Corporation. (The 1982 and 1983 dividend checks were designed as a heat-sealed mailer that did not require insertion into an envelope. When the Permanent Fund Corporation was authorized to include a pamphlet with each check beginning with the 1984 program, they agreed to pay all associated costs. These costs include the price of the envelopes as well as the seasonal help in the Central Mailroom.)

Following are the State's costs in providing this labor for the 500,000 checks mailed during the first eleven weeks of the 1985 check distribution period:

STATE'S LABOR COSTS

Pick-up and delivery of warrant stock to Data Processing:	\$ 255.97
Computer printing/signing/bursting:	2,589.93
Seasonal help in Central Mailroom:	10,910.00
Miscellaneous - loss of presort postage savings that would be gained in one large mailing:	<u>1,000.00</u>
	\$14,755.90

As can be seen by the summary below, the State's costs under the present system are considerably less than they would be with the Compurite Service.

1985 Dividend Program -	Actual Materials Cost	\$42,515.50
	Actual Labor Cost	<u>14,755.90</u>
	TOTAL	\$57,271.40
Estimated Cost of Mass Distribution:		<u>79,211.06</u>
Additional cost to State of Mass Distribution:		\$21,939.66

Moore Business Forms would not have proposed a system unless they believed it to be cost-justified. Given that, why does their proposal show an estimated minimum savings to the State of \$11,000.00? An examination of Moore's cost analysis reveals the following flaws:

- a. Moore's estimated costs of the existing warrant, pamphlet and envelope exceeded the actual costs by \$10,984.60.

- b. Moore assumed incorrectly that the Compurite System would save the State hours of computer time they valued at \$200/hr. However, the mainframe computer is involved only minimally in the check printing processes provided by Data Processing. Consequently, Moore overestimated the Data Processing costs by \$10,410.07.
- c. Moore failed to consider that with the Compurite System the State would still have to buy additional warrants, pamphlets and envelopes. The cost of these materials is estimated at \$4,211.06.

In spite of the relatively low costs of processing the dividend checks in-house, the Department of Administration has expressed an interest in giving up that responsibility. The aggravation factor is primarily at work here. The Data Processing Division must devote as much as 45% of one employee's time for an eleven week period, and even with the seasonal help it receives, the Central Mailroom is heavily impacted. However, unless the work situation in these two divisions changes dramatically, the State cannot justify using the Compurite Service or any similar system to distribute dividend checks.

#### C. Cost of Using Compurite Service on a Weekly Basis

When Moore Business Forms made its proposal last spring, the Department of Revenue requested a price to print 50,000 checks a week for a ten week period. The department wanted to be able to consider the Compurite Service in the event that a mass distribution proved to be unfeasible. The quote received reflected a price of \$223.17 per thousand. Using that price, following is a comparison of the costs under the various distribution options.

### Comparison of Compurite Service Plans

Ten weekly distributions - 500,000 X \$223.17/M	\$111,585.00
Mass distribution - 500,000 X \$150.00/M	<u>75,000.00</u>
Increased cost of weekly distribution	\$ 36,585.00

Ten weekly distributions	\$111,585.00
1985 Dividend Program - Materials & Labor Cost	<u>57,271.40</u>
Increased cost of weekly distribution	\$ 54,313.60

As can be seen above, a weekly distribution using the Compurite Service would almost double the State's current costs.

With the additional costs of the Compurite Service ranging from almost \$22,000 to more than \$54,000, it is clear that regardless of the distribution plan, eliminating the aggravation and inconvenience of having to do the project in-house has a very high price tag.

#### X. Conclusions

At the beginning of this report it was noted that department managers had, over the past three years, entertained the idea of a mass check distribution. The appeal was in "just getting it over with" instead of spreading the program out over a three month period. An analogy can be drawn to the practice of removing a band-aid - all at once is the relatively painless choice in that case.

When seriously considered, however, it can be seen that the band-aid analogy does not fit the dividend program. This is because there can truly be no "all at once" distribution. There are thousands of applicants that would not be paid in a mass distribution, but the workload caused by these "problem" cases would come "all at once." Could the department handle it? "Basically," commented Public Services Division Director Sally Smith, "we don't have the staff."

The Enforcement Division would lose potential review cases in a mass distribution and be faced with the costlier problem of collecting erroneous payments. The mounting pressure to review applications and hear appeals at a faster rate than scheduled could become intolerable. Sharon Lowe, Permanent Fund Dividend Specialist, spoke for the entire division when she stated, "We think it's a terrible idea!"

The Administrative Services Division, which at first glance would appear to be the least impacted by a mass distribution, could actually be devastated by such a plan. Quite simply, the division could not physically process all the applications in time for an October payment if the majority of them were filed at the last minute. "The incentive to file early is a key element in our ability to get our job done," said the division's director, Ervin Jones.

Of all the people interviewed in connection with this study, only Alison Farnan of the Permanent Fund Corporation found any merit in the idea of using the Compurite System. Such a plan would eliminate the administrative chore of

purchasing the pamphlets separately as they now must do. Other than that, they saw no advantage to changing the current system.

Prior to this analysis, department managers had no idea of the staggering costs involved in a mass distribution of checks or they would never have even briefly considered the alternative. "Hold harmless" costs would more than double, lost interest earnings would deprive the general fund of over a million dollars, and the cost of the Compurite Service itself is much more expensive than the cost of the current system.

In conclusion, a mass distribution of dividend checks would be prohibitively costly, both in terms of actual dollars spent or lost, and in harm done to existing State operations.

H B

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HOUSE STATE AFFAIRS COMMITTEE

NEXT COMMITTEE: JUDICIARY

BILL: HB 450

CURRENT VERSION:

SCHEDULED: MARCH 15, 1988

SPONSOR: PEARCE

PHONE NO: 4993

CONTACT FILE: \_\_\_\_\_

BILL SUBJECT: RELATING TO OUT OF STATE SOLICITATION FOR STATE CONTRACTS AND STATE EMPLOYEES

SPONSOR BACKUP: IN FILES

AFFECTED AGENCIES:

<u>DEPARTMENT</u>	<u>CONTACT/PHONE</u>	<u>COMMENT</u>
ADMINISTRATION	PUSHPENDER DHILLON/2200	NOTIFIED 4/6/88
DOT/PF	SUSAN FLEISCHAUER/3900	NOTIFIED 4/6/88

FISCAL NOTES

<u>AGENCY</u>	<u>REQUESTED</u>	<u>DATED</u>	<u>FY 88 AMT</u>	<u>FY 89 AMT</u>
ADMIN/PERSONNEL	2/25/88	3/2/88	-0-	-0-
DOT/PF		3/1/88	-0-	-0-
ADMIN/GENERAL SERVICES		4/5/88	-0-	\$60,300

ACTION

<u>DATE</u>	<u>COMMENT</u>
2/10/88	REFERRED TO STATE AFFAIRS
4/13/88	HEARING: HELD FOR FURTHER CONSIDERATION UNTIL 4/15/88
4/15/88	COMMITTEE SUBSTITUTE ADOPTED AND PASSED FROM HOUSE STATE AFFAIRS

STATE OF ALASKA  
THE LEGISLATURE

POUCH V - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY  
LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

*House State Affs:*

*April 15 - 1988*

# HOUSE COMMITTEE REPORT

(7)

Date referred: 2/10/88

FURTHER REFERRALS:

Judiciary  
Finance

DATE: 4-15-88

The State Affairs Committee has considered HB 450

"An Act relating to out-of-state solicitation for state contracts and state employees."

**RECOMMENDS:**

- replace with CS HB 450 (SA)  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(s):**

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published \_\_\_\_\_
- zero with analysis

**SIGNING DO PASS:**

*D. A. Brubaker*  
*Terry Martin*  
 \_\_\_\_\_  
 \_\_\_\_\_  
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 \_\_\_\_\_  
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 \_\_\_\_\_  
 \_\_\_\_\_  
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**SIGNING OTHER RECOMMENDATIONS:**

*Cliff Davidson (no rec.)*  
*John Ulmer (no rec.)*  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

*John Ulmer*  
 Chairman's signature



Official Business

# Alaska State Legislature

## House

COMMITTEE ON STATE AFFAIRS  
HOUSE BILL 450  
FILE CONTENTS

P.O. BOX 7  
State Capitol  
Juneau, Alaska 99811

1. HB 450: AN ACT RELATING TO OUT-OF-STATE SOLICITATION FOR STATE CONTRACTS AND STATE EMPLOYEES
- 1A. CS HB 450 (WORK DRAFT): AN ACT RELATING TO OUT-OF-STATE SOLICITATION FOR STATE CONTRACTS AND STATE EMPLOYEES
2. LETTER FROM REPRESENTATIVE PEARCE TO COMMISSIONER MALONE, DATED MARCH 24, 1988, AND RESPONSE, DATED MARCH 29, 1988
3. LETTER FROM RON LORENSEN TO REPRESENTATIVE PEARCE, DATED MARCH 24, 1988
4. LETTER FROM RON LORENSEN TO REPRESENTATIVE ULMER, DATED MARCH 9, 1988
5. MEMORANDUM FROM THERESA BANNISTER TO REPRESENTATIVE PEARCE, DATED FEBRUARY 15, 1988
6. LETTER FROM COMMISSIONER MALONE TO REPRESENTATIVE ULMER, DATED MARCH 17, 1988
7. LETTER FROM DAVID CHOQUETTE TO REPRESENTATIVE PEARCE, DATED FEBRUARY 17, 1988
8. DEPARTMENT OF ADMINISTRATION, DIVISION OF PERSONNEL, POSITION PAPER, DATED MARCH 2, 1988
9. DEPARTMENT OF ADMINISTRATION, DIVISION OF GENERAL SERVICES AND SUPPLY, DATED MARCH 2, 1988
10. ALASKA DEPARTMENT OF LABOR NEWS RELEASE, DATED FEBRUARY 19, 1988
11. OFFICE OF THE GOVERNOR NEWS RELEASE, DATED JANUARY 21, 1988
12. ALASKA ASSOCIATION OF MANUFACTURERS' NEWSLETTER, SPRING 1988

### FISCAL NOTES

- A. DEPARTMENT OF ADMINISTRATION, PERSONNEL: -0-
- B. DEPARTMENT OF ADMINISTRATION, DIVISION OF GENERAL SERVICES AND SUPPLY: \$103,100
- B2. (CS HB 450) DEPARTMENT OF ADMINISTRATION, DIVISION OF GENERAL SERVICES AND SUPPLY: \$60,300
- C. DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, DESIGN AND CONSTRUCTION, MAINTENANCE AND OPERATIONS AND ADMINISTRATION: -0-

5-1857B  
Bannister  
4/14/88

Original sponsors: Pearce, Swackhammer,  
Collins, et al.

1 IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 450 (State Affairs)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to out-of-state solicitation for  
7 state contracts and state employees."

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

9 \* Section 1. LEGISLATIVE FINDINGS. The legislature finds that

10 (1) the state is experiencing economic difficulties and the rate  
11 of unemployment is very high;

12 (2) the state contains a pool of able-bodied and skilled workers  
13 and organizations from which the state could, in most instances, find the  
14 persons necessary to perform its contracts and fill its employment posi-  
15 tions;

16 (3) before advertising outside the state, the state should  
17 conduct a search in the state for persons and organizations to perform its  
18 contracts and to fill its positions.

19 \* Sec. 2. AS 36.30 is amended by adding a new section to read:

20 Sec. 36.30.875. OUT-OF-STATE SOLICITATION OF CONTRACTS. (a)  
21 Except as necessary to contact the persons on the contractor lists  
22 established under AS 36.30.050, an agency may not solicit outside of  
23 the state for a contract unless the chief procurement officer, or, for  
24 construction contracts or procurements for the state equipment fleet,  
25 the commissioner of transportation and public facilities determines in  
26 writing that the agency has solicited within the state and that

27 (1) the agency has not received a responsive bid from a  
28 responsible bidder, if the agency is procuring the contract under  
29 AS 36.30.100 - 36.30.190;

has actively solicited 14,900 forms  
in the state during the 15-week  
period that covered the date  
when the agency began soliciting  
for the position and has been  
unable to find an individual  
who is qualified for the  
position -

[Solicitation - solicit - solicited]  
→ Definitive - s

*BASE ROOT OFFERS*

1 (2) the agency has not received a responsive proposal from  
2 a responsible offeror, if the state is procuring the contract under  
3 AS 36.30.200 - 36.30.270; or

4 (3) a source for the required procurement is not available  
5 in the state, if the procurement is made under AS 36.30.300, 36.30.-  
6 305, 36.30.310, or 36.30.320.

7 (b) This action does not apply to contracts for professional  
8 services to be performed in an area outside of the state and requiring  
9 knowledge of the customs, procedures, rules, or laws of the area.

10 (c) In this section

11 (1) "agency" includes the University of Alaska, the Alaska  
12 State Building Authority, and the Alaska Railroad Corporation;

13 (2) "solicit" includes advertising, initiating contact with  
14 a person, and sending an invitation to bid or a request for proposals  
15 to a person who has not requested the invitation or request.

16 \* Sec. 3. AS 39.25 is amended by adding a new section to read:

17 Sec. 39.25.165. OUT-OF-STATE SOLICITATION ~~PROHIBITED.~~ (a)

18 Except as provided in (b) of this section, a state agency, including  
19 the division of personnel, may not solicit outside the state for an  
20 individual to fill a position as a state employee unless the personnel  
21 officer determines in writing that the agency <sup>has solicited</sup> has advertised in the  
22 state during the 15-week period that followed the date when the agency  
23 began advertising for the position and has been unable to find an  
24 individual who is qualified for the position. In this subsection,  
25 "personnel officer" means the commissioner of administration for a  
26 state agency of the executive branch, the speaker of the house of  
27 representatives for the members, committees, and leadership of the  
28 house of representatives, the president of the senate for the members,  
29 committees, and leadership of the senate, and the executive director

*EXCEPTION - TITLE TO SECTION UNDER APP.*

1 of the Legislative Affairs Agency for the other entities of the legis-  
2 lative branch.

3 (b) The prohibition in (a) of this section does not apply if the  
4 state agency is

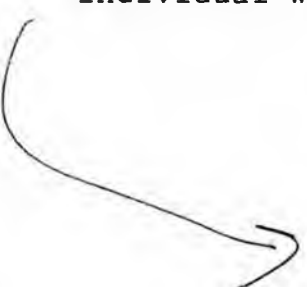
5 (1) in the executive branch and the governor makes a writ-  
6 ten finding that the state agency is not likely to be able to find an  
7 individual who is qualified for the position by soliciting in the  
8 state;

9 (2) in the legislative branch and the legislative budget  
10 and audit committee makes a written finding that the state agency is  
11 not likely to be able to find an individual who is qualified for the  
12 position by soliciting in the state.

13 (c) In this section

14 (1) "position" includes a position in the exempt or par-  
15 tially exempt service, except a position identified in AS 39.25.-  
16 110(1) - (2);

17 (2) "solicit" includes advertising, initiating contact with  
18 an individual, and sending a copy of an employment vacancy notice to an  
19 individual who has not requested the notice.  
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# STATE OF ALASKA

## DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX 5  
JUNEAU, ALASKA 99811-0400  
PHONE: (907) 465-2300

March 29, 1988

The honorable Drue Pearce  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Representative Pearce:

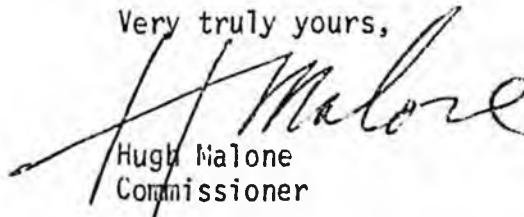
It is most useful, and the standard practice of the Department of Revenue to provide the sponsors of legislation a copy of any comments that may apply to the legislation.

In fact when time allows, it is preferable to discuss any comments with the sponsor, and we do try to do that.

I appreciate your concern over the March 17 letter on HB 450. Having served in the legislature myself, I realize timely communications are essential to your work.

The oversight was mine. I apologize for the difficulty that I caused you. I assure you, it was not my intention to cause difficulty.

Very truly yours,



Hugh Malone  
Commissioner

HM:m11  
88-89

cc: All members of House State Affairs

Bob Evans  
Representative Fran Ulmer  
Co-Sponsors of HB 450



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

POSITION PAPER/OFFICE OF THE GOVERNOR

April 15, 1988

Proposed CS for HB No. 450 ( )

"An Act relating to out-of-state solicitation for state contracts and state employees."

The Office of the Governor supports in principle the legislative findings in Section 1 of this bill, and agrees that in most instances the State can find the persons necessary to perform its contracts and fill its employment positions in-state, and that persons and organizations within the state should be considered before positions or contracts are advertised outside Alaska. It has been the experience of the Executive Branch historically that certain types of services and qualified applicants for some high-level positions requiring specific technical or professional skills are not available within the state, however, and it is important that State procurement and hiring regulations allow the flexibility for out-of-state solicitation of contracts and advertisement of positions in a timely manner.

Section 2 of this bill adds a new section to AS 36.30 which defines conditions under which out-of-state solicitation of contracts by a State agency is permitted. Previous versions of this bill were in conflict to some extent with the procurement code in that no allowance was made for out-of-state contractors who are on a contractors' list. The proposed committee substitute alleviates this conflict by providing that an agency may solicit outside of the state "as necessary to contact the persons on the contractor lists established under AS 36.30.050."

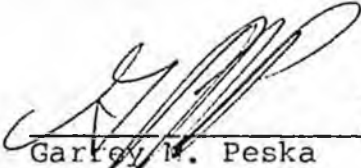
Section 3 of this bill amends provisions of the State's personnel code, and provides that "a state agency, including the division of personnel, may not solicit outside the state for an individual to fill a position as a state employee unless the personnel officer determines in writing that the agency has actively solicited in good faith in the state during the fifteen week period that followed the date when the agency began advertising for the position and has been unable to find an individual who is qualified for the position." Previous versions of the bill required a much longer waiting period; however, this version would require

Proposed CS for HB No. 450 ( )

a nearly four-month advertising period before a determination could be made that suitable candidates were not available. Advertising and recruitment outside the state would add an additional two months to the hiring effort, which could have a serious impact on the program or department if a vacancy were to exist for six months or more while the requirements of this section were met. Section 3 (b) (1) provides the Executive Branch with the needed flexibility to avoid such delays in filling a position by permitting the Governor to make a determination that "the state agency is not likely to be able to find an individual who is qualified for the position by soliciting in the state."

We have some concerns about the use of the term "solicit" in the context of hiring. An out-of-state solicitation would not necessarily result in an out-of-state hire. The Office of the Governor concurs with the Department of Law's March 9, 1988, memorandum to Representative Fran Ulmer with respect to the need for clarification of these terms.

APPROVED:

  
\_\_\_\_\_  
Garvey M. Peska                      Date  
Chief of Staff                      4/15/88

BY PEARCE, SWACKHAMMER, COLLINS,  
ZAWACKI, HANLEY, HUDSON, NAVARE,  
FRANK, PHILLIPS, MENARD, BROWN  
GRUENBERG AND FURNACE

1 IN THE HOUSE

2

HOUSE BILL NO. 450

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

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16 (3) before advertising outside the state, the state should  
17 conduct a search in the state for persons and organizations to perform its  
18 contracts and to fill its positions.

19 \* Sec. 2. AS 36.30 is amended by adding a new section to read:

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21 agency may not solicit outside of the state for a contract unless the  
22 chief procurement officer, or, for construction contracts or procure-  
23 ments for the state equipment fleet, the commissioner of transporta-  
24 tion and public facilities determines in writing that

25 (1) the agency has not received a responsive bid from a  
26 responsible bidder, if the agency is procuring the contract under  
27 AS 36.30.100 - 36.30.190;

28 (2) the agency has not received a responsive proposal from  
29 a responsible offeror, if the state is procuring the contract under

1 AS 36.30.200 - 36.30.270; or

2 (3) a source for the required procurement is not available  
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4 305, 36.30.310, or 36.30.320.

5 (b) In this section

6 (1) "agency" includes the University of Alaska, the Alaska  
7 State Building Authority, and the Alaska Railroad Corporation;

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9 a request for proposals to a person who has not requested the invita-  
10 tion or request.

11 \* Sec. 3. AS 39.25 is amended by adding a new section to read:

12 Sec. 39.25.165. OUT-OF-STATE SOLICITATION PROHIBITED. (a) A  
13 state agency, including the division of personnel, may not solicit  
14 outside the state for an individual to fill a position as a state  
15 employee unless the personnel officer determines in writing that the  
16 agency has been unable during six months of solicitation in the state  
17 to find an individual who is qualified for the position.

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19 (1) "personnel officer" means the commissioner of admin-  
20 istration for a state agency of the executive branch, the speaker of  
21 the house of representatives for the members, committees, and leader-  
22 ship of the house of representatives, the president of the senate for  
23 the members, committees, and leadership of the senate, and the execu-  
24 tive director of the Legislative Affairs Agency for the other entities  
25 of the legislative branch;

26 (2) "position" includes a position in the exempt or par-  
27 tially exempt service, except a position identified in AS 39.25.-  
28 110(1) - (2).

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1A/ 5-1857B  
Bannister  
3/23/88

Original sponsors: Pearce, Swackhammer,  
Collins, et al.

21 DAYS PUBLISHED  
WATERBURY  
FIND OUT WHO  
DO BUSINESS

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 450 ( )

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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In this subsection, "personnel officer" means the commissioner of administration for a state agency of the executive branch, the speaker of the house of representatives for the members, committees, and leadership of the house of representatives, the president of the senate for the members, committees, and leadership of the senate, and the executive director of the Legislative Affairs Agency for the other entities of the legislative branch.

no position involved actively.

1 (b) The prohibition in (a) of this section does not apply if the  
2 state agency is

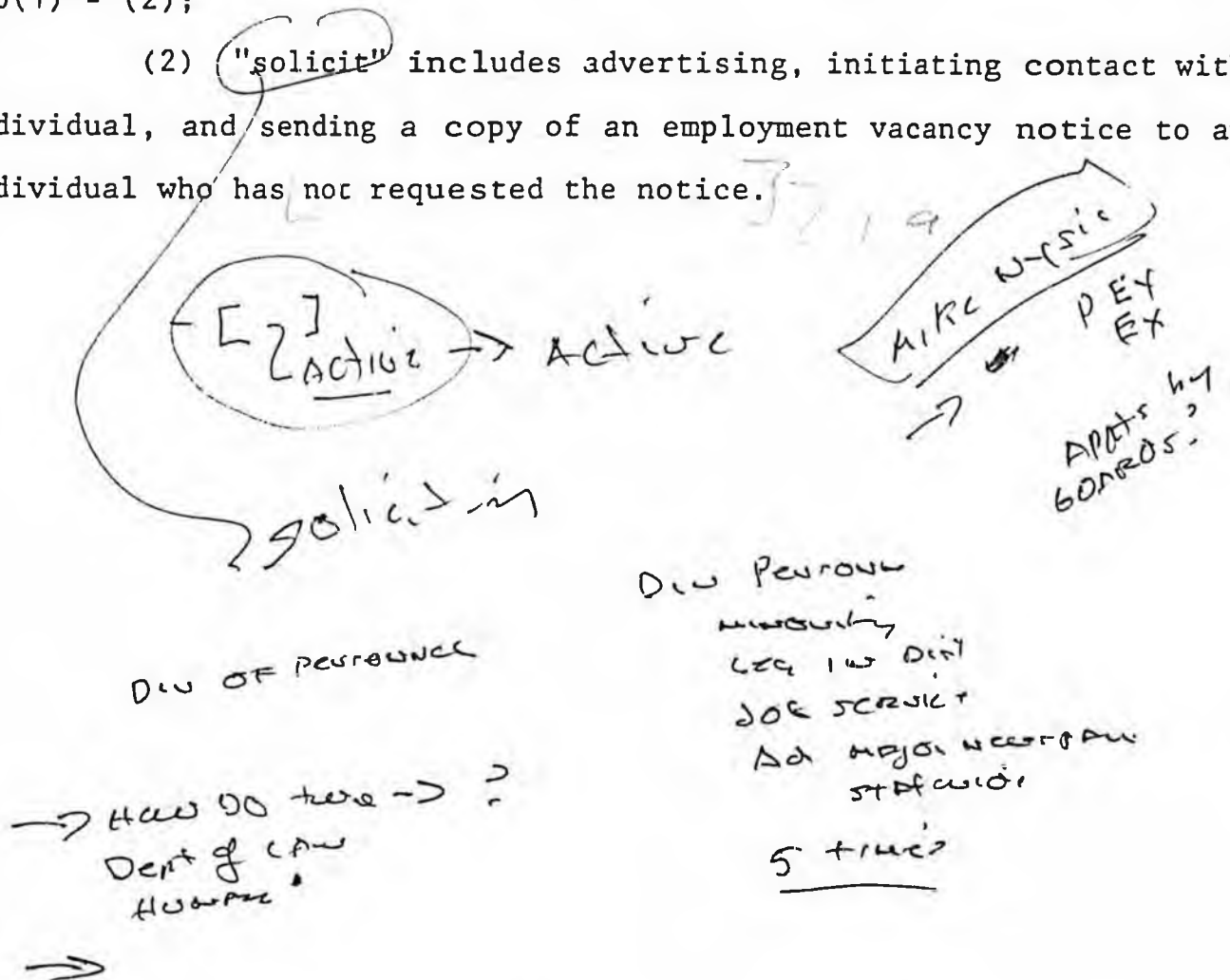
3 (1) in the executive branch and the governor makes a  
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5 an individual who is qualified for the position by soliciting in the  
6 state;

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16 individual, and sending a copy of an employment vacancy notice to an  
17 individual who has not requested the notice.





# Alaska State Legislature House of Representatives

REPRESENTATIVE DRUE PEARCE  
DISTRICT 9, SEAT A  
MINORITY WHIP

MEMBER  
RESOURCES COMMITTEE  
TRANSPORTATION COMMITTEE  
COMMERCE AND ECONOMIC DEVELOPMENT  
BUDGET SUBCOMMITTEE

3111 C STREET, SUITE 150  
ANCHORAGE, ALASKA 99503  
(907) 561-2038

WHILE IN JUNEAU:  
POST OFFICE BOX V  
JUNEAU, ALASKA 99811  
(907) 465-4993

March 24, 1988

Commissioner Hugh Malone  
Department of Revenue  
P. O. Box S  
Juneau, AK 99811

Dear Commissioner Malone:

On March 17 your department commented by letter to Representative Fran Ulmer, Chair of the House State Affairs Committee, about concerns you had relating to House Bill 450. I learned of your concerns quite by accident today.

While I do not wish to appear overly sensitive on the matter of proper channels of communication, I believe all of us would have been better served had I been notified of your concerns. I feel it would have been appropriate for your letter to have been addressed to me. Furthermore, the lack of even a copy on the letter left me at a definite disadvantage in dealing with the Committee. I have to assume that was your intent.

Questions similar to the ones you raised were brought to me by the Department of Law. In response, I have already prepared a proposed committee substitute for HB 450. I believe that this CS will remedy your complaints. A copy is enclosed for your information.

Sincerely,

Drue Pearce

cc: Bob Evans  
Ray Price  
Representative Fran Ulmer ✓  
Co-sponsors of HB 450

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

1 (b) The prohibition in (a) of this section does not apply if the  
2 state agency is

3 (1) in the executive branch and the governor makes a  
4 written finding that the state agency is not likely to be able to find  
5 an individual who is qualified for the position by soliciting in the  
6 state;

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17 individual who has not requested the notice.

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# Alaska State Legislature House of Representatives

REPRESENTATIVE DRUE PEARCE  
DISTRICT 9, SEAT A  
MINORITY WHIP

MEMBER  
RESOURCES COMMITTEE  
TRANSPORTATION COMMITTEE  
COMMERCE AND ECONOMIC DEVELOPMENT  
BUDGET SUBCOMMITTEE

3111 C STREET, SUITE 150  
ANCHORAGE, ALASKA 99503  
(907) 561-2038

WHILE IN JUNEAU:  
POST OFFICE BOX V  
JUNEAU, ALASKA 99811  
(907) 465-4993

March 24, 1988

Commissioner Hugh Malone  
Department of Revenue  
P. O. Box S  
Juneau, AK 99811

Dear Commissioner Malone:

On March 17 your department commented by letter to Representative Fran Ulmer, Chair of the House State Affairs Committee, about concerns you had relating to House Bill 450. I learned of your concerns quite by accident today.

While I do not wish to appear overly sensitive on the matter of proper channels of communication, I believe all of us would have been better served had I been notified of your concerns. I feel it would have been appropriate for your letter to have been addressed to me. Furthermore, the lack of even a copy on the letter left me at a definite disadvantage in dealing with the Committee. I have to assume that was your intent.

Questions similar to the ones you raised were brought to me by the Department of Law. In response, I have already prepared a proposed committee substitute for HB 450. I believe that this CS will remedy your complaints. A copy is enclosed for your information.

Sincerely,

Drue Pearce

cc: Bob Evans  
Ray Price  
Representative Fran Ulmer ✓  
Co-sponsors of HB 450

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX 5  
JUNEAU, ALASKA 99811-0400  
PHONE: (907) 465-2300

March 29, 1988

The Honorable Drue Pearce  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Representative Pearce:

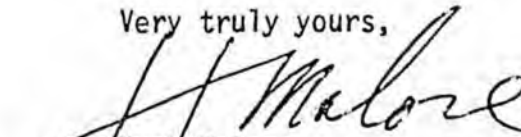
It is most useful, and the standard practice of the Department of Revenue to provide the sponsors of legislation a copy of any comments that may apply to the legislation.

In fact when time allows, it is preferable to discuss any comments with the sponsor, and we do try to do that.

I appreciate your concern over the March 17 letter on HB 450. Having served in the legislature myself, I realize timely communications are essential to your work.

The oversight was mine. I apologize for the difficulty that I caused you. I assure you, it was not my intention to cause difficulty.

Very truly yours,



Hugh Malone  
Commissioner

HM:m11  
88-89

cc: All members of House State Affairs

Bob Evans  
Representative Fran Ulmer  
Co-Sponsors of HB 450

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOV

P.O. BOX K—STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600

March 24, 1988

The Honorable Drue Pearce  
Alaska State Legislature  
House of Representatives  
Pouch Y  
Juneau, Alaska 99811

Re: Proposed CSHB 450

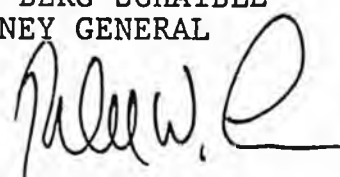
Dear Representative Pearce:

Thank you for the opportunity to review a proposed committee substitute for HB 450, relating to out-of-state solicitation for state contracts and state employees. I have reviewed the draft, and I believe that it addresses the concerns which I raised in my March 9, 1988 letter.

If I can be of any additional assistance, please let me know.

GRACE BERG SCHAIBLE  
ATTORNEY GENERAL

By:

  
Ronald W. Lorensen  
Deputy Attorney General

RWL/lg

cc: Representative Fran Ulmer, Chair, House State Affairs  
Committee

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

P.O. BOX K—STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600

March 9, 1988

The Honorable Fran Ulmer  
House State Affairs Committee  
Alaska State Legislature  
House of Representatives  
P.O. Box V  
Juneau, Alaska 99811

Re: HB 450 relating to out-of-  
state solicitation for state  
contracts and state employees

Dear Representative Ulmer:

Representative Pearce, prime sponsor of HB 450, has asked the Department of Law to provide comments on that bill. Our comments will address constitutional law, technical and practical aspects of the bill.

First, with respect to potential issues of constitutionality, I would say that the provisions of this bill fall into the "gray zone" between being clearly constitutional and clearly unconstitutional. Under the United States Constitution, these limitations on out-of-state procurements and hiring would probably be upheld. However, given the flexibility and unpredictability of an equal protection analysis under the Alaska Constitution, I think there is a significant likelihood that these kinds of limitations would be struck down by our Alaska Supreme Court. That outcome is far from certain, however, and I do not mean to suggest that legislation along the lines of this bill should not be adopted by the legislature simply because of the chance that they would be later struck down.

With respect to the more technical aspects of the bill, there are some potential problems as the bill is presently drafted. For instance, the limitation on out-of-state solicitation in sec. 2 of the bill fits awkwardly with present provisions in the state's procurement code regarding contractors' lists. AS 36.30.050 permits anyone who holds a valid Alaska business license to be placed on contractors' lists maintained by the Department of Administration. Under AS 36.30.130(a)(3) and AS 36.30.210(c), notices of invitations to bid or requests for proposals, respectively, are to be mailed to "all active

prospective contractors on the appropriate list maintained under AS 36.30.050." Thus, out-of-state contractors on such a list would be entitled to notice of a proposed contract. This inconsistency between existing statutes and the proposed bill should be addressed.

Also, although the requirement can probably be inferred from the purpose of the bill, there is no "active" requirement in sec. 2 that agencies actually solicit in-state before the chief procurement officer makes one of the specified findings prior to an out-of-state solicitation. Another problem is that the definition of "solicitation" in sec. 2 of the bill (page 2, line 8) provides a definition for a term which is used only in the title of the section and not in the body of the section (i.e. the substantive portion) of the statute. As presently drafted, the operative word in the statute itself is "solicit". Finally, the definition as proposed underscores the need to mesh the provisions of this bill with the existing provisions in the procurement code dealing with contractors' lists. An out-of-state contractor who has placed his name on a contractors' list could assert that the limitations of this section do not apply to him since, by getting on a contractors' list, he can be considered to be a person who has requested the invitation or request.

Section 3 of the bill would amend provisions of the state's personnel code, rather than the procurement code, so the contractors' lists problems that I mentioned with respect to sec. 2 do not arise. Unlike sec. 2, this provision does use the term "solicitation" (as well as the term "solicit"), but does not provide a definition of either term. A definition of either, or both, terms would certainly be desirable from a legal point of view. Also alternate approach to limiting out-of-state solicitation might be to place a limitation on the hiring of non-residents for a certain period of time after a position becomes vacant. "Hiring" is obviously a much easier term to define than "solicit".

In addition to the constitutional and technical problems that I have identified above, I also have some practical concerns regarding the manner in which the bill would affect agency operations. For instance, there are times when the Department of Law needs to procure the services of outside counsel to assist or represent it in a matter which is pending outside the State of Alaska (e.g. pipeline tariff proceedings before the Federal Energy Regulatory Commission in Washington, D.C. or appearance before a bankruptcy court in another state on behalf of a state agency/creditor). In these kinds of situations, it would not make much sense to pursue legal

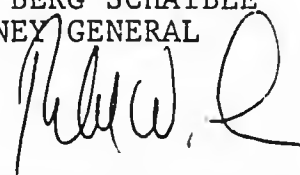
representation within Alaska. However, because of the limitations proposed in sec. 2, we may have to go through the process of soliciting in-state before we could seek the proposals of out-of-state law firms.

With respect to the limitations of sec. 3 regarding out-of-state hiring, in virtually all hiring decisions of the Department of Law this would present no particular difficulty. In recent years, there has been a sufficient pool of in-state attorney applicants such that the hiring of non-Alaskan applicants has become extremely rare. However, our experience has shown that there is not a sufficient pool of qualified minority attorney applicants in the state to permit us to actively pursue affirmative action objectives of the department and the administration. I am concerned that sec. 3 would make it very difficult for us to find and hire qualified minority attorneys in the Department of Law.

If you or members of your committee have any questions, please do not hesitate to contact me.

Sincerely yours,

GRACE BERG SCHAIBLE  
ATTORNEY GENERAL



By: Ronald W. Lorensen  
Deputy Attorney General

RWL/lg

cc: Representative Drue Pearce  
Bob Evans, Legislative Liaison, Office of the Governor  
Art Peterson, Assistant Attorney General, Juneau AGO  
Dick Pegues, Director, Administrative Services Section,  
Department of Law

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

5  
FEB 15 1988

POUCH Y STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3800

MEMORANDUM

February 15, 1988

SUBJECT: Sectional analysis of HB 450  
TO: Representative Drue Pearce  
FROM: Theresa L. Bannister *TLB*  
Legislative Counsel

You have requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or 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.

Section 1 provides certain findings for the bill.

Section 2.

Sec. 36.30.875(a) prohibits a state agency from soliciting outside the state for a contract unless the specified procurement officer makes a particular written finding.

Sec. 36.30.875(b) defines the terms for the section.

Section 3.

Sec. 39.25.165(a) prohibits a state agency from soliciting outside the state for an employee unless the personnel officer makes a written determination that after six months of solicitation in the state the agency hasn't been able to find a qualified individual for the position.

Sec. 39.25.165(b) defines the terms for the section.

TLB:gc  
WKG1:086

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

POUCH 5  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-2300



March 17, 1988

The Honorable Fran Ulmer  
Chair  
House State Affairs Committee  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Representative Ulmer:

I would like to call your attention to the effects of HB 450, "An Act relating to out-of-state solicitation for state contracts and state employees," on the Department of Revenue. The bill would significantly affect numerous areas of the Department's contracting for professional services and, in the case of the Treasury Division, the recruitment of certain personnel.

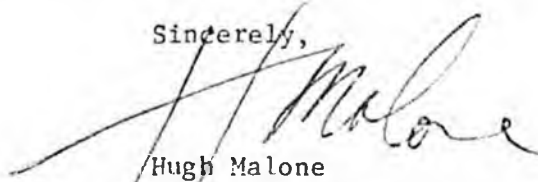
Enclosed is a list of certain Department professional services contracts. They predominantly involve out-of-state firms. Certain services--such as petroleum economic consulting, investment management, investment performance evaluation, securities custody, bond trustee, bond counsel, investment counsel, and financial advisor--are either available only from out-of-state firms, or available from such few in-state firms or in-state firms of true professional competence, that solicitations only in-state would result in either no proposals or provision of markedly inferior services. Moreover, most of these services involve questions of significant financial concern to the State. I do not believe applicability of this legislation to most Department of Revenue professional services contracts would be in the best interest of the State.

I also am concerned that the restrictions on out-of-state solicitation of personnel would be a severe handicap to the recruitment of qualified state investment officers by the Treasury. The pool of such expertise in Alaska is quite limited. Aside from personnel on Treasury staff, there are only four persons in Alaska who are fellows of the Financial Analysts Federation. Such membership is one of the qualifications for certain investment officer positions. Investment officers probably have a greater effect on the State's bottom line than any other positions in government. I do not believe applicability of the legislation to such positions would be in the State's best interests.

The Honorable Fran Ulmer  
March 17, 1988  
Page 2

I would appreciate any consideration you and your committee could give to these concerns during your deliberations on HB 450.

Sincerely,



Hugh Malone  
Commissioner of Revenue

HM/MB/gb  
88-78

Enclosure

Department of Revenue  
Professional Services Contracts  
January 1, 1987 through November 12, 1987

47 seen  
As requested  
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Code	Project Description	Authority To Negotiate	Selected Vendor, Location, and Period of Performance	Date Awarded	Contract Amount	Reason for Selection
5803	To implement an automated Treasury accounting, cash, and investment management information system	85-0435	AUS Associates Calabasas, CA 11/1/85-12/31/87	7/87 amended	199,350	originally awarded by competitive bid - no in-state response; amendment extended period of performance
6330	To provide management, safekeeping, clearance, and reporting services for a portfolio of marketable securities denominated in foreign currencies or Eurodollars	84-0327A	Citibank, N.A. New Castle, DE 7/1/86-10/31/87	1/87 amended	3,176,666	originally awarded by competitive bid - no in-state response; amendment extended period of performance
6720	Financial advisor services relating to the authorization, issuance, and sale of tax-exempt revenue bonds or anticipation notes by AK Mod. Fac.	84-0595	Foster and Marshall Seattle, WA 4/1/84-4/1/88	5/87 amended	250,000	originally awarded by competitive bid- no in-state response; amendment extended period of performance
5010	To obtain services of professional collection agency to pursue monies owed by non-residents	85-0326	Financial Collection Agencies Devon, PA 9/10/85-12/31/87	9/87 amended	50,000	originally awarded by competitive bid requiring outside contractor; amendment extended period of performance
6330	To retain the services of an Equity Investment Manager for an initial \$100 million of PERS and TRS funds	84-0602	Fred Alger Management New York, NY 6/7/84 5/1/88	9/87 amended	3,061,000	sole source per findings of previous search contract (ATN 84-0265); amendment extended period of performance

Department of Revenue  
Professional Services Contracts  
January 1, 1987 through November 12, 1987  
Continued

Code	Project Description	Authority To Negotiate	Selected Vendor, Location, and Period of Performance	Date Awarded	Contract Amount	Reason for Selection
5950	To retain an economist to serve on panel of 3 to review economic aspects of tax assessments disputed by the oil industry	88-0103	Tanzer Economic Associates New York, NY 8/1/87-9/1/87	8/87	30,000	sole source
5950	To retain an economist to serve on panel of 3 to review economic aspects of tax assessments disputed by the oil industry	80-0102	Dr. Arlon Tussing Seattle, WA 8/1/87-9/1/87	8/87	30,000	sole source
561-50	To develop a Western Interstate Clearinghouse for child support enforcement	87-0186	Urban Institute Washington, D.C. 4/1/87-9/30/88	4/87	139,709	competitive bid
6330	To provide management, safekeeping, clearance, and reporting services for a portfolio of marketable securities denominated in foreign currencies or Eurodollars for PERS and TRS	84-0327A	Morgan Guaranty and Trust London, England 7/1/86-10/31/87	1/87 amended	3,176,666	originally awarded by competitive bid; amendment extended period of performance

Department of Revenue  
Professional Services Contracts  
January 1, 1987 through November 12, 1987  
Continued

Code	Project Description	Authority To Negotiate	Selected Vendor, Location, and Period of Performance	Date Awarded	Contract Amount	Reason for Selection
5950	To retain an economist to review economic aspects of state tax assessments disputed by the oil industry	88-0104	Dr. John Gault Geneva, Switzerland 8/1/87-9/1/87	8/87	30,000	sole source
6330	To provide financial advice to the state bond committee for structure and sale of general obligation bonds, guaranteed, and International Airport revenue bonds	85-0145	Government Finance Associates Princeton, NJ 10/29/84-11/27/87	11/87 amended	400,000	originally awarded by competitive bid; amendment extended period of performance
6330	To retain the services of an Equity Investment Manager for an initial \$100 million of PERS and TRS funds	84-0603	Invesco Capital Management Atlanta, GA 6/7/84-5/1/88	9/87 amended	2,844,000	sole source per findings of previous search contract (ATH 84-0265); amendment extended period of performance
6330	To retain the services of an Equity Investment Manager for an initial \$100 million of PERS and TRS funds	84-0601	Lehman Management Company New York, NY 6/7/84-5/1/88	9/87 amended	4,248,000	sole source per findings of previous search contract (ATH 84-0265); amendment extended period of performance
5420	To assist in the development of assessment inventory and evaluations of oil and gas properties for state taxation	86-0134	Pritchard & Abbott Fort Worth, TX 7/1/85-6/30/88	9/87 amended	85,000 annually	sole source due to nature of services and time availability; amendment extended period of performance



# MAKE IT ALASKAN, INC.

3202 Spenard Road, Suite 200  
P.O. Box 93001  
Anchorage, Alaska 99509-3001  
(907) 258-2878

FEB 19 1988

February 17, 1988

## EXECUTIVE COMMITTEE

**President**  
P. David Choquette  
**Vice-President**  
Scott Hawkins  
**Treasurer**  
Denise Knapp  
**Secretary**  
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Ernie Hall  
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Joe Faulhaber  
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Jose Vicente  
Jerry Weaver  
Doug Wise  
Connie Yoshimura

## EX-OFFICIO

Charity Kadow  
Caren Mathis  
James Wiedeman

Rep. Drue Pearce  
Post Office Box V  
Juneau, Alaska 99811

Dear Rep. Pearce:

Make It Alaskan, Inc., supports and encourages the passage into legislation of House Bill 450, an act relating to out-of-state solicitation for state contracts and state employees.

Considering Alaska's current economic condition and the high rate of unemployment, it is now more important than ever to take positive steps to ensure that, whenever possible, Alaskans and Alaskan firms are given the maximum opportunity to participate in the economic recovery and development of the state. The vitality generated by employed and contributing citizens and businesses in the state of Alaska will provide an energy and source of pride in state and community that promises to surpass even the financial benefit.

House Bill 450 gives Alaskan residents and Alaskan businesses the advantage of being asked first. Make It Alaskan, Inc., firmly believes that the state SHOULD ask Alaskans first; now, in these difficult times, and always.

Please consider this a statement of support and we will help in any way possible to assure passage in the Legislature this year. Let me know what we can do.

Kindest personal regards,

P. David Choquette  
President  
Make It Alaskan, Inc.

PDC/tal

POSITION PAPER  
HB 450

PERSONNEL

Section 3 of this bill adds a new section to AS 39.25. The new section prohibits a State agency from soliciting outside the state for exempt and partially-exempt positions in State service. An exception to this prohibition exists if the personnel officer certifies that the hiring agency has been unable, after six months of in-state solicitation, to find a qualified person for the position.

Paragraph (b)(1) of Section 3 defines Personnel Officer for State agencies in the Executive Branch to be the Commissioner of Administration.

Paragraph (b)(2) of Section 3 limits the coverage of the bill to exempt or partially-exempt positions which are not elected positions or positions in the Judicial Branch.


Analysis

Positions which are included in the exempt and partially-exempt service are listed in AS 39.25.110 and 39.25.120 respectively. Among the positions statutorily defined as exempt are physicians licensed to practice in this state and employed by the Division of Mental Health and Developmental Disabilities (AS 39.25.110(13)). These positions, classified as medical officers in the State's system, are highly technical positions which have historically been difficult to fill. A requirement that the State solicit unsuccessfully in-state for six months before soliciting out-of-state for these positions could result in a severe shortage of medical officers at Alaska Psychiatric Institute and a concomitant loss of primary medical care to residents. We recommend that medical officers be excluded from the provisions of this chapter by changing the bill's definition of position as follows:


"position" is limited to positions listed in 39.25.110 and 39.25.120, except a position found in 39.25.110(1), (2) and (13).

Position

Oppose as currently drafted. Support with recommended change.

  
\_\_\_\_\_  
Diana DeSimone, Director  
Division of Personnel

2/29/88  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Commissioner John M. Andrews  
Department of Administration

3/2/88  
\_\_\_\_\_  
Date