

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990

8672

5799

HOUSE JUDICIARY

The issue came up again in 1986, when Congress was debating major changes in federal tax laws. Ms. Bennett sent a letter to Robert Maynard, assistant attorney general, asking whether changes in federal tax laws would affect the 1983 attorney general's memo that said loan forgiveness is taxable income. Hand-written notes on a copy of the May 1986 letter on file at the loan office say: "Still advised that ACPE should not give tax advice per attorney general's office." The comments are dated June 2 and are attributed to Mr. Maynard.

The next written record of the issue came in November 1988, when Price Waterhouse, a nationwide accounting firm, sent a letter to the commission on the subject of loan forgiveness. The main point of the letter was to tell the commission that it was under no legal obligation to report loan forgiveness to the IRS on a Form 1099 (used to report non-wage income). The accounting firm said, "There is no information return reporting requirement, even though the forgiveness is income to the borrower." The accountants said their advice was based on an informal opinion from the IRS, although the commission could face penalties of up to \$500,000 a year if the opinion was wrong and the commission was in violation of reporting requirements to the IRS. The company suggested the commission seek a formal ruling from the IRS.

In stating that loan forgiveness is considered taxable income by the IRS, Price Waterhouse offered some advice:

During our meeting, we discussed your responsibilities to the borrowers who receive debt forgiveness, since there is no information return reporting requirement. While there are no additional responsibilities required by the IRS or the code, you may wish to inform the individuals of the tax ramifications of the forgiveness. We would recommend that you provide a statement of the tax implications either in the application for the forgiveness, or in your letter to the individual when you notify them of the approval. Your statement could be worded as follows:

"The amount of your loan reduction under the forgiveness provisions of the Alaska Guaranteed Student Loan Program is includible in your gross income for tax purposes. We recommend you provide this information to your tax return preparer, or consult with a tax accountant prior to completing the return yourself."

Nothing was done in response to the Price Waterhouse suggestion.

"We wanted to be very careful not to alarm people," Mr. Phipps said of the commission's reaction to the Price Waterhouse letter. He served as director of the Alaska student loan program from April 1988 to September 1989, and was interviewed by phone in December at his new job as assistant secretary for finance and policy analysis at the Maryland Higher Education Commission.

The commission wanted to take a cautious approach to the problem of potential tax liability, he said. Although Price Waterhouse had suggested that the commission consider asking for a private ruling from the IRS on the loan

forgiveness issue and reporting requirements, Mr. Phipps said he recommended against such action. In addition to the cost of a private ruling, estimated at \$15,000, there was the possibility that the ruling could go against the commission for not reporting the loan forgiveness and could result in tax bills to borrowers. The decision was, "Let's just take our chances," Mr. Phipps said.

Ms. Maynard's response was similar in an October 10 phone interview with Mr. Persily. Paying for a formal IRS ruling was not worth the price, she said, especially "if one wasn't wanted in the first place."

It appears one reason the commission chose not to notify students of the potential tax liability or ask the IRS for a formal ruling was for fear of alerting the IRS to tax revenue it had been neglecting for years. The attorney general's warning to avoid giving out tax advice may have been the legal reasoning behind the policy of silence, but it also appears that through the years the commission wanted, as one person said, "to let sleeping dogs lie."

"In hindsight, perhaps we should have" notified borrowers of the tax liability, said Gary Amendola, assistant attorney general to the Alaska Student Loan Corporation, in an interview in December with Mr. Persily. Mr. Amendola had previously served as legal counsel to the commission, prior to establishment of the loan corporation as a separate entity.

Mr. Amendola's advice through the years was consistent: Do not give tax advice. He said the state was under no legal obligation to report loan forgiveness to the IRS or to advise borrowers, and the attorney general's office did not deviate from its advice to the commission. However, he said there would have been no "legal downside" had the state warned students of the tax issue. "We could have done that before," he said. "It seemed pretty clear that it was taxable."

As a point of information, the Price Waterhouse report was requested and paid for by the Department of Administration, which was conducting a review of several state programs to determine if the state was in compliance with IRS reporting requirements. Division of Finance Director Keith Busch said he started working with the attorney general's office in 1988 to ensure that the state was correctly reporting to the IRS all payments made under various state programs.

Every so often through the years, a borrower would call the student loan office and ask if loan forgiveness was taxable, Ms. Bennett said, and the answer she gave was to advise the caller to consult a tax accountant. That was the commission's policy until this past fall when the IRS action caused a reaction and the commission added a notice of tax liability to its annual statement to borrowers. In fact, the notice now included on forgiveness applications and annual statements is the same notice that Price Waterhouse recommended one year ago.

ANALYSIS OF THE ALLEGATIONS

The easiest part of the case to resolve is the alleged illegal action by the commission in turning over to the IRS the name, address and loan amount of borrowers. Alaska Statute 09.25.110 says that state records are open to the public, unless there is a specific state or federal law protecting the confidentiality of the records. State regulations 6 AAC 95.010-900 say that public record requests shall be filled in a timely and responsive manner, unless a state or federal law or principle recognized by the courts prevents public disclosure. None of the exceptions appear

to apply to the name, address and loan amount of student loan borrowers. The borrowers are using public money, not private funds from a bank, and the expenditure of public money is public record under the law.

In this case, the records are public; the commission did not violate any state or federal law that I could find in the release of the records; there is no requirement in law or regulation that the commission ask borrowers' permission before releasing public records; and it would have been unreasonable for the commission to challenge the constitutionality of the public records law solely for the tax avoidance benefit of borrowers.

Consequently, you found this aspect of the complaint unsupported.

As for tax advice services, it is not the job of the student loan office to act as a tax consultant to borrowers. The commission's duties under state law include providing financial aid to college and vocational students and ensuring that schools follow the rules for participation in the loan program. The commission is not a branch office of H & R Block. It should provide what borrowers need to know to complete accurate tax returns, such as interest paid during the year, amount of loan forgiven and, everyone now knows, the tax consequences of loan forgiveness. But the tax buck stops there. Borrowers who are angry at the commission for not fighting the IRS over the issue of forgiveness, who are upset that the commission did not act as an advocate on the issue or who are frustrated at the lack of tax services from the commission are expecting too much from the state. The commission's job is to administer the student loan program, not help borrowers fight the IRS.

You found this allegation over the lack of tax advice unsupported.

As for whether the commission should pay the interest charged on borrowers' tax bills, the legal versus moral obligations of the state must be considered. Although it is true that several thousand borrowers face the unpleasant task of paying interest on back taxes because they were unaware that loan forgiveness was taxable income, they did benefit from having the use of that money for an extra year or two before having to pay taxes to the IRS. However, if the commission had notified borrowers of the tax status of the program, they could have made individual decisions whether to pay their taxes on time and avoid interest charges. I believe that because of its decision not to tell borrowers of the tax issue, the commission morally shares in the blame for the interest that has accrued.

For example, the average borrower in this group of 5,900 had about \$1,800 in loans forgiven during 1987 and 1988. For a person in a 28 percent tax bracket, that could result in about \$500 in back taxes for the two years and about \$80 in interest as of this spring.

Had the IRS assessed heavy penalties against the borrowers for non-payment of taxes, it would have been easier to say the commission should assist in paying the bill. But the IRS is not assessing any penalties, and the borrowers' use of the money for an extra year or two in part compensates them for the interest charge they must now pay.

On the legal side, it appears the state was under no legal obligation to warn borrowers of the forgiveness issue and Mr. Persily could not find any law that would require the commission to pay the interest. However, our office was aware of

several borrowers who are considering legal action against the state over their tax bills and interest.

The commission followed the attorney general's advice in good faith, although in hindsight that advice was too conservative. The advice was legally correct, but morally flawed and a disservice to borrowers. Balancing the moral and legal issues is difficult, and although our office agreed with the borrowers' frustration that the commission shares in the moral blame for the problem, the legal answer appears to be that the commission is not required to pay the bills.

Therefore, you found this aspect of the complaint unsupported.

However, you found supported the allegation that the commission erred in failing to advise borrowers of what it knew about loan forgiveness as soon as it knew it.

The reasoning that there was no legal requirement to tell borrowers that their loan forgiveness could be taxable is a weak excuse, even if it does get the state off the financial hook for the interest charges. There should not have to be a law for everything. Just because the lack of notice was legal does not mean it was fair to the borrowers who are now stuck with interest on their tax bills. The commission knew something that apparently most borrowers did not know, yet needed to know, and the commission should have told them at the earliest possible time and let the borrowers make their own tax decisions.

The reasoning that the commission should avoid giving tax advice was a cop-out. We're not talking about tax advice here; the issue was the commission knew the loan forgiveness money probably was taxable and yet did not give that information to the people who could be directly affected. That's not inappropriate advice or overstepping the jurisdiction of state government; that's sharing information with the people who need to know.

The reasoning that keeping the issue low key may have helped keep the issue from the IRS is well-meaning, but the benefits that accrued to borrowers who escaped taxes does nothing to alleviate the problems created for borrowers today.

The reasoning that the commission lacked a formal IRS ruling on the subject, and had only informal opinions from the attorney general's office and an accounting firm, also is flawed. It appears that everyone agreed the money was taxable -- that never was questioned in any of the documents reviewed or people interviewed for this report. If the lack of a formal IRS ruling was so important, why didn't the commission ask for it and spare everyone the risk and uncertainty, or just tell the borrowers that the money may be taxable and let each individual deal with the question. No news may be good news in some cases, but in this case no notice to borrowers was bad news.

Overall, you found these complaints partially justified.

RECOMMENDATION

Your only recommendation was that the commission notify borrowers or grant recipients of any potential tax liabilities that may exist now or in future programs administered by the agency.

February 27, 1990

You then notified the complainants that the review was completed, that you had sent it to the commission for comment and that the commission had an opportunity to dispute the findings before our office concluded the investigation and released it to them. You also told the commission that you planned to send a copy of the report to Governor Cowper's chief of staff, Garrey Peska. You said that this might prevent similar problems in other state programs with similar circumstances.

AGENCY RESPONSE

Ms. Maynard responded on behalf of the commission to our office in a February 2, 1990, letter addressing our investigatory findings and recommendation. She accepted our first three findings which were unsupported and noted that the commission had already notified students of the potential tax liability as we had recommended they do. In addition, she found our evaluation of the fourth allegation (concerning notification to borrowers of potential tax liability to be "reasonable." She did challenge several statements in the report which indicated the commission "knew" the loans were taxable. However, her portrayal of that finding as "reasonable" and the commission's notification to borrowers lead you to conclude officially that the complaints were fully rectified and the recommendation was accepted.

Ms. Maynard also informed us that the commission is working with United States Senator Ted Stevens and Congressman Don Young on further complications to this issue. The Internal Revenue Service (IRS) ". . . is currently taxing students for years in which the student has received no monetary benefit . . ." from forgiveness eligibility. They currently tax borrowers from the time of forgiveness eligibility as if the student has already seen a cost savings. Since this is not the case, the commission hopes that the Congressional delegation will impress the facts upon the IRS.

Along these lines, the commission also hopes to make data processing changes which reflect "the year in which the true impact of forgiveness eligibility will occur." Lastly, they are working with the State Legislature on possible statutory changes to remedy the problem.

DWH:pjc

HR 65

Testimony before the House HESS Committee
Representative Johnnie Ellis, Chair
February 22, 1990
By Bill Potter, NEA Alaska

My name is Bill Potter, and I am testifying for NEA-Alaska.

We support H. B. 370^{* HR 65} and/or any other legislative vehicle which would result in any student loan forgiveness being classed as nontaxable income, or bringing about the same net effect.

NEA-Alaska has long supported loans, grants, and other incentives for Alaskans to pursue a postsecondary education. The I.R.S. decision to consider loan forgiveness under the Alaska Student Loan program as taxable income has created a disincentive to an incentive. In addition, the decision of the I.R.S. to tax this loan forgiveness in a retroactive fashion flies in the face of the spirit of, if not the letter of, the constitutional prohibition against "ex-post facto laws."

NEA-Alaska sees the subject of this proposed legislation as an issue of fairness; an issue of justice. We commend your efforts to remove the taxable income onus from the Alaska Student Loan program.

STATE OF ALASKA

ALASKA COMMISSION ON POSTSECONDARY EDUCATION

STEVE COWPER, GOVERNOR

P.O. BOX 99
JUNEAU, ALASKA 99811-0599
PHONE: (907) 465-2854

MEMORANDUM

TO: MEMBERS OF THE HOUSE HESS COMMITTEE

THE HONORABLE JOHNNY ELLIS, CHAIR
THE HONORABLE MARK BOYER, VICE CHAIR
THE HONORABLE PETER GOLL
THE HONORABLE MAX GRUENBERG
THE HONORABLE CHERI DAVIS
THE HONORABLE WALT FURNACE

FROM: JANE MAYNARD, EXECUTIVE DIRECTOR
ALASKA COMMISSION ON POSTSECONDARY EDUCATION

RE: IMPACTS OF RESCINDING FORGIVENESS BENEFITS FOR
CALENDAR YEARS 1987, 1988 AND 1989

DATE: February 20, 1990

IF CSHB 370 MANDATED THE RESCINDING OF FORGIVENESS BENEFITS FOR THE 1987, 1988, AND 1989 YEARS, THE ALASKA COMMISSION ON POSTSECONDARY EDUCATION (ACPE) WOULD CONTACT THE BORROWER TO DETERMINE WHETHER OR NOT THEY WANT TO RESCIND THEIR FORGIVENESS BENEFIT. THIS WOULD INVOLVE UP TO TWO CONTACTS WITH THE BORROWER, TRACKING THE PAPERWORK, AND REQUIRED SKIP TRACING BORROWERS WHO HAVE NOT KEPT US INFORMED OF THEIR CURRENT ADDRESS. THE NEXT STEP WOULD BE RESCINDING THE FORGIVENESS BENEFITS, RECALCULATING PRINCIPAL AND INTEREST DUE FROM THE TIME OF THE FIRST FORGIVENESS, MAKING THE NECESSARY CHANGES ON THE COMPUTER SYSTEM TO ADJUST PRINCIPAL AND INTEREST, NOTIFYING THE BORROWER OF THE NEW PRINCIPAL BALANCE DUE AND NOTIFYING THE IRS OF THE AMOUNT OF FORGIVENESS RESCINDED. WE WOULD THEN TRACK RESCINDED FORGIVENESS BENEFITS UNTIL TERM DATE IN THE BILL OR UNTIL BORROWER RE-APPLIED FOR THE BENEFIT (WHICHEVER IS APPLICABLE) AND, RE-APPLY THE FORGIVENESS.

COST OF NOTIFICATIONS

NOTIFICATION WOULD BE REQUIRED:

1. TO DETERMINE IF THE BORROWER WANTS TO RESCIND FORGIVENESS (UP TO TWO NOTICES)
2. TO RELAY THE NEW LOAN BALANCE AND CHANGES TO PRINCIPAL AND INTEREST
3. TO ADVISE IRS OF THE ADJUSTED FORGIVENESS BENEFITS

COST OF FORMS AND MAILING:

\$ 10,750

RECALCULATION OF PRINCIPAL AND INTEREST

RESCINDING OF FORGIVENESS BENEFITS WOULD REQUIRE RE-COMPUTATION OF PRINCIPAL AND INTEREST FOR EACH INDIVIDUAL LOAN.

SINCE INTEREST IS CHARGED ON A DECLINING BALANCE AND THE INTEREST CHARGES DECLINE AS THE PRINCIPAL DECLINES, THE INTEREST AMOUNT THAT WE CHARGE WILL BE GREATER IF WE REMOVE THE FORGIVENESS BENEFIT. EACH PAYMENT ON EACH LOAN FROM THE TIME OF THE FIRST FORGIVENESS WOULD HAVE TO HAVE A REMOVAL OF INTEREST AND PRINCIPAL AND A RE-APPLICATION OF BOTH. IN SOME CASES IT MAY BE POSSIBLE TO DO THIS AUTOMATICALLY, BUT MOST CASES WOULD BE MANUAL.

STAFFING REQUIREMENTS/DATA PROCESSING COSTS

IT WOULD BE POSSIBLE FOR SOME OF THE LOANS TO BE REWORKED (PRINCIPAL AND INTEREST RECALCULATION) BY CREATING A NEW COMPUTER PROGRAM. ANY LOANS, HOWEVER, THAT HAVE HAD REVISED SCHEDULES OR GONE INTO DEFERMENT SINCE THE TIME FORGIVENESS WAS DONE WOULD NOT FALL INTO THIS CATEGORY AND WOULD HAVE TO BE WORKED BY STAFF.

THE AMOUNT OF TIME REQUIRED TO IMPLEMENT THESE CHANGES, RESPOND TO CORRESPONDENCE AND TELEPHONE INQUIRIES ABOUT THESE CHANGES, TRACK THE NOTIFICATIONS, RESCIND FORGIVENESS AND REPROCESS PAYMENTS (WHETHER MANUALLY OR AUTOMATICALLY) TRACK FORGIVENESS ELIGIBILITY AND REAPPLY FORGIVENESS, PROCESS THE DATA IN THE ACCOUNTING SYSTEM AND FILM THE RECORDS ONTO MICROFICHE WOULD BE OUT OF THE SCOPE OF THE ABILITIES OF PRESENT STAFF. WITHOUT ADVERSELY IMPACTING PRESENT LOAN SERVICING COMMUNICATIONS AND COLLECTIONS FUNCTIONS.

ESTIMATED STAFFING REQUIREMENTS:

| | | |
|------------------------------|---------|------------|
| DATA ENTRY/DOCUMENT TRACKING | 1 STAFF | 32,480.00 |
| SKIP TRACING STAFF | 1 STAFF | 32,480.00 |
| ACCOUNTING TECHNICIAN | 1 STAFF | 32,480.00 |
| FORGIVENESS PROCESSOR | 5 STAFF | 170,955.00 |
| MICROFICHE/RECORDS PROCESSOR | 1 STAFF | 27,940.00 |
| TOTAL STAFF COSTS | 9 STAFF | 296,335.00 |
| SPACE AND EQUIPMENT COSTS | 9 STAFF | 100,600.00 |
| TOTAL COST..... | | 396,935.00 |

DATA PROCESSING COSTS HAVE YET TO BE DETERMINED.

HB

380



Permanent Fund Dividend Division
 Document Processing Section
 PO Box S-0460
 Juneau, AK 99811-0460

RECEIVED

APR 4 1990

REACH, INC.

NOTICE OF DENIAL OF ALASKA PERMANENT FUND DIVIDEND

| | | |
|---|--|-----------------------|
| Jimmy A Mercurief P O Box 34197 Juneau AK 99803 | Applicant's Name Jimmy A Mercurief | |
| | Applicant's Social Security Number 574460677 | |
| | Sponsor's Social Security Number (if applicable) | |
| | Document Locator Number 90524808 | Dividend Year 1989 |

A permanent fund dividend for the above named applicant has been denied for the reason(s) stated below.

If you disagree with this denial, you may appeal the decision. In order to appeal you must complete and mail the enclosed Request for Appeal (form 04-190) to the Department of Revenue within 60 days from the date of this notice. If you appeal this decision, you must return one copy of this notice with your appeal.

Reason(s) for the denial:

LAW AND REGULATIONS:

AS 43.23.055(2), 15 AAC 23.160 (g)

A person must file an application on or before June 30, 1989, in order to receive the 1989 Permanent Fund Dividend.

FINDINGS OF FACT:

Your application was postmarked or personally delivered to one of our offices after June 30, 1989.

CONCLUSIONS FROM THE FACTS:

As your application was postmarked or personally delivered after June 30, 1989, you do not qualify for a 1989 Permanent Fund Dividend.

Mailed
4/6/90
Bell

| | |
|---|------------------|
| Permanent Fund Dividend Division Office | Date 04-02-90 |
|---|------------------|

KEEP NOV. 8, 1989

Alaska Department of Revenue
P.O. Box S-0460
Juneau, Alaska 99811-0460



PRE-SORT
FIRST CLASS
U.S. POSTAGE
PAID
Juneau, AK
Permit No. 272

015
3200434

ALBERTA S MARTIN
BATCH NO: 02643 DLN: 90524808
JEFF D LAPRABLE
BATCH NO: 02643 DLN: 90324808
JIMMY A MERCULIEF
BATCH NO: 02643 DLN: 90524808

TO:
A S MARTIN
PO BOX 34197
JUNEAU AK 99803

** LATE FILED APPLICATIONS **
*** NOTE ***
ASSIGNMENTS, OTHER THAN TO GOVT
AGENCIES, WILL NOT BE HONORED.

IMPORTANT RECEIPT
SAVE FOR FUTURE REFERENCE

06-100A (Rev. 3/89)

STATE OF ALASKA

DEPARTMENT OF REVENUE

PERMANENT FUND DIVIDEND DIVISION

STEVE COWPER, GOVERNOR

STATE OFFICE BUILDING
P.O. BOX S-0463
JUNEAU, ALASKA 99811-0400

April 11, 1990

Jeff D. Larrabee
%REACH
BOX 34197
Juneau, AK 99803

Dear Mr. Larrabee:

Re: 1989 Permanent Fund Dividend Appeal(s)

This is to acknowledge receipt of your Request for Appeal.

The Department works appeals on a first-received, first-worked basis. Due to the number of appeals received before your appeal, it may be several months before your case will be heard.

In case you change your address or phone number, please notify the Department by sending in a change of address form to: Alaska Department of Revenue, Permanent Fund Dividend Appeals, P.O. Box S-0463, Juneau, Alaska 99811 so I will be able to reach you when your appeal is worked.

Thank you for your cooperation and patience.

Sincerely yours,

Tracy Paige for Tracy Buchheim
Tracy Buchheim
PFD Specialist I
(907) 465-2001

TB/tdp

This is but one of a series of 5 individual responses and replies - used as an example -

HOUSE COMMITTEE REPORT

(7)

Date Referred: April 4, 1990

FURTHER REFERRALS:

Date of Committee Action: 4-18-90

FINANCE

The JUDICIARY Committee considered:

HB 380

HOUSE BILL NO. 380

PFD'S FOR INCOMPETENT PERSONS

"An Act relating to permanent fund dividends for incompetent individuals; and providing for an effective date."

RECOMMENDATIONS:

- be replaced with CS HB 380 (SUD) the same title
 a new title
- have attached amendment(s)
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact _____
- zero fiscal note _____
- zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) 4-4-90 Rev
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING:
(Check approp. column)

Do Not
Pass
No Rec
Amend

[Signature]

[Signature]

Mike Miller

[Signature]

[Signature]

| | Do Not Pass | No Rec | Amend |
|-------|----------------|--------|-------|
| _____ | | | |
| _____ | | | |
| _____ | | | |
| _____ | | | |
| _____ | | | |
| _____ | | | |
| _____ | | | |
| _____ | | | |
| _____ | | | |
| _____ | | | |

[Signature] / [Signature]
Chairman's Signature

Original sponsor(s): REP. HUDSON, MacLean, Zawacki, Hanley

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 380 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to permanent fund dividends for
7 disabled individuals; and providing for an effective
8 date."

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

10 * Section 1. AS 43.23.005(c) is amended to read:

11 (c) A parent, guardian, or other authorized representative may
12 claim a permanent fund dividend on behalf of an unemancipated minor or
13 on behalf of a disabled or an incompetent individual who is eligible
14 to receive a payment under this section.

15 * Sec. 2. AS 43.23.015(d) is amended to read:

16 (d) The application and certification of residency of an un-
17 emancipated individual under 18 years of age or of a disabled or an
18 incompetent individual must be signed by the individual's parent,
19 legal guardian, or other authorized representative.

20 * Sec. 3. AS 43.23.015(f) is amended to read:

21 (f) A minor or a disabled or an incompetent individual may not
22 maintain a claim against the state or an officer or employee of the
23 state based on the manner in which the parent, guardian, or authorized
24 representative other than a public agency of the state managed or
25 disposed of permanent fund dividends received on behalf of the minor
26 or disabled or incompetent individual.

27 * Sec. 4. AS 43.23.025(a) is amended to read:

28 (a) By October 1 of each year the commissioner shall give public
29 notice of the value of each permanent fund dividend for that year.

1 The public notice shall contain a statement disclosing the amount by
2 which each individual dividend has been reduced in order to pay the
3 costs of administering the program and the hold harmless provisions of
4 AS 43.23.075. The commissioner shall also include the statement on
5 the stub attached to each individual dividend check. The commissioner
6 shall determine the value of a permanent fund dividend by

7 (1) determining the total amount available for dividend
8 payments, which equals

9 (A) the amount of income of the Alaska permanent fund
10 transferred to the dividend fund under AS 43.23.045(b) during the
11 current year;

12 (B) plus the unexpended and unobligated balances of
13 prior fiscal year appropriations that lapse into the dividend
14 fund under AS 43.23.045(d);

15 (C) less the amount necessary to pay dividends from
16 the dividend fund in the current year under AS 43.23.055(3) and
17 (7);

18 (D) less the amount necessary to pay dividends from
19 the dividend fund due to eligible applicants who, as determined
20 by the department, filed for a previous year's dividend by the
21 filing deadline but who were not included in a previous year's
22 dividend computation;

23 (2) determining the number of individuals eligible to
24 receive a dividend payment for the current year; and

25 (3) dividing the amount determined under (1) of this sec-
26 tion by the amount determined under (2) of this section.

27 * Sec. 5. AS 43.23.055 is amended to read:

28 Sec. 43.23.055. DUTIES OF THE DEPARTMENT. The department shall

29 (1) annually pay permanent fund dividends from the dividend
30

1 fund;

2 (2) adopt regulations under the Administrative Procedure
3 Act (AS 44.62) that establish procedures and time limits for claiming
4 a permanent fund dividend; the department shall set the time limit for
5 applications for permanent fund dividends so that the number of eligi-
6 ble applicants is determined by October 1 of the year for which the
7 dividend is declared and permanent fund dividends for a year are paid
8 before April 30 of the year following that year;

9 (3) adopt regulations under the Administrative Procedure
10 Act (AS 44.62) that establish procedures and time limits for an indi-
11 vidual upon emancipation or upon reaching majority to apply for perma-
12 nent fund dividends not received during minority because the parent,
13 guardian, or other authorized representative did not apply on behalf
14 of the individual;

15 (4) assist residents of the state, particularly in rural
16 areas, who because of language, disability, or inaccessibility to
17 public transportation need assistance to establish eligibility and to
18 apply for permanent fund dividends;

19 (5) annually determine, in cooperation with the Department
20 of Corrections, the number and identity of individuals ineligible for
21 a permanent fund dividend under AS 43.23.005(d); [AND]

22 (6) adopt regulations that are necessary to implement
23 AS 43.23.005(d);

24 (7) adopt regulations that establish procedures for the
25 parent, guardian, or other authorized representative of a disabled
26 individual to apply for prior year permanent fund dividends not re-
27 ceived by the disabled individual because no application was submitted
28 on behalf of the individual.

29 * Sec. 6. AS 43.23.095 is amended by adding a new paragraph to read:

1 (9) "disabled" means physically or mentally unable to
2 complete and sign an application due to a serious emotional distur-
3 bance, visual, orthopedic, or other health impairment, or develop-
4 mental disability that is attributable to mental retardation, cerebral
5 palsy, epilepsy, autism or other cause; "disabled" does not mean
6 "incompetent";

7 * Sec. 7. The Act takes effect January 1, 1991.
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

Alaska State Legislature

REPRESENTATIVE BILL HUDSON

P.O. BOX V
Juneau, Alaska
99811
(907)465-3744 or 4991

COMMITTEES

Transportation
Resources
Foreign Trade

FINANCE SUBCOMMITTEES

DOT/PE
C & RA

April 4, 1990

Representative Peter Goll
and
Representative Max Gruenberg,
CoChairmen - House Judiciary Committee
Alaska State Legislature
Juneau, Alaska

Dear Representatives Goll and Gruenberg:

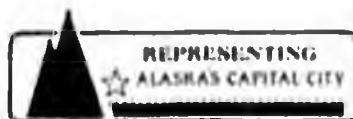
CSHB 380(SA) will soon be transmitted to the House Judiciary Committee for consideration. The legislation relates to permanent fund dividends for disabled individuals, and seeks to require the Department of Revenue to adopt regulations to enable the parent, guardian or authorized representative of a disabled individual to apply for prior years dividends.

I introduced HB 380 after being advised by Mr. Rod Moline, Executive Director of REACH, that some of his disabled clients had missed receiving their permanent fund dividends because no timely application had been made on their behalf.

Enclosed is a copy of a letter from Mr. Moline, as well as a copy of a letter from Ms. Rebecca Graham, Staff Attorney for Advocacy Services of Alaska. Ms. Graham has made available copies of briefs she has filed on behalf of her client, and the briefs state rather well the problems disabled Alaskans have encountered relating to their application process with the Department of Revenue.

Also enclosed is a copy of a recent letter from Commissioner Hugh Malone, Alaska Department of Revenue, advising me that effective April 1, 1990, regulations have been adopted to address the problem HB 380 seeks to solve.

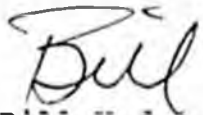
However, according to a legal opinion from Ms. Tamara Cook, Director of Legislative Legal Services, there is no statutory authority for the promulgation and adoption of this regulation.



The passage of HB 380 will not only provide statutory authority, but it will also be a policy in statute. Regulations are changeable at any time, and I believe this policy is necessary to protect those Alaskans who suffer disabilities as defined in this legislation.

Your favorable consideration to place this bill on the House Judiciary Committee schedule at the earliest possible date will be very much appreciated.

Respectfully,

A handwritten signature in cursive script, appearing to read "Bill Hudson".

Bill Hudson

BH:lh

Enclosures

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 5, 1990

SUBJECT: Permanent fund dividends for disabled
individuals (CSHB 380(SA))

TO: Representative Bill Hudson

FROM: Tamara Brandt Cook ^{TBC}
Director
Division of Legal Services

You have supplied me with a copy of a letter from Hugh Malone, commissioner of revenue in which he suggests that HB 380 is not needed because of a regulation adopted by the department that provides:

If the department does not have a timely filed application on file for an individual, that individual or an authorized representative may submit an application for a prior year dividend, if the individual was disabled as defined in 15 AAC 23.990(6) during the application period.

You have asked me to comment on this letter with respect to CSHB 380(SA). That bill deletes the word "incompetent" where it appears in AS 43.23 and substitutes the word "disabled." A statutory definition of "disabled" is included for the chapter that matches the definition under 15 AAC 23.990(6). In addition, the bill provides specific authority to the department of revenue to adopt regulations that establish procedures for a representative of a disabled individual to apply for prior year dividends on behalf of that individual.

I agree with Commissioner Malone that much of the purpose behind CSHB 380(SA) is accomplished through adoption of the regulation. However, there are several reasons why the legislature may still wish to enact this bill. First of all, what can be done by regulation can be undone by regulation. If the legislature wishes to retain control over this issue, it must enact law. Secondly, CSHB 380(SA) now goes further

Representative Bill Hudson
Page 2
April 5, 1990

than the regulation. By changing AS 43.23.005(c), the bill expands the group of people on whose behalf a representative may apply for a current year dividend initially -- from incompetent people to disabled people. The regulation only addresses applications for prior year dividends, so it is not substantively identical to the bill. Lastly, AS 44.62.-030 provides

Sec. 44.62.030. CONSISTENCY BETWEEN REGULATION AND STATUTE.

If, by express or implied terms of a statute, a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, a regulation adopted is not valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute.

The department of revenue currently has statutory authority to adopt regulations relating to the permanent fund dividend program under AS 43.23.055. Arguably, the regulation at issue goes beyond the authority granted under AS 43.23.055 and does more than can be justified under AS 44.62.030 as reasonably necessary to carry out the purpose of the statutes relating to the dividend program. The bill, by providing specific authority to the department to adopt regulations establishing procedures for a representative of a disabled individual to apply for prior year dividends, removes the question as to the authority of the department to adopt this particular regulation.

TBC:pl
WKP4/024

TABLE OF CONTENTS

HB 380: PFD's for Incompetent Persons

- Item 1: HB 380 by Rep. Hudson
CSHB 380 (SA)
- Item 2: Fiscal Note by Department of Revenue
- Item 3: Backup Information from Rep. Hudson
- Item 4: Section 43.23.025. Amount of dividend
- Item 5: Letter from Department of Revenue, April 2, 1990
- Item 6: Letter from REACH, Inc., January 11, 1990
- Item 7: Letter from Advocacy Services of Alaska,
January 18, 1990

HOUSE COMMITTEE ON STATE AFFAIRS

RECAP OF
HB 380

PFD's for Incompetent Persons

Received January 8, 1990
by Rep. Hudson

Heard April 3, 1990

Adopted CSHB 380 (SA) April 3, 1990

Passed Out of Committee April 3, 1990
4 Do Pass
1 No Recommendation

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 8, 1990

FURTHER REFERRALS: JUDICIARY
FINANCE

Date of Committee Action: _____

The STATE AFFAIRS Committee considered:

HB 380

HOUSE BILL NO. 380

PFD'S FOR INCOMPETENT PERSONS

"An Act relating to permanent fund dividends for incompetent individuals; and providing for an effective date."

RECOMMENDATIONS:

- be replaced with CSHB 380 (SA) the same title
- have 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):
(Dept)

APPROVES PREVIOUS: _____
(Date/Dept)

- fiscal impact _____
- zero fiscal note DOR
- zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

Wayne Hendley

Scott Johnson

Jim Swanson

Paul Jacobs

SIGNING:
(Check approp. column)

| | Do Not Pass | No Rec | Amend |
|----------------------|-------------|--------|-------|
| <i>Wayne Hendley</i> | | X | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

Wayne Hendley

 Acting Chairman's Signature

FISCAL NOTE

REQUEST

Revision Date: _____
Title: An Act relating to permanent
fund dividends for incompetent indiv.
Sponsor: HUDSON
Requestor: _____

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

| | FY 91 | FY 92 | FY 93 | FY 94 | FY 95 | FY 96 |
|--------------------|-------|-------|-------|-------|-------|-------|
| OPERATING | | | | | | |
| PERSONAL SERVICES | -0- | -0- | -0- | -0- | -0- | -0- |
| TRAVEL | -0- | -0- | -0- | -0- | -0- | -0- |
| CONTRACTUAL | -0- | -0- | -0- | -0- | -0- | -0- |
| SUPPLIES | -0- | -0- | -0- | -0- | -0- | -0- |
| EQUIPMENT | -0- | -0- | -0- | -0- | -0- | -0- |
| LANDS & STRUCTURES | -0- | -0- | -0- | -0- | -0- | -0- |
| GRANTS, CLAIMS | -0- | -0- | -0- | -0- | -0- | -0- |
| MISCELLANEOUS | -0- | -0- | -0- | -0- | -0- | -0- |
| TOTAL OPERATING | -0- | -0- | -0- | -0- | -0- | -0- |
| CAPITAL | -0- | -0- | -0- | -0- | -0- | -0- |
| REVENUE | -0- | -0- | -0- | -0- | -0- | -0- |

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: None required.

Prepared By: Ervin Jones
Division: Permanent Fund Dividend Division

Phone: 465-2323
Date: March 30, 1990

Approved by Commissioner: [Signature]
Agency: Revenue

Date: 4/1/90

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

Item 3

Alaska State Legislature

REPRESENTATIVE BILL HUDSON

P.O. BOX V
Juneau, Alaska
99811
(907)465-3744 or 4991

COMMITTEES

Transportation
Resources
Foreign Trade

FINANCE SUBCOMMITTEES

DOT/PF
C & RA

January 30, 1990

Representative Red Boucher,
Chairman
House State Affairs Committee
Juneau, Alaska

Dear Representative Boucher:

Enclosed is a copy of a letter together with copies of briefs I recently received from Rebecca Graham, Staff Attorney for Advocacy Services of Alaska.

Ms. Graham discusses her past efforts on behalf of incompetent individuals who had not received a Permanent Fund dividend.

My assertion that the Department of Revenue needs direction by statute is supported by the description of the Department's arbitrary actions relating to claims brought by Ms. Graham.

After you have reviewed this material, I hope you will agree to schedule HB 380 for a hearing.

Respectfully,

Bill
Bill Hudson

BH:lh

Enclosures





ADVOCACY SERVICES OF ALASKA

615 East 82nd, Suite 101
Anchorage, AK 99518
(907) 344-1002 TDD
Toll Free 800-478-1234
Fax (907) 349-1002

230 South Franklin
Juneau, AK 99801
(907) 586-1627 TDD
Fax (907) 586-1066

250 Cushman, Suite 3H
Fairbanks, AK 99701
(907) 456-1070 TDD
Fax (907) 456-1080

January 18, 1990

Representative Bill Hudson
P.O. Box V
Juneau, AK 99811

Attn: Landa

Re: Permanent fund dividend checks for people
with disabilities

Dear Representative Hudson:

I spoke today with Rod Moline of REACH in Juneau about the issue of people with developmental disabilities who miss filing deadlines for requesting their permanent fund dividends. He called me because he was aware of a case I recently settled with Department of Revenue. He stated that your office is interested in introducing some legislation to deal with this problem.

I have enclosed a copy of the briefs in the court appeal that I brought on behalf of a man with mental retardation. Basically the facts and issues are set out in the brief of appellant. After this was filed, the court remanded the case back to the Department of Revenue for a hearing to get more facts.

We never had a hearing on any of the issues because the State settled with my client and gave him his 1986 Permanent Fund Dividend. Subsequently the Department also settled with a client of this agency who has a diagnosis of mental illness and had also not applied for a PFD.

I have removed the name of my client to protect his dignity although this case is a public record.

I would be happy to provide any more information about this case or anything else that might be helpful to bring about a statutory resolution to this. I do not think that the current policy of simply settling with those claimants who appeal will be fair to those who have no way of knowing that this is available.

Sincerely,

Rebecca E. Graham
Staff Attorney

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

E J G)
Appellant,)
v.) Case No. 3AN-88-5268 CI
HUGH MALONE, Commissioner,)
Department of Revenue, State)
of Alaska, in his official)
capacity.)

AN ADMINISTRATIVE APPEAL FROM A FINAL DECISION
OF THE DEPARTMENT OF REVENUE

REPLY BRIEF OF APPELLANT

Rebecca E. Graham
Attorney for Appellant
ADVOCACY SERVICES OF ALASKA
325 E. 3rd Ave., #400
Anchorage, Alaska 99501
(907) 274-3658

TABLE OF CONTENTS

Table of Authorities.....iii

I. A. MR. G . WOULD BE DENIED DUE PROCESS IF NOT
ALLOWED TO PRESENT THE ISSUES IN THIS APPEAL.....1

B. THIS COURT HAS THE DISCRETION TO RELAX THE
RULES REGARDING ISSUES RAISED ON APPEAL.....2

II. THE DEPARTMENT OF REVENUE DOES NOT PROVIDE
SUFFICIENT ASSISTANCE TO DISABLED APPLICANTS.....4

III. A. THERE IS NO RATIONAL BASIS FOR TREATING
MR. G DIFFERENTLY FROM MINORS APPLYING
FOR PERMANENT FUND DIVIDENDS.....5

B. IT IS CONSTITUTIONAL TO PROVIDE DIFFERENT
TREATMENT FOR PEOPLE WITH MENTAL DISABILITIES....6

IV. THE STATE OF ALASKA HAS DISCRIMINATED AGAINST
MR. G ON THE BASIS OF HIS DISABILITY.....7

CONCLUSION.....8

Table of Authorities

CASES

City of Cleburne v. Cleburne Living Center,
473 U.S. 432 (1985).....6, 8

Goldberg v. Kelly, 397 U.S. 254 (1970).....2

Kelly v. Zamarello, 486 P.2d 906 (Alaska 1971).....5, 6

Matter of L.A.M., 727 P.2d 1056 (Alaska 1986).....3

Miller v. City of Fairbanks, 509 P.2d 826 (Alaska 1983)....3

Nelson v. Thornburgh, 567 F. Supp. 369 (E.D. Pa. 1983),
aff'd mem., 732 F.2d 146 (3d Cir. 1984), cert.
denied, 105 S.Ct. 955 (1985).....7

Vest v. First National Bank of Fairbanks, 659 P.2d 1233
(Alaska 1983).....2

Zobel v. Williams, 457 U.S. 55 (1982).....2

LAW REVIEW ARTICLE

Kaufman, Federal and State Handicapped Discrimination
Laws Toward an Accommodating Legal Framework, 18 Loy. U.
L.Rev. 1119 (1987).....8

STATUTES

29 U.S.C. § 794 (§ 504 of the Rehabilitation
Act of 1973).....7

AS 18.80.255(3).....7, 8

AS 43.23.015(g).....1

AS 43.23.055(4).....4

I.

A. MR. G WOULD BE DENIED DUE PROCESS IF NOT ALLOWED TO PRESENT THE ISSUES IN THIS APPEAL.

The State contends that all issues raised by G in this appeal are outside the scope of the administrative proceeding held by the Department of Revenue. The Department quotes AS 43.23.015(g) which states in part:

An appeal under this section does not entitle the aggrieved individual to a trial de novo. The appeal shall be based on the record of the administrative proceeding from which appeal is taken and the scope of appeal is limited to matters contained in the record of the administrative proceeding.

However, Mr. G was not represented by counsel at the administrative hearing and in fact, did not even participate in the hearing in any meaningful way. He was assisted by Ms. Bonnie Darnell, the Administrator of Full Circle Boarding Home, where he lives. [Tr. 14]

Mr. G stated his name at the outset of the hearing [Tr. 14] and his further involvement in the hearing was to occasionally hit a button on the phone he was using. [See Tr. 14, 15 and 16.] It was assumed by everyone involved that Mr. G was not capable of participating any further in the hearing; the Department of Revenue allowed another person to do all of his speaking for him. [Tr. at 17] He certainly was not able to develop any legal

arguments as to why he was entitled to receive his 1986 Permanent Fund Dividend nor was his non-lawyer assistant. It is indeed surprising that the Department of Revenue allowed the hearing to go forward under these circumstances.

Where a deprivation of a government benefit is involved, the United States Supreme Court has required a high degree of due process. See Goldberg v. Kelly, 397 U.S. 254 (1970) (requiring a procedure much like a trial for deprivation of welfare benefits). Certainly an entitlement program like the Alaska Permanent Fund Dividend rises to the level of requiring similar due process protections. See Zobel v. Williams, 457 U.S. 55, 60 (1982).

Since Mr. G was not able to present the constitutional arguments at the earlier hearing due to his disability and the manner in which the hearing was conducted, it would be a denial of due process to dismiss the issues he raises now. A more equitable solution would be to remand the case to the Department of Revenue for a hearing on the issues raised here if the court rules that such issues should not be raised at this time.

B. THIS COURT HAS THE DISCRETION TO RELAX THE RULES REGARDING ISSUES RAISED ON APPEAL.

As the State correctly observes, issues not raised in the lower tribunal are generally waived. West v. First National Bank of Fairbanks, 659 P.2d 1233, 1234 n.2 (Alaska

1983). However, the Alaska Supreme Court has recognized some exceptions to the general rule. In Vesr, the Court itself required briefing of an issue neither party had raised in the lower court. Id. at 1234. And in Matter of L.A.M., 727 P.2d 1056, 1059 (Alaska 1986), the court stated:

Unless it constitutes plain error, we ordinarily will not consider a claim of error if it was not both argued in the trial court and properly raised on appeal. [Citations omitted.] In order for this court to find plain error, the error must affect substantive rights and be obviously prejudicial. [Citation omitted.] As we stated in Miller v. Sears, 636 P.2d 1183, 1189 (Alaska 1981), "[p]lain error exists where an obvious mistake has been made which creates a high likelihood that injustice has resulted."

There the court found plain error where a parent alleged improper notice in an Indian Child Welfare Act case (plain error not being limited to the Criminal Rules as alleged in Appellee's Brief). In other words, where due process would be denied by failing to allow the issue to be heard, the appellate court may consider an issue not raised at the hearing level. Further, the court has noted that "relaxation of the appellate rules might be especially appropriate where a layman represents himself." Miller v. City of Fairbanks, 509 P.2d 826, 829 n.8 (Alaska 1983).

In a case such as this where the appellant was admitted by all concerned to lack the ability to handle the

hearing himself, the dismissal of his constitutional arguments would be a denial of due process. If this court accepts that the factual issues would be better addressed by an administrative hearing, remand is a more appropriate remedy, preserving due process rights, than dismissal of Mr. G 's claims.

II.

THE DEPARTMENT OF REVENUE DOES NOT PROVIDE SUFFICIENT ASSISTANCE TO DISABLED APPLICANTS.

The State has listed some ways in which it provides assistance to people with disabilities in applying for Permanent Fund Dividends and concludes that these are sufficient under AS 43.23.055(4) which requires such assistance. However, the methods of assistance listed by the Department are completely inadequate for a person with a mental disability. Without an outreach program of some kind, it would be impossible for a person without the capability to read to even know that it was time to make an application. Another alternative is to leave open the filing deadline for all those people who are incapable of knowing of their entitlement to a Permanent Fund Dividend. But to merely state that when a person contacts the Department of Revenue, they will be given assistance misunderstands the nature of many disabilities. Unless every developmentally disabled person in the state of Alaska were in a care-taking relationship or

had a legal guardian, the system contemplated by the State in its brief would not work.

Contrary to the State's position, this is a question of law which should be evaluated by this court under the substantial evidence test. Kelly v. Zamarello, 486 P.2d 906, 916 (Alaska 1971). The Department of Revenue is not charged with having expertise in assisting people with disabilities. It is a question of law as to whether they have fulfilled their statutory mandate to make such assistance available.

As stated above, to deny Mr. G the chance to raise this statutory issue would be a denial of due process. Again, remand for further factual development as the court finds necessary would be a more appropriate remedy than dismissal.

III.

A. THERE IS NO RATIONAL BASIS FOR TREATING MR. G DIFFERENTLY FROM MINORS APPLYING FOR PERMANENT FUND DIVIDENDS.

The State does not deal in its brief with whether there is a rational basis for treating Mr. G differently for purposes of receiving his 1986 Permanent Fund Dividend than the way minors are treated by law. They argue instead that this is a decision which the Department could make in any way which it saw fit. However, where a statute leaves open the method by which an agency may act, that agency must

still act constitutionally. Further that action has nothing to do with agency expertise. A constitutional question of whether equal protection has been denied does not come within the special knowledge and expertise of the Department of Revenue. This is an issue which the courts are uniquely charged with deciding. Kelly v. Zamarello, 486 P.2d 906, 916 (Alaska 1971).

B. IT IS CONSTITUTIONAL TO PROVIDE DIFFERENT TREATMENT FOR PEOPLE WITH MENTAL DISABILITIES.

Because the Court in City of Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985), refused to make people with mental retardation a suspect class for purposes of equal protection claims, they left open the possibility of treating such people differently. Id. at 433-445.

[L]egislation... singling out the retarded for special treatment reflects the real and undeniable differences between the retarded and others. That a civilized and decent society expects and approves such legislation indicates that governmental consideration of those differences in the vast majority of situations is not only legitimate but also desirable.

Id. at 444.

Our legislature has required that the State provide assistance to people with disabilities in applying for and proving eligibility for Permanent Fund Dividends. The question for the court is whether that assistance was ade-

quate to assist people such as Mr. G , not whether to do so would be constitutionally impermissible.

IV.

THE STATE OF ALASKA HAS DISCRIMINATED AGAINST MR. G ON THE BASIS OF HIS DISABILITY.

The Alaska Statutes state at AS 18.80.255(3):

It is unlawful for the state or any of its political subdivisions... to refuse or deny to a person any... state... funds, services, goods, facilities, advantages or privileges because of physical or mental disability.

As stated in appellant's brief, this section of the Alaska Statutes is substantially similar to federal law found at 29 U.S.C. § 794 (§ 504 of the Rehabilitation Act of 1973).¹ Federal decisions and the federal government have consistently required "reasonable accommodation" of a person's disabilities. (See e.g., Nelson v. Thornburgh, 567

¹ That Act provides:

No otherwise qualified individuals with handicaps in the United States... shall, by reason of the handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service....

Section 7(8) of the Act also tracks the definition of disability found at AS 18.80.300(12).

F. Supp. 369 (E.D. Pa. 1983), aff'd mem., 732 F.2d 146 (3d Cir. 1984), cert. denied, 105 S.Ct. 955 (1985).) This has included requiring what might be seen as "preferential treatment" such as the requirement that deaf people be provided with sign language interpreters and telecommunication devices so that they may be able to receive the benefits of governmental programs. An excellent analysis of what is required is found in Kaufman, Federal and State Handicapped Discrimination Laws: Toward an Accommodating Legal Framework, 18 Loy. U. L.Rev. 1119 (1987). As stated above, it is constitutionally permissible for people with mental retardation to be treated differently than others. See Cleburne, supra.

Similarly, the accommodation necessary for a person with a developmental disability is that the filing deadline be waived in those cases where it would impermissibly deny the person privileges of residency in the State of Alaska under AS 18.80.255(3).

CONCLUSION

Mr. G . should be allowed to present his arguments in this appeal or, in the alternative, to present facts supporting his arguments in an additional administrative hearing. To dismiss this case, as requested by the State, would be a denial of due process. In addition, the issues raised by Mr. G in Appellant's Brief have not

been refuted by the State. It is not impermissible to give reasonable accommodation to people with developmental disabilities as required by state statute.

Respectfully submitted at Anchorage, Alaska this
6th day of September, 1988.

Rebecca E. Graham

Rebecca E. Graham
Attorney for E . J. G

understand that these penalties are in penalties imposed.

ature of individual, guardian, or other authorized representative)

this section or as may be provided by department, an individual must personally receive permanent fund dividends, including the certification of residency of an unemancipated minor, or of an incompetent individual or of an incompetent individual's parent, legal guardian, or other authorized representative.

Under subsection (b) of this section, an individual may not maintain a claim against the state based on the manner in which the state managed or disposed of permanent fund dividends received on behalf of the minor or incompetent, or an election made or not made on that individual's behalf under AS 43.23.005(d).

Under subsection (c) of this section, an individual shall hold the dividend in trust for the benefit of the individual under this subsection shall be in accordance with AS 37.10.070.

Under subsection (d) of this section, an individual may not maintain a claim against the state based on the manner in which the state managed or disposed of permanent fund dividends received on behalf of the minor or incompetent, or an election made or not made on that individual's behalf under AS 43.23.005(d).

Under subsection (e) of this section, an individual may not maintain a claim against the state based on the manner in which the state managed or disposed of permanent fund dividends received on behalf of the minor or incompetent, or an election made or not made on that individual's behalf under AS 43.23.005(d).

Under subsection (f) of this section, an individual may not maintain a claim against the state based on the manner in which the state managed or disposed of permanent fund dividends received on behalf of the minor or incompetent, or an election made or not made on that individual's behalf under AS 43.23.005(d).

Under subsection (g) of this section, an individual may not maintain a claim against the state based on the manner in which the state managed or disposed of permanent fund dividends received on behalf of the minor or incompetent, or an election made or not made on that individual's behalf under AS 43.23.005(d).

Under subsection (h) of this section, an individual may not maintain a claim against the state based on the manner in which the state managed or disposed of permanent fund dividends received on behalf of the minor or incompetent, or an election made or not made on that individual's behalf under AS 43.23.005(d).

Item 4

and a certification of residency in substantially the following form:

I certify that

(1) I am a state resident on the date of this application and I have been a state resident for at least six months immediately preceding the date of this application; or

(2) (name), the individual on whose behalf I am applying, is a state resident and has been a state resident for at least six months immediately preceding the date of this application.

I understand that a false claim of residency to obtain a permanent fund dividend for myself or for another is a criminal offense and that if convicted I will forfeit future permanent fund dividends and that I will lose or must repay all permanent fund dividends that have been credited or paid to me, and any accrued interest in my annuity account. I understand that this penalty is in addition to any criminal penalties imposed.

(signature of individual, parent, guardian, or other authorized representative)

(e) If a public agency claims a dividend on behalf of an individual under this section, the public agency shall elect 100 percent cash under AS 43.23.005(d) and hold the dividend in trust for the individual. Money held in trust under this subsection shall be invested by the commissioner in accordance with AS 37.10.070.

Sec. 43.23.025. Amount of dividend. (a) By October 1 of each year the commissioner shall give public notice of the value of each permanent fund dividend for that year. The public notice shall contain a statement disclosing the amount by which each individual dividend has been reduced in order to pay the costs of administering the program and the hold harmless provisions of AS 43.23.075. The commissioner shall also include the statement on the stub attached to each individual dividend check. The commissioner shall determine the value of a permanent fund dividend by

(1) determining the total amount available for dividend payments, which equals

(A) the amount of income of the Alaska permanent fund transferred to the dividend fund under AS 43.23.045(b) during the current year;

(B) plus the unexpended and unobligated balances of prior fiscal year appropriations that lapse into the dividend fund under AS 43.23.045(d);

(C) less the amount necessary to pay dividends from the dividend fund in the current year under AS 43.23.055(3);

(f) A minor or an incompetent individual may not maintain a claim against the state or an officer or employee of the state based either on the manner in which the parent, guardian, or authorized representative other than a public agency of the state managed or disposed of permanent fund dividends received on behalf of the minor or incompetent, or an election made or not made on that individual's behalf under AS 43.23.005(d).

(g) The permanent fund dividend application form shall be prepared to allow an applicant, other than a person who is exempt under AS 47.45.015(b), to elect to receive the dividend either in cash or as an annuity credit.

Cross references. — For voluntary contributions to Alaska Winter Olympics account, see AS 05.35.100.

Effect of amendments. — The 1988 amendment, effective January 1, 1989, rewrote the statement of eligibility and certification of residency in subsection (b) to the extent that a detailed comparison is impracticable.

The 1989 amendment, effective January 1, 1990, substituted "24 months" for "six months" in the first two paragraphs of the form in subsection (b).

Editor's notes. — Until January 1, 1990, the first two paragraphs in the form in subsection (b) refer to a six-month rather than 24-month residency period.

(D) less the amount necessary to pay dividends from the dividend fund due to eligible applicants who, as determined by the department, filed for a previous year's dividend by the filing deadline but who were not included in a previous year's dividend computation;

(2) determining the number of individuals eligible to receive a dividend payment for the current year; and

(3) dividing the amount determined under (1) of this section by the amount determined under (2) of this section.

(b) For the purpose of calculating the amount of a permanent fund dividend under (a) of this section, an individual who is ineligible to receive a dividend under AS 43.23.005(d) is counted as an eligible individual whether or not the individual has applied for the dividend. (§ 1 ch 102 SLA 1982; am § 1 ch 55 SLA 1983; am § 2 ch 43 SLA 1984; am § 2 ch 57 SLA 1987; am § 2 ch 54 SLA 1988)

Effect of amendments. — The 1984 amendment substituted "October" for "December" in the first sentence in the introductory paragraph.

The 1987 amendment, added the second and third sentences in the introductory language, in paragraph (1) inserted "the total amount available for dividend payments, which equals" following "determining," designated some of the existing language as subparagraph () and added

subparagraphs (B)-(D), and in paragraph (3) substituted "under" for "in" in two places.

The 1988 amendment, effective May 26, 1988, added subsection (b).

Editor's notes. — Section 4, ch. 54, SLA 1988 provides that the amendments made to this section by ch. 54, SLA 1988 apply "only to eligibility for permanent fund dividends for years after 1988."

NOTES TO DECISIONS

Stated in *Alaska Oil Co. v. Alaska*, 45 Bankr. 358 (D. Alaska 1985).

Sec. 43.23.035. Penalties and enforcement. (a) In addition to any criminal penalties imposed by state law, if an individual is convicted of a crime in connection with a false statement made in a certification required under AS 43.23.015, and the conviction is not reversed, that individual forfeits all permanent fund dividends paid and is not eligible for a future permanent fund dividend.

(b) If the commissioner determines that a permanent fund dividend should not have been claimed by or paid to an individual, the commissioner may use all collection procedures or remedies available for collection of taxes under this title to recover the payment of a permanent fund dividend that was improperly made. A notice of an improperly paid dividend must be sent to the individual within 10 years after the improper payment. If notice is not sent within the 10-year period, proceedings may not be commenced in court for recovery of the improper payment.

(c) An individual who, in claiming a permanent fund dividend, or an individual who, in certifying another person's eligibility, wilfully misrepresents, exercises gross negligence, or recklessly disregards a

materi
to a civ
five div
may coi
102 SL

Reviso
ch. 99. SL
section, e
ments ar
1985 is r
1985). If t
section w
criminal)
an indivi
connectio:
a certifi:
43.23.015
versed, th
nent fund
gether wi
individua
igible for
dend.

"(b) If
that a cas
claimed b
commissic
cedures or
tion of tax

Sec. 4
lished a
shall be
the comr

(b) No
commissi
income o
ending or
However
Amerada
District)
Alaska p
to the di
pal of th

(c) [Re

(d) Un
pended a
chapter 1
which th
the amou

Item 5

STEVE COWPER, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

P.O. BOX 5
JUNEAU, ALASKA 99811-0400
PHONE: (907) 465-2300
TELEFAX: (907) 465-2389

April 2, 1990

The Honorable Bill Hudson
Alaska House of Representatives
P.O. Box 5
Court, Room 605
Juneau, Alaska 99811

Dear Representative Hudson:

Your bill, HB 380 - "An Act relating to Permanent Fund Dividends for Incompetent Individuals ...", is scheduled for hearing in House State Affairs on April 3. Essentially this is a good piece of legislation. It seeks to address a fundamental inequity in the administration of the PFD program. With the recent adoption of 15 AAC 23.135(e), however, the Department believes this legislation to be unnecessary. Like yourself, the Department recently came to the conclusion that certain Alaskans, those loosely defined as "disabled" under 15 AAC 23.990(6), were unfairly being excluded from the program due to overly restrictive guidelines. Through no fault of their own-they were simply unable to complete the application-some were not completing or filing their application in time to meet the filing deadline. The recent adoption of 15 AAC 23.135(e) should adequately address this problem:

15 AAC 23.135(e) If the department does not have a timely filed application on file for an individual, that individual or an authorized representative may submit an application for a prior year dividend, if the individual was disabled as defined in 15 AAC 23.990(6) during the application period.

I appreciate your efforts (HB 380) in bringing both public and legislative attention to this issue. With the new regulation in place, the department will immediately undertake steps to rectify this very unfortunate situation.

Sincerely,

Clifford Cook for
Hugh Malone
Commissioner

HM:RW:sp

SG-75

cc: All Members of House State Affairs Committee

Register

1990

REVENUE

15 AAC 23.135

gible to receive a permanent fund dividend. (Eff. / /
Register)

Authority: AS 43.23.015

AS 43.23.055

15 AAC 23.135. ELIGIBILITY FOR A PRIOR YEAR DIVIDEND FOR
1990 AND SUBSEQUENT YEARS. (a) An individual who has reached
majority, or who has become an emancipated minor, may apply to
the department for a prior year dividend if

(1) the individual had not reached majority or become
an emancipated minor ~~prior to~~ ^{before} July 1 of the dividend year for
which the individual is applying;

(2) a complete permanent fund dividend application was
not filed by an eligible sponsor on the individual's behalf, was
not timely filed, or, solely as a result of competing applications
being filed, ~~none~~ ^{not} was paid; and
Λ

(3) the individual would have qualified as a resident, as described in AS 43.23.095(7).

(b) An individual who qualifies under (a) of this section must file an application within one year after the individual reaches majority or becomes an emancipated minor, whichever is earlier.

(c) Except as provided in (e) of this section, if the department does not have a timely filed application on file, in order to be eligible to receive a dividend, the applicant must submit, before July 1 of the year following the dividend year, a request to reapply and one of the following forms of evidence that an application was timely filed with the department:

(1) a mailing receipt;

(2) a delivery receipt; or

(3) a notarized affidavit in which the applicant or applicant's sponsor states, under penalty of unsworn falsification, that the application was timely filed, and

(A) an individual states, under penalty of unsworn falsification, that the individual witnessed the filing; or

(B) one of the individuals who signed the residency verification portion of the timely filed application states, under penalty of unsworn falsification, that the individual signed the residency verification before the application deadline.

(d) If an applicant files, under (c) of this section, a request to reapply along with the required supporting evidence by September 15 of the dividend year and is determined to be eligible, the department will pay the applicant from that year's dividend distribution. If an applicant files, under (c) of this section, a request to reapply along with supporting evidence after September 15 of the dividend year but before the July 1 immediately following the dividend year and is determined to be eligible, the department will pay the applicant from that year's dividend distribution if money is available; if money is not available, then the applicant will be paid from the subsequent year's dividend distribution.

(e) If the department does not have a timely filed application on file for an individual, that individual or an authorized representative may submit an application for a prior year dividend if the individual was disabled, as defined in 15 AAC 23.990(6), during the application period. (Eff. / / , Register)

Authority: AS 43.23.015

AS 43.23.055

15 AAC 23.145. APPLICATIONS GENERALLY FOR 1990 AND SUBSEQUENT YEARS. (a) An individual may apply for a permanent fund dividend after March 31 but before July 1 of the dividend year on a form provided by the department. An application postmarked during that period is considered timely filed.

(b) Except as provided in AS 43.23.015(d), 15 AAC 23.155, and 15 AAC 23.165, an individual applying for a ^{permanent fund} dividend ~~payment~~ must personally sign the certification of residency and eligibility contained on the application form.

15 AAC 23.990 ADMINISTRATIVE CODE SUPPLEMENT 15 AAC 23.990

15 AAC 23.990. DEFINITIONS. In this chapter, unless otherwise indicated,

- (1) "abode" means one's home or place of dwelling;
- (2) "adult" means an individual who has reached 18 years of age, which is the age of majority under AS 25.20.010, or who is under 18 years of age but because of marriage has reached the age of majority under AS 25.20.020;
- (3) "authorized representative" means an adult who has a sufficiently significant relationship with a child or another adult that the department is satisfied that the person is applying for the permanent fund dividend payment for the benefit of the child or the adult; "authorized representative" includes an official of a public agency or a private institution;
- (4) "child" means an individual who has not reached the age of majority under AS 25.20.010 or 25.20.020;
- (5) "department" means the Department of Revenue;
- (6) "disabled" means physically or mentally unable to complete and sign an application, due to a visual handicap, serious emotional disturbance, orthopedic or other health impairment, or due to a developmental disability that is attributable to mental retardation, cerebral palsy, epilepsy, or autism; "disabled" does not mean "incompetent";
- (7) "dividend year" means the calendar year in which the dividend is declared;
- (8) "emancipated minor" means an individual under the age of 18 years who has been declared emancipated by the superior court of this state under AS 09.55.590, or by a court of another jurisdiction under procedures granting the individual the equivalent status;
- (9) "individual" means a natural person;
- (10) "legal guardian" means a guardian or conservator appointed by the court under AS 13.26.035, 13.26.045, 13.26.095, 13.26.110, 13.26.112, 13.26.210, or similar provisions of law of this state or another jurisdiction;
- (11) "month" means a calendar month. (Eff. 4/1/89, Register 109)

Authority: AS 43.23.015
AS 43.23.055
AS 43.23.095



Item 6

Residential and Employment Alternatives in the Community for the Handicapped
P. O. Box 34197 • Juneau, Alaska 99803
Phone: (907) 789-7673

January 11, 1990

The Honorable Bill Hudson
House of Representatives
Pouch V
Juneau, AK 99811

Dear Representative Hudson:

On behalf of Residential and Employment Alternatives in the Community for the Handicapped (REACH, Inc.) we offer support to your legislative efforts toward allowing the Permanent Fund Dividend application process to be sensitive to the special needs of disabled Alaskans.

As an agency, this is an issue of concern. We have several individuals who did not receive dividends. Even though they are certainly eligible, they are incapable of filling out the forms on their own. The system fails to take this type of situation into account. These individuals are penalized as a result, leading to further dependence on others to complete the process on their behalf.

I believe the state owes Alaskans suffering disabilities the protection from the existing Permanent Fund Dividend application process. Many Alaskans are at the mercy of others to file on their behalf and this is the "risk" factor that should be evaluated for removal, if possible.

If I can be of further assistance or support to you regarding this issue, please feel free to call on me anytime.

With regards,

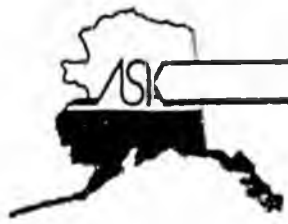
Rod Moline

Rod Moline
Executive Director

RM/lc



Item 7



ADVOCACY SERVICES OF ALASKA

615 East 82nd, Suite 101
Anchorage, AK 99518
(907) 344-1002 TDD
Toll Free 800-478-1234
Fax (907) 349-1002

230 South Franklin
Juneau, AK 99801
(907) 586-1627 TDD
Fax (907) 586-1066

250 Cushman, Suite 3H
Fairbanks, AK 99701
(907) 456-1070 TDD
Fax (907) 456-1080

January 18, 1990

Representative Bill Hudson
P.O. Box V
Juneau, AK 99811

Attn: Landa

Re: Permanent fund dividend checks for people
with disabilities

Dear Representative Hudson:

I spoke today with Rod Moline of REACH in Juneau about the issue of people with developmental disabilities who miss filing deadlines for requesting their permanent fund dividends. He called me because he was aware of a case I recently settled with Department of Revenue. He stated that your office is interested in introducing some legislation to deal with this problem.

I have enclosed a copy of the briefs in the court appeal that I brought on behalf of a man with mental retardation. Basically the facts and issues are set out in the brief of appellant. After this was filed, the court remanded the case back to the Department of Revenue for a hearing to get more facts.

We never had a hearing on any of the issues because the State settled with my client and gave him his 1986 Permanent Fund Dividend. Subsequently the Department also settled with a client of this agency who has a diagnosis of mental illness and had also not applied for a PFD.

I have removed the name of my client to protect his dignity although this case is a public record.

I would be happy to provide any more information about this case or anything else that might be helpful to bring about a statutory resolution to this. I do not think that the current policy of simply settling with those claimants who appeal will be fair to those who have no way of knowing that this is available.

Sincerely,

Rebecca E. Graham
Staff Attorney

HB

384

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: An Act relating to an approp
limit; and providing for an
 Sponsor: Phillips and Collins
 Requestor: _____

Agency Affected: Office of the Governor
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 91 | FY 92 | FY 93 | FY 94 | FY 95 | FY 96 |
|------------------------|----------|----------|----------|----------|----------|-------|
| PERSONAL SERVICES | 0 | 0 | 0 | 0 | 0 | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0 | 0 | 0 | 0 | 0 | |

| | | | | | | |
|----------------|----------|----------|----------|----------|----------|--|
| CAPITAL | 0 | 0 | 0 | 0 | 0 | |
|----------------|----------|----------|----------|----------|----------|--|

| | | | | | | |
|----------------|----------|----------|----------|----------|----------|--|
| REVENUE | 0 | 0 | 0 | 0 | 0 | |
|----------------|----------|----------|----------|----------|----------|--|

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Alison M. Elgee, Director
 Division: Division of Budget Review

Phone: 465-3568
 Date: 2/20/90

Approved by Commissioner: _____
 Agency: _____

Date: _____

Distribution (by preparer):

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



④
140384
billfile
in H.J.ord

February 23, 1990

Anchorage Star of the North
Chamber of Commerce

Members of the Alaska State House

Dear Representative:

Enclosed is testimony presented on behalf of the Anchorage Chamber of Commerce at the House Judiciary Committee's public hearing teleconference held on February 23, 1990.

We hope you give thought to our remarks as you prepare to vote on this very critical issue.

Sincerely,
THE ANCHORAGE CHAMBER OF COMMERCE

H. Hunt

Horace C. Hunt, Jr.
President

HCH/jas

Enclosure



Anchorage • *Star of the North*
Chamber of Commerce

Testimony

Anchorage Chamber of Commerce
Legislative Affairs Committee
State Spending Reduction Subcommittee

Before

House Judiciary Committee
Public Hearing Teleconference
February 23, 1990

o n

State Spending Reduction Legislation

I am D.J. Moon, Chair of the Anchorage Chamber of Commerce State Spending Reduction Subcommittee of the Legislative Affairs Committee. I am accompanied by Chamber Board member Doug Stark. The Anchorage Chamber represents more than 1200 businesses with an employee base of more than 38,000.

The message I carry today is a simple one and is spelled out in Anchorage Chamber Resolution 89-11, "...Be it resolved, that the Anchorage Chamber of Commerce urges the State Legislature to decrease the operating budget 8% or more each year for the next five years, including, if necessary, popular entitlement programs."

What we are asking you to do however, is not as easily done as passing a resolution. We recognize that each of you in the Legislature will receive intense pressure from all fronts to cut or preserve certain portions of the existing State budget.

We empathize with the difficulty of the decisions you will face because we in the business community must make similar tough decisions daily if our businesses are to thrive.

There are organizations which have devoted substantial effort to analysis of the existing budget and have specific recommendations for areas of savings for you to review as you deliberate. We urge you to recognize the concern for Alaska's future shown in their efforts.

The Board and membership of the Chamber will be thanking you personally and publicly for your positive efforts to rein in spending. You will have our resounding support as you do so even though we know we will not like all of the decisions you will be making.

I offer you the services of the Chamber in providing what assistance we can to help your constituents understand the gravity of the problem we all face and the difficulty of your task in solving the problem.

We will be copying my remarks to all of your colleagues and we look forward to working with each of you. Thank you for the opportunity to share our views with you and to offer our support.



Cold Weather Contractors, Inc.

4797 Business Park Blvd., Building I, Suite 4
Anchorage, Alaska 99503-7143
(907) 561-1289 Fax 561-6104

February 20, 1990

Representative Randy Phillips
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Dear Rep. Phillips,

I am truly delighted with HB 384. This single piece of legislation, if enacted, could do more to positively effect the future of Alaska than anything the legislature has done since the initiation of the Permanent Fund.

This bill would send a strong positive message to the people of Alaska, the business interests currently in Alaska and those anticipating locating in Alaska. The message to Alaska's population is that we are serious about managing our future, not becoming a victim of it. To business we would proclaim that we are now willing to provide an environment for business expansion and development, unlike the tax and burn message sent by last years' legislative strategy.

As this bill indicates, controlled spending will result in stable taxation. Along this line I have never seen a case where more taxation has resulted in an increase of any desired activity.

Keep up the good work Randy, you certainly have my support.

Sincerely,

Randall D. Kowalke
V.P. Corporate Development

cc: Rep. Virginia Collins
Rep. Loren Leman
Rep. Jim Zawacki

RDK/tw

Being an ex-police officer, I have many times sat in on indictments and have testified before jurors. Never have I witnessed such flagrant disregard for proper judicial behavior.

The district attorney himself, Mr. Dwayne McConnell, who seldom tries cases any longer, wants a conviction so badly he will try this case himself, instead of leaving it up to assistant D.A.'s.

— Walt Kodiak

Halt runaway spending

Rep. Randy Phillips (letter, Feb. 7) outlined his proposal to reduce state spending by \$150 million over each of the next five fiscal years resulting in a sustainable state budget of about \$1.65 billion. His proposal is contained in HB 384.

Efforts by Rep. Phillips, and other solons, to achieve a sensible state-spending level are to be commended, and more importantly, supported.

The Anchorage Chamber of Commerce, in its Resolution 89-11, has called for, "the state legislature to decrease the operating budget 8 percent or more each year for the

Los Angeles Times
next five years, including, if necessary, popular entitlement programs."

I support the chamber's position, and legislative efforts to that end, and am copying this letter to my representatives in Juneau to inform them of my views.

I urge all chamber members, and other citizens, to express their concern about state spending and to encourage actions to bring expenditures to a more realistic level.

— D.J. Moon

Salesman was greatest

How can Sam Dennis (letter, Feb. 1) possibly complain about the new \$400,000 fiber-optic, state-of-the-art-changeable-display sign on the north end of Anchorage. He saw it work.

We are often headed toward Girdwood in adverse weather conditions and ours never says anything, not even "Have a nice day."

We think they should sell advertising and have a format like the sign at the Sears parking lot. At least it is entertaining. Perhaps enough revenue could be generated

Students discover Anchorage n

□ The following letters are a selection of those written by fifth- and sixth-graders in Judy Campbell's gifted class at Chinook Elementary School.

the acid rain problem before it ruins this planet.

— Amy Carleton
Sand Lake Elementary

Might ruin Earth

I'm concerned about the environment and I think something should be done. We should stop the problem before it begins to get too big like L.A. The lowest level of acidic rain was pH 5.6 the highest pH was 4.9. Our rain is not as acidic as the Lower 48. People think they won't hurt the environment, but electric companies who burn coal should take more precautions. If we don't do anything we will ruin the Earth.

— David Fairbanks
Sand Lake Elementary

Develop public transportation

We have been taking acid rain samples with 12 other schools throughout the U.S. and the U.S.S.R. Among others the worst causes of acid rain are automobiles, airplanes and factories. Our average pH is 5.2 which is slightly acidic. Quite a few people do not know about the acid rain problem. I suggest the city start cutting down on factories that produce acids. And start on a public transportation system like trains and subways. Start more carpools so that there are less cars on the roads.

— Steven Stick
Campbell Elementary

Walk to save energy

My partner, Melodie Jackson, and I built a rain collector and tested how much acid is in the rain that is falling in Anchorage. We found out that there is a high acidity level in Anchorage, and it needs to be stopped. We found out that most people get too lazy and drive to their friends' house instead of walking. When people could just let their hair dry by itself they have to use a lot of electricity to dry their hair by using a hair dryer. We learned about how the higher acidity level can be bad for the environment by killing the plants and animals. It even does damage to the walls of buildings and the faces of the sculptures. We need to stop

Reduce electricity use

As a student, I am concerned about our community and the rest of the country. These levels of pH are toxic to plants, animals and even us. If we do not do something about pollution and acid rain soon the government will shut down factories and many people will lose jobs. The people of this city can help bring down acid rain problems to a minimum by using car pools, bicycles, and other ways of cutting down electricity.

— Elizabeth Lininger
Campbell Elementary

ON

Star Route Mail Box

LETTERS TO THE EDITOR
16941 No. Eagle River Lp.
Eagle River, AK 99577

Cotten trashes House Bill 384

To the Editor:
Double talking Sam Cotten is at it again. The man who claims he's for reduced government spending has trashed a bill that would do just that. Rep. Randy Phillips' House Bill No. 384 would reduce \$150 million from state spending every year through 1995 and then freeze it at the 1995 rate every year thereafter. It would also require a post-audit to make sure it was spent on what it was meant to be spent on, and not shuffled around in the pork barrels.

Rep. Phillips should be hailed by everyone in the state, but what does our house majority leader Cotten do with this bill? He assigns it to no less than 3 different house committees. Why don't you just take it out in the yard and bury it, Sam? Or better yet, just flush it down the toilet like you have done with the thousands of opinions you have heard on reducing state spending.

I hope everyone will call in or write in support of Rep. Phillips' bill. It is the single greatest bill that's been introduced in a long, long time. And it will send a message to Juneau and the fork-tongued Sam Cotten, that we really do want state spending reduced.

Joe Kuzma

HB 384 would reduce budget

To the Editor:
After reading Rep. Phillips letter to the editor in the Star on January 10th, I feel compelled to write.

I couldn't agree more with what Rep. Phillips said about declining revenues and what his bill, HB 384 will do. I'm sure that \$150 million reduction a year for the each of the next 5 years sounds drastic to some. But stop and consider that we have added to the budget by close to 100% since the first year of spending all revenues in 1970. It

seriously consider privatizing some state programs enabling the state to still offer the same levels of services which we have all grown accustomed, but at a much reduced cost.

Would you rather keep on wasting state money, thrown away on just about anything the legislature or governor can dream up? If so, plan to allow the bureaucracy to consume the Permanent Fund, and hit us with new taxes.

Hopefully, Rep. Phillips can keep those in his district and the rest of the state apprised of committee hearings on this bill.

Brinda Miller

Talk is cheap in Alaskan politics

To the Editor:
In Alaskan politics talk is cheap. How many times have we heard legislators tell us, "I want to cut the budget but...?" In District 15, Representative Phillips has introduced legislation to cut the budget, last year Senator Halford was thrown out of the Senate majority for not voting for increased spending and Sam Cotten, well he talks about cutting the budget. Remember last year when Sam told us the budget was cut when in fact it was not. Not only that, the current supplemental budget is over \$60 million and still growing due to things like underfunding last year's budget and paying former Governor Sheffield's impeachment trial legal fees. We have certainly told Sam enough times we want the budget cut and organizations across the state who have studied state spending and given legislators plans for reducing state spending have told him how. As Speaker of the House, Sam (if he is a leader) should be setting the House agenda and that should include reduced state spending. Sam says he wants to cut the budget and as Speaker of the House, he is in a position to do just that at least from the House side and prove to us he just doesn't talk about reduced spending. We should watch the House budget if state spending is not reduced in the House then shouldn't we elect somebody to the House besides Sam? Aren't you tired of hearing the excuses? Don't you think it's time we had somebody who did something about reducing state spending instead of talking about it? Yes, in Alaskan politics talk is cheap.

making sure that Phillips was a dead issue by giving it three committee referrals. Instead, he could come home to Eagle River and say that "something had been done to the budget. Sam gave just one committee referral each, to two other bills that allow more spending than state government spends today. Now those two bills should sail right out of committee with no problems.

It's all quite easy to understand, it's just a matter of semantics. Here's how it works, for the benefit of Cowper, we should change the name of the Permanent Fund to Non-Permanent Fund, and for Sam, we should call him our Non-Representative.

Michael Ruppert

Education fund has board support

To the Editor:
The Association of Alaska School Boards wholeheartedly supports the concept of the proposed Education Fund which will provide a dependable base of funding for Alaska's public schools in the future.

We recognize that the issue has been debated in numerous arenas, and the concerns for the Permanent Fund monies and future inflation proofing have merit. However, in our view the benefits of establishing a stable base of funding for the future education of the children of the State of Alaska by far outweighs the criticism that the Education fund has been receiving to date. As a matter of public policy, we have an obligation to provide Alaska's children with the best possible education.

It is in the best interest of all the people of Alaska that we prepare our children to face the challenges of the 21st Century. Currently, the social, economic, technological, and demographic changes that face our children are unprecedented in the course of recorded history. If we are to take full advantage of the tremendous opportunity that we have to prepare our children to be self sustaining people in the State of Alaska, we must make every move to insure quality education for these youngsters. It has been widely accepted in many arenas that the common solution to address many of the

aily Times

sins at the Anchorage Times a new publishing schedule. Publish a morning edition for final being delivered to a new appearance with new old section heads. The new uture that it will discourage

ca's largest newspaper, the frequently in advertising placements subscriptions, on which a s. Circulation numbers play r's budgets.

f a new publisher. Bill Allen, ort services to the oil industry r. Atwood had guided the small, building both the

ho he said will be charged ting of the news. Opinions Allen insists.

at competition will be fierce he Anchorage Daily News. tion to items of interest to wn as reporters strive to be generate more debate among g better informed as a result. tivity on the part of the daily ne mountain. Journalism in J. Readers will benefit from e. The search for truth will

set a goal

ate budget which adds more ount. More money would would continue to do things

1 it comes to saying whether dget. That was clearly illus- liffs, a minority member of with Rep. Sam Cotten dur- uent meeting. Rep. Phillips at "to spend, spend, spend" wants to write into law a 0 million each year for four use, says he, too, wants to s's proposal would for one s impossible to achieve. No n doomsday list.

urday's meeting seemed to was asked, can't they "just s? Where does the majority

t easy to get a majority of

ort services to the oil industry
fr. Atwood had guided the
small building both the
who he said will be charged
ting of the news. Opinions
Allen insists
at competition will be fierce
he Anchorage Daily News
tion to items of interest to
wn as reporters strive to be
generate more debate among
better informed as a result
tivity on the part of the daily
be mountain. Journalism in
d. Readers will benefit from
e. The search for truth will

set a goal

ate budget which adds more
nount. More money would
would continue to do things
n it comes to saying whether
dget. That was clearly illus
lips, a minority member of
with Rep. Sam Cotten dur
nent meeting. Rep. Phillips
at "to spend, spend, spend"
wants to write into law a
0 million each year for four
use, says he, too, wants to
e's proposal would for one
e impossible to achieve. No
ion doomsday list.
urday's meeting seemed to
was asked, can't they "just
e? Where does the majority
t easy to get a majority of
ome members of the house
lined to limit spending. The
f dollars available. It's easy
l. Doing it is something else.
; noted that the key may lie
e legislature. It is the gover
o administers the spending
y spoken. His plan calls for
e resolved. North Slope oil
reater reduction in revenue
goose on the horizon.
a shrinking economy. More
en though Alaska's popula
more and more and their
s dead ahead. Very shortly,
ips with the fact that there
ding where to cut back will
t fair to say wait until the
whether they want to keep
ternate route.
y're also ugly. You can
or big government yourself.
t your children worry about
s by picking a number and
at to expect. Especially in

Rep. Phillips should be nailed
by everyone in the state, but
what does our house majority
leader Cotten do with this bill?
He assigns it to no less than 3 dif
ferent house committees. Why
don't you just take it out in the
yard and bury it, Sam? Or bet
ter yet, just flush it down the
toilet like you have done with the
thousands of opinions you have
heard on reducing state spend
ing.

I hope everyone will call in or
write in support of Rep. Phillips
bill. It is the single greatest bill
that's been introduced in a long
long time. And it will send a
message to Janes and the fork
tongued Sam Cotten, that we
really do want state spending
reduced.

HB 384 would reduce budget

To the Editor:
After reading Rep. Phillips let
ter to the editor in the Star on
January 10th, I feel compelled to
write.

I couldn't agree more with
what Rep. Phillips said about
declining revenues and what his
bill, HB 384 will do. I'm sure
that \$150 million reduction a
year for the each of the next 5
years sounds drastic to some. But
stop and consider that we have
added to the budget by close to
100% since the first year of
spending oil revenues in 1979. If
HB 384 becomes law, it would
bring spending down to \$1.65
billion annually, we would prob
ably still be the highest per capita
spending state in the nation.
Remember too, that the \$1.65
billion annual budget does not
include any federal funds.
Federal funds will be added to
the \$1.65 billion figure, increas
ing it substantially.

Now, I know that a lot of state
government employees won't
like this idea. But, with all the
early retirement incentives
available and full coverage on
benefits, the state workforce
could be reduced painlessly. In
fact, the state offers early retire
ment incentives frequently, many
have taken advantage of this
great program. The only thing is,
while the state has done this, it
has turned right around and
hired considerably more new
state employees than it had
retired. That is not the way it's
supposed to work.
I know it's been suggested
before, but why don't we

tion to cut the budget, last year
Senator Halford was thrown out
of the Senate majority for not
voting for increased spending
and Sam Cotten, well he talks
about cutting the budget.
Remember last year when Sam
told us the budget was bad when
in fact it was not. Remember that
the current supplemental budget
is over 160 million and still grow
ing due to things like underfund
ing last year a budget and payin
former Governor Sheffield's
impeachment trial legal fees. We
have certainly told Sam enough
times we want the budget cut and
organizations across the state
who have studied state spending
and given legislators plans for
reducing state spending have told
him how. As Speaker of the
House, Sam (if he is a leader)
should be setting the House
agenda and that should include
reduced state spending. Sam says
he wants to cut the budget and
as Speaker of the House, he is in
a position to do just that at least
from the House side and prove
to us he just doesn't talk about
reduced spending. We should
watch the House budget if state
spending is not reduced in the
House then shouldn't we elect
somebody to the House besides
Sam? Aren't you tired of hear
ing the excuses? Don't you think
it's time we had somebody who
did something about reducing
state spending instead of talking
about it? Yes, in Alaskan politics
talk is cheap.

Representatives differ in styles

To the Editor:
Without a doubt, our faithful
District 15 representative, Sam
Cotten knows what is best for his
constituents. Sam's probably a
much better representative than
what he's been credited for of
late, it's just that we constituents
need to straighten up and realize
that Sam has our best interest in
mind.

It can all be explained this
way. Sam and our other Dist. 15
representative, Randy Phillips
just have different styles of
representing us. Cotten does
what he wants to do and Phillips
introduces legislation HB384,
complying with the demands of
the majority of his constituents
who want state spending
reduced.
Because his constituents don't
really know what's best for
themselves, Sam saved us by

THE ASSOCIATION OF ALASKA
School Boards wholeheartedly
supports the concept of the pro
posed Education Fund which will
provide a dependable
funding for Alaska
schools in the future.

Let us recognize that the
debated in many
arenas, and the concern of
permanent Fund's monies
are inflation proofing
However, in our view the
of establishing a stable
for the future
education of the children of the
State of Alaska by far outweighs
the criticism that the Education
fund has been receiving to date.
As a matter of public policy, we
have an obligation to provide
Alaska's children with the best
possible education.
It is in the best interest of all
the people of Alaska that we
prepare our children to face the
challenges of the 21st Century.
Currently, the social, economic,
technological, and demographic
changes that face our children
are unprecedented in the course
of recorded history. If we are to
take full advantage of the
tremendous opportunity that we
have to prepare our children to
be self-sustaining people in the
State of Alaska, we must make
every move to insure quality
education for these youngsters. It
has been widely accepted in
many arenas that the common
solution to address many of the
problems that we face in the
future is, in fact, education.
However, with the prospect of
declining revenues and increased
education costs, it becomes more
and more difficult to fulfill the
obligation we have to our
children.

In the coming months, you
will be receiving information
regarding the Education Fund
proposal. We hope that all of
Alaska's citizens will carefully
study the question, and come to
agree that our children and their
education must be the first
priority of our state. Establishing
an Education Fund is critical to
guaranteeing that we can provide
them with the best education in
the future.

We applaud Governor Cowper
for his farsightedness and con
cern for the future of our
children and our state and
encourage everyone to lend their
support to this proposal.
Carl F.N. Rose
Executive Director
Association of Alaska
School Boards

2/15/90

Dear Randy:

Let it be known I'm
behind your HB 384 150%.

I'm sick of seeing tax
dollars fund that Bastion
of Waste - our state government.

CUT THAT BUDGET
and restore responsibility
to government.

Jim Dace

Testimony Submitted to Reps. Phillips and Collins Supporting HB. 384

Randall H. Reviere, D. Eng.
2628 Redwood St.
Anchorage, Alaska 99508

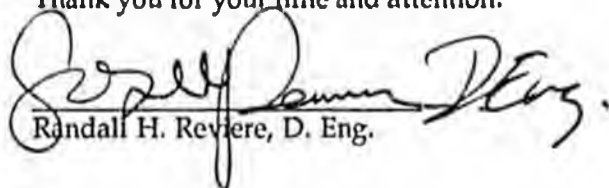
Long and medium term forecasting is one of the most important and difficult requirements for prudent management of any large enterprise; troops of highly compensated executives have this responsibility in the business world, where the turbulence of competition can wipe out the short-sighted in a very short time. Fortunately, in Alaska, this forecasting is made much easier by the relative simplicity of the dominant source of cash for the state: Prudhoe Bay. Furthermore, Prudhoe is a finite resource, and of the roughly 10 billion recoverable barrels that were present at discovery, roughly 7 billion have been produced. Prudhoe was particularly remarkable in that it stayed on plateau production as long as it did....but, that's a good news - bad news situation: the rapid pace of recovery didn't increase the size of the fundamental resource, so there is less production left for the future. The odds against finding another Prudhoe in Alaska and being able to develop it in a timely manner if found are stupendously large. Winning two \$10 million lotteries is more likely.

Because oil field production is relatively predictable compared with other endeavors, various parties will claim they can make accurate forecasts of the production rate 3 or 4 years down the road. Do not be fooled by their confidence, because it is much more likely that the estimates are optimistic than pessimistic with respect to Prudhoe. A simple analogy to Prudhoe is a large soft-drink in an opaque container consumed rapidly with a straw; until the air breaks into the straw from the bottom, any extrapolations of drinking performance would have the drinker drinking forever. When the air hits the bottom of the straw, it's just about over. So it is with Prudhoe, and there is very little that anyone can do about it.

So it is for the glory days of ballooning state budgets. We can all be thankful that the Permanent fund sopped up a great deal of the excess money the state received. Hopefully it will remain there, properly managed, helping raise the standard of living in our state. Failure to plan for the winding down of the state's grand spending spree will no doubt result in worse dislocations than any that have occurred in the past. HB 384 is a wise and prudent step in the direction of reigning in the perpetual fiscal incontinence that has squandered so much of the oil wealth of the past 14 years. My only observation is that it does not go far enough...while it represents a definite attempt to apply the brakes to a freight train heading full speed toward a rail-stop, it needs to be made tougher by providing that any excess funds received beyond the planned scaled down budgets be placed in the permanent fund, off limits to any new project schemers.

Ultimately non-renewable resource areas go bust, and without renewable activities to provide a basis for the economy of the future, Alaska will revert to something resembling it's pre-oil economy as well, with no oil industry and a tiny state government. The least the state can do now is plan to move all of the eventually-to-be-unemployed state employees outside, purchase a number of excess dwellings equivalent to those previously occupied by the servants of the state, and restore them to the wetlands from which they came.

Thank you for your time and attention.


Randall H. Reviere, D. Eng.

Testimony on House Bill 384 to the House Judiciary Committee

Jonathan Jordan
10248 Jamestown Drive
Anchorage, AK 99507
564-4663

I want to express my opinion as a citizen on House Bill 384, the only House bill that, to my knowledge, will actually result in needed spending level reductions by the State of Alaska. I am sorry that I was unable to attend the public hearing on this bill, but previous work commitments prevented me from attending the Judiciary hearing on Friday, February 23 at 1:15 pm.

It is well known that this state has, by far, the largest budget on a per capita basis of all fifty of the United States. At \$2.4 billion dollars, Alaska's budget for fiscal 1990 was approximately \$4500 for each and every one of its citizens. Recent figures and studies show that the next highest state spending is about **ONE HALF** of this amount and the average per capita of all states is **ONE THIRD** of this amount (see ISER Fiscal Policy Papers). The higher cost of living in Alaska only can account for a very small portion of this difference. The spending frenzy has been around since the days the oil wealth hit from Prudhoe Bay. It is also well known that this oil bonanza will not be around much longer, despite the optimistic predictions of the Governor's Revenue Department. It is imperative that action be taken **NOW** to plan for the future.

If you wait until the day of reckoning, when oil revenue has already dropped below state expenditure levels, before you act on reducing state spending, it will be necessary to take **draconian** action in a one or (with any luck) two fiscal year period to **massively curtail** spending. This will cause untold harm to the Alaska economy, sending it into a tailspin as bad as the 1986-88 recession in Alaska. As stated in the ISER Paper #3, nobody would wish this upon their worst enemy, let alone on their own constituents and citizens. But by implementing a **steady, but consistent level of moderate to small budget cuts**, the pain from reduced state spending will be minimal, particularly if a strong private sector economy is maintained by not increasing taxation levels. HB 384

accomplishes this goal by requiring small cuts of only \$150 million per year, or approximately 5-6% per year of the current budget.

I implore you, as our elected leaders, to listen to the testimony and the will of the public. **The current level of state spending is excessive and is not maintainable.** This has been affirmed in many recent public opinion surveys and reports. Your own report on the future of the permanent fund showed that the majority of people statewide responding to the survey wanted state spending reduced. Since only one quarter of the respondents were from the Anchorage area, the majority of respondents outside of Anchorage likely also wanted spending reduced. While it should not have to come down to a law to reduce the budget, it appears that this may be the only mechanism of self control.

House Bill 384 is the only bill that I have read that actually reduces spending by the state. Other bills may have been introduced, but those bills do not provide for real sustainable spending reductions. However, HB 384 itself is not perfect. I feel that Section (c) should be amended to require the legislature to ratify the expenditure of monies exceeding the mandated spending limit, rather than to permit the legislature to avoid the job by **not ratifying the mandated spending cuts.** The bill, as written, provides too much leeway for the Administration to implement its own spending levels without proper input from the Legislature. The proposed change would equitably maintain the checks and balances in our governmental budget process.

This bill, amended as proposed, meets the needs and will of the people of Alaska. Current spending levels are excessive and cannot be maintained in an era of oil production declines. By spreading out the necessary spending cuts over a five fiscal year period, sudden massive economic upheavals in the state will be avoided. The Administration and Legislature will also have the time needed to debate the difficult but required cuts in a reasonable and timely manner.

Thank you very much the opportunity to present you with this testimony.



Jonathan Jordan



NEA-ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

ANCHORAGE REGIONAL OFFICE

1411 W 33RD AVENUE
ANCHORAGE, ALASKA 99503
(907) 274-0536

JUNEAU OFFICE

105 MUNICIPAL WAY, SUITE 302
JUNEAU, ALASKA 99801
(907) 586-3090

FAIRBANKS REGIONAL OFFICE

2118 CUSHMAN STREET
FAIRBANKS, ALASKA 99701
(907) 456-4435

March 16, 1990

To: Representatives Goll and Gruenberg, Co-Chairs
Members, House Judiciary Committee

Re: Constitutional/Statutory Spending Limits

NEA-Alaska opposes any form of constitutional or statutory spending limit. Such a change would be far more than a limit on spending. It would be a limit on government and on your ability to represent your constituency and to act on their behalf and in their interests.

Tough spending decisions are never easy decisions but they must be made by our elected representatives based upon the circumstances which are current. They should not be based upon a formula driven system without regard for unique circumstances and needs.

A constitutional spending limit will have the effect of distorting subsequent spending decisions. Alaska is unique. Our problems, programs, and needs are truly different from other states. They are always dynamic.

It is predictable that they will be changing this session, next year, and in future years. As Legislators, you have a continuing need for maximum flexibility in how you chose to deal with them.

A state spending limit will do nothing more than pass along an increasing financial burden to local government. It will only serve to increase a disparity and inequity which is already glaringly evident.

In our opinion, the Alaskans who were involved in last years' "town meetings" were asking you and the Administration to have the courage to make the tough and responsible decisions on the level of programs and services which reflect our current needs and our current and projected financial resources. Such a process does not require any form of formula driven spending limit.

As Legislators you have the information, the responsibility, and the opportunity to make those spending decisions which are in the best interests of all of us. Please do so.

Thank you for your consideration of our position.

Respectfully submitted,

Bob Manners
Executive Director

Don Oberg
President

MY TURN

Just say 'No' to a constitutional spending limit

By BILL POTTER

The Alaska Legislature is presently considering a constitutional spending limit. I think this is an ill-conceived idea and hope that fellow Alaskans will also oppose such a politically motivated way to avoid making the important decisions elected officials are supposed to make.

When the Founding Fathers gathered in Philadelphia to write our Constitution, the most significant comprehensive political document the world had ever seen or has yet to see, there were many present who did not have much trust in governments or government institutions. Yet in spite of this mistrust and even fear, of government run amok, they wrote a document that placed the ultimate control, the ultimate power, the power of the purse, in the hands of the people's elected representatives.

Without money, government cannot act; with money government can act. Those Founding Fathers placed the power to act, or not to act, in the hands of the people's representatives. And when a like number of another set of Founders met in Fairbanks to draft the Alaska Constitution, they recognized the wisdom of that earlier group which had met in Philadelphia, and acted likewise. They put the ultimate power, the power of the purse, in the hands of elected representatives. And that is as it should be.

A constitutional spending limit is more than a limit on spending; it is a limit on the power of government to act. It is a limit on the power of government to protect the people; it is a limit on the power of the government to serve the people; it is a limit on the power of the government to govern.

I suspect that many people who support a spending limit are concerned about the financial future of this state, and I think that is a just and righteous concern, but as bleak as the financial future of Alaska may be, it is not as bleak or as foreboding

as it has been in times past. Any review of the first eight years of this state government's financial history will show that the financial constraints were far more severe than even the most dire predictions for the future. In spite of the lack of financial resources during those early years, the state legislature, the people's representatives, were able to balance the needs of government with the financial resources available without a constitutional spending cap.

I believe we had many wise people in our legislature during those formative, financially pressing years, but I submit that the current legislature is equally wise and equally able to balance the needs of government with the finances available. I further submit that the people of Alaska will choose an equally wise legislature in the 1990 elections which will be equally able to balance the needs that exist with the finances that will be available, and subsequent elections will result in equally wise and able representatives of the people.

I don't believe it is good government policy or good public policy, for any legislature or any other body to second-guess the intelligence, judgment, or motives of future legislative representatives.

To deny future legislatures the opportunity to use their judgment to address the issues before them with the resources available at that time smacks of, if not arrogance, a profound lack of confidence in those legislators and/or the people who elected them.

I am concerned about the future of public schools because I have devoted my life to education in this state. I am concerned about the future we offer our children, and I am concerned about the economic and social status of the elderly, and I am concerned about those for whom circumstances have cast their lot outside the mainstream of our society. I have concerns for the future and what it is that may be done to restrict the ability of our legislature

to restrict the ability of government to act to deal with the issues and needs that arise within the confines of the resources available.

Notwithstanding what I said about the wisdom and ability of past, present, and future legislatures, I am painfully aware that not all legislators have been, or are likely to be, willing to make the judgments necessary to balance needs with the financial resources available. If there is a constitutional spending limit in place, I am concerned about legislators who will take the low road by saying "I wanted to help, but our hands were tied." "I wanted good schools, but there was a spending limit." "I support you in your desire to deal with alcohol and drug abuse, but there is nothing we can do with the constitutional limits placed on the legislature."

In the interests of good public policy; in the interests of good government, I urge you to resist any constitutional spending limits. I urge Alaskans to insist that elected officials demonstrate the courage to resist the temptation to tie the hands of government's ability to act in the public interest with the resources available.

♦♦♦♦

Bill Potter has taught in Juneau for 25 years and is a member of the Education Commission of the States.

net set of r
inks to draft
in, they recog
at earlier gro
Philadelphia
ley but the
wer of the p
ected represe
It should be
A constitutio
ve than a lin

Testimony on House Bill 384 to the House Judiciary Committee

Testimony of:

Gary J. Green
2830 Kempton Hills Drive
Anchorage, AK 99516
(907) 345-7063

My name is Gary Green and I have lived in Anchorage for over five years. During this period, I have seen the size and cost of State government continue to grow according to the availability of revenue generated by the oil industry. As an engineer with an MBA degree, I have read with great interest, the first three reports on State Fiscal Policy as recently published by the Institute for Social and Economic Research at the University of Alaska, Anchorage. It is from this informed background that I am pleased to have an opportunity to speak in support of House Bill 384; a bill that, if passed, should force the state to start a long overdue cost reduction program.

But our legislators tell us that it is hard to cut the size and cost of State government. I can agree with that. But this is not a valid reason for not taking appropriate action. We all know it is hard to start a new diet. How many times have we heard "The diet begins tomorrow!" Tomorrow comes and goes, but the well intentioned diet doesn't get started. Our State government is overweight and needs to trim down. As the Institute of Social and Economic Research has reported, the external and internal symptoms have been carefully examined and the diagnosis has been made. Our state government weighs about 3.1 times the national average, after cost of living adjustments. The prescription is simple. Pass H.B. 384 and make the state government go on a forced fiscal diet to get rid of its bureaucratic fat.

Other than our state bureaucrats, who make about 25% more than the national average for state employees, is there anyone who truly benefits from the high calorie diet that our state legislature has been on?

Are the people of Alaska getting 3.1 times the national average level of service provided to residents of other states? I don't believe that, and if any of our state legislators believe that, then maybe they have been swallowing the propaganda being disseminated by the state employees union representatives. When you listen to them, it sounds like they are both overworked and underpaid. I would agree that too many of them are engaged in meaningless "make work" tasks, but I have met only a few employees that I felt were underpaid.

If House Bill 384 is passed with the \$150 MM per year cost reductions through the year 1995, we would still have a state budget of approximately \$1.65 Billion, which would be still be about 2.1 times the national average. This sounds like a reasonable goal short term goal to me. The public opinion polls being taken around the state also indicate an overwhelming mandate for this legislature to cut the size and cost of our state government now, in the magnitude and manner called for by this legislation. Let's put State government on a forced fiscal diet throughout the decade of the 90's. We do not need more government at an ever greater expense, but rather less government and more productive people who genuinely contribute to Alaska's share of the Gross National Product. Let's get going and pass House Bill 384. In this election year, I think it is safe to say that I and several thousand other voters will not vote for any candidates who fail to support H.B. 384 or similar alternative legislation. Thankyou for allowing me this opportunity to provide my testimony.



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

REPRESENTATIVE RANDY PHILLIPS
HOUSE DISTRICT 15
(907) 465-4949

P.O. Box V
State Capitol
Juneau, Alaska 99811

Memorandum

TO: Representative Max F. Gruenberg
Co-Chair, House Judiciary Committee

Representative Peter Goll
Co-Chair, House Judiciary Committee

FROM: Representative Randy Phillips *R.C.P.*

DATE: February 21, 1990

RE: Back-up for House Bill 384;
"An Act relating to an appropriation limit; and
providing for an effective date."

Here is back-up information on HB 384. This bill is designed to create an automatic mechanism that would reduce the state general fund budget by \$150 million per year in each year from F.Y. 1991 to F.Y. 1995, from approximately \$2.4 billion in F.Y. 1991 to \$1.65 billion in F.Y. 1995.

I have attached the the following materials for your consideration:

1. "The Alaska Fiscal Gap", Oliver Scott Goldsmith, ISER Fiscal Policy Papers, No. 1, August 1989, Institute of Social and Economic Research, University of Alaska Anchorage
2. "Facts and Fables of State Spending", Oliver Scott Goldsmith, Lee Gorsuch and Linda Leask, ISER Fiscal Policy Papers, No. 2, October 1989, Institute of Social and Economic Research, University of Alaska Anchorage
3. "Alaska's Potential Tax Revenues", Oliver Scott Goldsmith, et al, ISER Fiscal Policy Papers, No. 3, February 1990, Institute of Social and Economic Research, University of Alaska Anchorage
4. A copy of the current spending limit statute. AS 37.05.540
5. A copy of the spending limit calculations from legislative finance, based on current law as of 2-16-90.
6. State of Alaska, et al, v. Fairbanks North Star Borough and Fairbanks North Star Borough School District, No. S-22122, 2141. Supreme Court of Alaska, May 6, 1987, 736 Pacific Reporter, 2d Series, pp 1140-1145

7. Fairbanks North Star Borough and Fairbanks North Star Borough School District v. State of Alaska, et al, No. S-2254, Supreme Court of Alaska, May 6, 1988, 753 Pacific Reporter, 2d Series, pp 1158-1161

Items 1, 2 and 3 speak to the need for HB 384. Items 4 and 5 relate to the current statutory appropriation limit. Items 6 and 7 speak to the authority for executive impoundment and legislative ratification of the impoundment. Additionally I have included copies of letters in support of this bill. If you have any further questions, please do not hesitate to call me. Your cooperation is appreciated.

RANDY PHILLIPS
 State Representative
 P.O. Box 770142
 Eagle River, Alaska 99577
 (907) 694-4949

1990
Report to the People
 REP. RANDY PHILLIPS
 Alaska House of Representatives



While in Session:
 P.O. Box V
 Juneau, Alaska 99811
 (907) 465-4949

1990 LEGISLATIVE QUESTIONNAIRE

THANK YOU FOR PARTICIPATING IN MY 1990 LEGISLATIVE QUESTIONNAIRE. OF THE 10,800 QUESTIONNAIRES MAILED, 1,741 OR 16.1% WERE RETURNED. THE RESULTS ARE INDICATED BELOW. PERCENTAGES EXPRESSED IN EACH ANSWER REPRESENT A PERCENT OF THE TOTAL ANSWERING THAT QUESTION AND NOT A PERCENT OF THE TOTAL RETURNED.

1. ABORTION

Last year the United States Supreme Court in Webster v. Reproductive Health Services ruled that state legislatures could restrict abortions.

A. Should Alaska restrict a woman's access to abortions? YES 34% NO 66% 1733 TOTAL ANSWERS

B. Should the state spend state general fund dollars to provide abortions for women who are eligible for state public assistance programs? YES 43% NO 57% 1697 TOTAL ANSWERS

2. MARIJUANA

The Alaska Supreme Court, in the 1975 Ravin case (which was decided based, in part, upon the 1972 voter-approved constitutional amendment regarding right to privacy), allowed the possession by an adult of up to 4 ounces of marijuana in one's own home. However, possession of any amount is prohibited by current federal law. There are proposals before the legislature concerning the recriminalization of marijuana as well as a petition question which will be placed on the 1990 ballot.

Should the possession and/or use of up to 4 ounces of marijuana in one's own home be legal or illegal in Alaska?

LEGAL 32% ILLEGAL 68% 1719 TOTAL ANSWERS

3. EDUCATIONAL ENDOWMENT FUND

Governor Cowper has proposed a constitutional amendment that, beginning in 1991, would dedicate at least 40% of the earnings of the Permanent Fund to be placed into an Educational Endowment Fund. Income earned from the Educational Endowment Fund would be appropriated to fund public elementary and secondary education in Alaska.

This endowment would have an impact on the Permanent Fund earnings, which provides for inflation-proofing of the Permanent Fund and the amount of Permanent Fund dividends paid to Alaskans. By the year 2000, the absence of inflation-proofing would reduce the Permanent Fund value by approximately 25%. The projected individual Permanent Fund Dividend check with and without the Educational Endowment Fund would be:

| Year | Without Endowment | With Endowment |
|------|-------------------|----------------|
| 1995 | \$1,038 | \$ 982 |
| 2000 | \$1,390 | \$1,074 |
| 2005 | \$1,733 | \$1,075 |

Should the Educational Endowment Fund be adopted? YES 27% NO 73% 1701 TOTAL ANSWERS

4. STATE EMPLOYEES

Negotiations are currently being conducted with various unions representing state employees. The Governor is currently proposing that no pay raises be granted for state employees. Some unions are asking for a 4.5% raise this year and as much as a 5% raise during the next two years.

A. Should state employees be granted a pay increase? YES 31% NO 69% 1697 TOTAL ANSWERS

B. Currently, most state employees work a 37.5 hour work week as negotiated in labor contracts.
Should state employees work a 40-hour work week with no increase in pay?
YES 66% NO 34% 1654 TOTAL ANSWERS

5. STATE BUDGET

The following indicates state general funding levels for various state departments in fiscal year 1990. A fiscal year runs from July 1 to June 30. The chart below does not include supplemental appropriations or reappropriations.

Please indicate whether the department should have MORE funding, LESS funding or the SAME level for FY 1991 as it received in FY 1990. (Please check one per category)

| Department | FY 1990 (millions of dollars) | FY 1991 | | | <u>1593 TOTAL ANSWERS</u> |
|------------------------------------|----------------------------------|------------------|-------------------|-------------------|---------------------------|
| | | More | Less | Same | |
| Governor's Office | \$ 16 | <u>1%</u> | <u>67%</u> | <u>32%</u> | |
| Administration | \$148 | <u>1</u> | <u>77</u> | <u>22</u> | |
| Law | \$ 17 | <u>20</u> | <u>32</u> | <u>48</u> | |
| Revenue | \$ 12 | <u>6</u> | <u>40</u> | <u>54</u> | |
| Education | \$626 | <u>24</u> | <u>31</u> | <u>45</u> | |
| Health & Social Services | \$298 | <u>20</u> | <u>40</u> | <u>40</u> | |
| Labor | \$ 10 | <u>7</u> | <u>43</u> | <u>50</u> | |
| Commerce/ Economic Dvp. | \$ 56 | <u>18</u> | <u>38</u> | <u>44</u> | |
| Military/Veteran's Affairs | \$ 7 | <u>17</u> | <u>29</u> | <u>54</u> | |
| Natural Resources | \$ 45 | <u>23</u> | <u>29</u> | <u>48</u> | |
| Fish and Game | \$ 46 | <u>22</u> | <u>29</u> | <u>49</u> | |
| Public Safety | \$ 76 | <u>29</u> | <u>20</u> | <u>51</u> | |
| Transportation & Public Facilities | \$162 | <u>16</u> | <u>40</u> | <u>44</u> | |
| Environmental Conservation | \$ 18 | <u>26</u> | <u>34</u> | <u>40</u> | |
| Community & Regional Affairs | \$123 | <u>3</u> | <u>60</u> | <u>37</u> | |
| Corrections | \$ 93 | <u>17</u> | <u>33</u> | <u>50</u> | |
| University of Alaska | \$159 | <u>17</u> | <u>36</u> | <u>47</u> | |
| Court System | \$ 39 | <u>19</u> | <u>32</u> | <u>49</u> | |
| Legislature | \$ 31 | <u>2</u> | <u>62</u> | <u>36</u> | |
| SUBTOTAL IN BILLIONS | \$ 2.0 | <u>3%</u> | <u>67%</u> | <u>30%</u> | |
| Debt Service | \$132 | <u>5%</u> | <u>43%</u> | <u>52%</u> | |
| School Debt | \$108 | <u>11</u> | <u>34</u> | <u>55</u> | |
| Student Loans | \$ 10 | <u>19</u> | <u>35</u> | <u>46</u> | |
| Capital Projects | \$133 | <u>11</u> | <u>54</u> | <u>35</u> | |
| Oil Spill Cleanup | \$ 20 | <u>15</u> | <u>53</u> | <u>32</u> | |
| TOTAL IN BILLIONS | \$ 2.4 | <u>6%</u> | <u>65%</u> | <u>29%</u> | |

State Employees:

FY 90: 16,337.5 full time; 3,321 part time; 1,327 temporary = \$666 million total payroll
(Included within the \$2.4 billion operating budget)

6. STATE BUDGET

Alaska receives 85% of its revenues from oil production. Oil production is in a stage of steady decline which will reduce future state revenues. What actions do you think the legislature should take to balance the state budget? (Please check ONE).

57% Reduce Spending 3% Raise Taxes 30% Some of Both 1717 TOTAL ANSWERS

If you selected REDUCE SPENDING, select only 1 of the following as ways to reduce spending.

52% Reduce revenue sharing to municipalities 37% Reduce aid to education
83% Reduce number of state employees 43% Reduce Health and Social services
65% Reduce revenue for capital improvement projects

1137 TOTAL ANSWERS

If you selected RAISE TAXES, select only 1 of the following as ways to raise taxes:

47% Increase special severance, property and corporate income taxes on the oil industry
24% Increase other business taxes 47% Institute statewide sales taxes
22% Institute statewide property taxes 47% Re-establish personal income tax

59 TOTAL ANSWERS

If you selected SOME OF BOTH, please select only 1 of the following to show some of both ways:

26% Reduce revenue sharing to municipalities 38% Increase special severance, property and corporate income taxes on the oil industry
7% Reduce aid to education 34% Institute statewide sales taxes
47% Reduce number of state employees 40% Increase other business taxes
15% Reduce Health and Social services 13% Institute statewide property taxes
35% Reduce revenue for capital improvement projects 23% Re-establish personal income tax

521 TOTAL ANSWERS

7. CAPITAL IMPROVEMENTS

What ONE capital improvement (i.e., road, sewer, water, school, park, etc.) do you feel our district needs? Please be as SPECIFIC as possible. PLEASE LIMIT YOURSELF TO THE ONE PROJECT THAT YOU FEEL SHOULD HAVE THE HIGHEST PRIORITY FOR FISCAL YEAR 1991.

Project: MOST MENTIONED GENERALLY WAS "ROADS"
MOST MENTIONED SPECIFICALLY WAS "HILAND BRIDGE PROJECT"

8. GENERAL COMMENTS

Please make any general comments in this section:

MOST PREVALENT COMMENT WAS A DESIRE TO SEE THE STATE BUDGET REDUCED.



Official Business

Alaska State Legislature

P.O. Box V
State Capitol
Juneau, Alaska 99811

DISTRICT 15 HEARING SCHEDULE
1990

SATURDAY, FEBRUARY 10, 1990

- 11:00 AM - MULDOON ELEMENTARY SCHOOL LIBRARY
515 CHERRY STREET
ANCHORAGE, AK
- 4:00 PM - CHUGIAK-EAGLE RIVER LIBRARY
11801 BUSINESS BOULEVARD
EAGLE RIVER, AK

SATURDAY, MARCH 17, 1990

- 11:00 AM - MULDOON ELEMENTARY SCHOOL LIBRARY
515 CHERRY STREET
ANCHORAGE, AK
- 4:00 PM - CHUGIAK SENIOR CENTER
MILE 21, OLD GLENN HIGHWAY
CHUGIAK, AK

SATURDAY, APRIL 7, 1990

- 11:00 AM - MULDOON ELEMENTARY SCHOOL LIBRARY
515 CHERRY STREET
ANCHORAGE, AK
- 4:00 PM - CHUGIAK-EAGLE RIVER LIBRARY
11801 BUSINESS BOULEVARD
EAGLE RIVER, AK

FOR FURTHER INFORMATION, CONTACT:

Representative Randy Phillips
465-4949

Representative Sam Cotten
465-3711

Senator Rick Halford
465-4958

Senator Tim Kelly
465-3822

Chapter 58

1 the change in population for purposes of this subsection shall be
2 based on an annual estimate of population by the Department of Labor.
3 The determination of the change in inflation for purposes of this sub-
4 section shall be based on the Consumer Price Index for all urban
5 consumers for Anchorage prepared by the United States Bureau of Labor
6 Statistics. The amount of money received by the state that is subject
7 to the appropriation limit includes the balance in the general fund
8 carried forward from the preceding fiscal year.

9 (c) If the legislature determines that the money subject to the
10 appropriation limit received by the state in a fiscal year is less
11 than the maximum permitted to be appropriated under (b) of this sec-
12 tion, up to 25 percent of the balance of the budget reserve fund may
13 be appropriated to the general fund.

14 (d) The Department of Revenue shall manage and invest assets of
15 the budget reserve fund in the manner set out for the management and
16 investment of the assets of the general fund under AS 37.10.070.
17 Income from investment of the budget reserve fund may be appropriated
18 to the fund each year by law.

19 (e) Notwithstanding other provisions of this section, appropria-
20 tions may be made from the budget reserve fund needed by the governor
21 to meet a disaster. In this subsection, "disaster" has the meaning
22 given in AS 26.23.230.

23 * Sec. 2. AS 37.05.159 is repealed.

24 * Sec. 3. AS 37.05.156 added by sec. 1 of this Act applies to fiscal
25 year 1988 and fiscal years thereafter.

26 * Sec. 4. This Act takes effect July 1, 1986.



LAWS OF ALASKA

1986

Source

SCS CSIB 513(Fin)

Chapter No.

58

AN ACT

Relating to a budget limitation and to reserve funds; and
providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1, LINE 9

Approved by the Governor: May 31, 1986
Actual Effective Date: July 1, 1986

AN ACT

Relating to a budget limitation and to reserve funds; and providing for an effective date.

* Section 1. AS 37.05 is amended by adding a new section to read:

Sec. 37.05.156. BUDGET RESERVE FUND; APPROPRIATION LIMIT. (a)

There is established as a separate fund in the state treasury the budget reserve fund. The budget reserve fund consists of appropriations to the fund. Money received by the state that is subject to the appropriation limit under (b) of this section and that exceeds that limit, may be appropriated to the budget reserve fund.

(b) Except for appropriations to the permanent fund or for Alaska permanent fund dividends, appropriations to the budget reserve fund, appropriations of revenue bond proceeds, appropriations required to pay the principal and interest on general obligation bonds, and appropriations of money received from a nonstate source in trust for a specific purpose, including revenue of a public enterprise or public corporation of the state that issues revenue bonds, appropriations from the treasury made in a fiscal year may not exceed appropriations made in the preceding fiscal year by more than five percent plus the change in population and inflation since the beginning of the preceding fiscal year. For purposes of applying this limit an appropriation is considered to be made in the fiscal year in which it is enacted and a reappropriation remains attributed to the fiscal year in which the original appropriation is enacted. The determination of

---REVISED---

1990 SESSION STATUTORY APPROPRIATION LIMIT CALCULATION
GENERAL FUND AND GENERAL FUND/PROGRAM RECEIPTS
BASED ON A.S. 37.05.540

APPROPRIATIONS ENACTED IN FY89

| | | |
|--|---------|---------|
| Operating | 2,032.5 | |
| Capital | 132.8 | |
| Loans | 10.0 | |
| G.O. Debt | 120.4 | |
| Other Debt | 12.1 | |
| Special Appropriations | | |
| Ch 117 Sec 206, Oil/Hazard Fund | 32.0 | |
| Ch 13, Oil/Hazard Fund | 20.0 | |
| Science & Technology Endowment | 34.0 | |
| Ch 62, Business Incentive Training | 0.3 | |
| Ch 103, Arctic Winter Games | 0.1 | |
| Supplementals (for FY89 and prior years) | 91.2 | |
| Supplementals (for FY88 and prior years) | 55.9 | |
| TOTAL APPROPRIATIONS | | 2,541.3 |

EXCEPTIONS TO THE APPROPRIATION LIMIT

| | | |
|---|--------|--------|
| G.O. Debt Retirement | -120.4 | |
| Reappropriations | | |
| Ch 117, Sec 35, Foundation | -3.5 | |
| Ch 117, Sec 195, PCE Grants | -1.8 | |
| Ch 117, Sec 204, DCAP | -0.4 | |
| Science & Technology Endowment (Enacted FY88) | -34.0 | |
| TOTAL EXCEPTIONS | | -160.1 |

TOTAL APPROPRIATIONS SUBJECT TO LIMIT 2,381.2

Multiply by 5% plus the change in population and inflation 1,0794

1990 SESSION APPROPRIATION LIMIT 2,570.3

APPROPRIATIONS REQUESTED - 1990 SESSION (Subject to Spending Limit)

| | | |
|--|---------|---------|
| Operating | 2,063.1 | |
| Capital | 228.5 | |
| Loans | 13.7 | |
| School Debt | 107.8 | |
| Other Debt | 12.1 | |
| Special Appropriations | | |
| Oil/Hazardous Fund | 27.0 | |
| Supplementals (for FY90 and prior years) | | |
| HB 428 | 61.5 | |
| HB 464 | 48.8 | |
| HB 453 | 0.9 | |
| HB 459/SB 424 | 8.6 | |
| New Legislation | 10.0 | |
| TOTAL REQUESTED APPROPRIATIONS | | 2,582.0 |

BALANCE OF SPENDING LIMIT OVER APPROPRIATIONS -11.7

Assumptions: "An appropriation is considered to be made in the fiscal year in which it is enacted" All appropriations included in the FY89 base are those signed into law during that fiscal year, whether it relates to FY89 or FY90. Differences between this calculation and the 1/24/90 version of the spending limit computations are a result of the identification of the actual enactment date of the supplemental appropriation for FY88 (signed by the Governor on 7/8/88). Debt Retirement - The statute refers to general obligation bonds as exceptions to the spending limit. In the more strict interpretation of this statement we would not exclude any other debt. Railbelt Energy Fund expenditures are shown as general funds subject to the spending limit.

FY90 SPENDING LIMIT COMPUTATION
MULTIPLICATION FACTOR

PERCENTAGE
CHANGE

SET BY STATUTE

5.00

CHANGE IN POPULATION

Source: Greg Williams, Dept. of Labor, Research and Analysis

| | |
|------|----------------|
| 1988 | 531,000 |
| 1989 | <u>534,400</u> |
| | 3,400 |

0.64

CHANGE IN INFLATION

Source: Dept. of Labor, Research and Analysis
CPI - Urban Consumers - Anchorage

| | |
|--------------------|--------------|
| First half of 1988 | 108.4 |
| First half of 1989 | <u>110.9</u> |
| | 2.5 |

2.30

TOTAL

7.94

1989 SESSION STATUTORY APPROPRIATION LIMIT CALCULATION
 GENERAL FUND AND GENERAL FUND/PROGRAM RECEIPTS
 BASED ON A.S. 37.05.540

APPROPRIATIONS ENACTED IN FY88

| | | |
|--|---------|---------|
| Operating | | |
| FY89 | 1,973.1 | |
| Capital | | |
| FY89 | 88.2 | |
| FY88 (signed by Governor 7/23/87) | 88.5 | |
| Loans | | |
| FY89 | 16.7 | |
| FY88 (signed by Governor 7/23/87) | 1.0 | |
| G.O. Debt | | |
| FY89 | 135.6 | |
| Other Debt | 11.8 | |
| Special Appropriations | | |
| Science & Technology Endowment (Sec 1, Ch 5, FSSLA 87 repealed & reauthorized at Sec 189, Ch 173, SLA 88) | 100.0 | |
| Ch 10, SLA 88, Jobs Bill | 75.2 | |
| Ch 137, SLA 88, Circumpolar Health Studies | 0.3 | |
| Ch 171, SLA 88, Enforcement of Alcohol Laws | 0.2 | |
| Supplementals (for FY88 and prior years) | 8.6 | |
| TOTAL APPROPRIATIONS | | 2,499.2 |

EXCEPTIONS TO THE APPROPRIATION LIMIT

| | | |
|---------------------------|--------|--------|
| G.O. Debt Retirement FY89 | -135.6 | |
| TOTAL EXCEPTIONS | | -135.6 |

TOTAL APPROPRIATIONS SUBJECT TO LIMIT 2,363.6

Multiply by 5% plus the change in population and inflation 1.0499

1989 SESSION APPROPRIATION LIMIT 2,481.5

APPROPRIATIONS - 1989 SESSION (Subject to Spending Limit)

| | | |
|---|---------|---------|
| Operating | 2,026.8 | |
| Capital | 132.8 | |
| Loans | 10.0 | |
| Other Debt | 12.1 | |
| Special Appropriations | | |
| Oil/Hazardous Fund (Prior Years) | 20.0 | |
| Oil/Hazardous Fund | 32.0 | |
| Supplementals (for FY88 and prior years, signed by Governor 7/8/88) | 55.9 | |
| Supplementals (for FY89 and prior years) | 91.2 | |
| TOTAL APPROPRIATIONS | | 2,380.8 |

BALANCE OF SPENDING LIMIT OVER APPROPRIATIONS 100.7

Assumptions: According to the statute "an appropriation is considered to made in the fiscal year in which it is enacted." This would require all appropriations included in the FY88 base to be any that were made during the FY88 legislative session, whether it relates to FY88 or FY89.

Debt Retirement - The statute refers only to general obligation bonds as an exception.

FY89 SPENDING LIMIT COMPUTATION
MULTIPLICATION FACTOR

PERCENTAGE
CHANGE

SET BY STATUTE

5.0000

CHANGE IN POPULATION

Source: Greg Williams, Dept. of Labor, Research and Analysis

| | |
|------|----------------|
| 1987 | 537,800 |
| 1988 | <u>531,000</u> |
| | -6,800 |

-0.0126

CHANGE IN INFLATION

Source: Dept. of Labor, Research and Analysis
CPI - Urban Consumers - Anchorage

| | |
|--------------------|--------------|
| First half of 1987 | 108.3 |
| First half of 1988 | <u>108.4</u> |
| | 0.1 |

0.0009

TOTAL

4.9883

1988 SESSION STATUTORY APPROPRIATION LIMIT CALCULATION
 GENERAL FUND AND GENERAL FUND/PROGRAM RECEIPTS
 BASED ON A.S. 37.05.540

| | | |
|--|--|----------------|
| APPROPRIATIONS ENACTED IN FY87 | | |
| Operating | | 1,846.9 |
| Capital - signed by Governor 7/23/87 | | 0.0 |
| Loans | | 19.4 |
| G.O. Debt | | 148.0 |
| Special Appropriations | | |
| Ch 32, Alaska AIDS Program | | 0.5 |
| Ch 85, Arctic Winter Games | | 0.6 |
| Supplementals (for FY87 and prior years) | | 22.6 |
| TOTAL APPROPRIATIONS | | 2,038.0 |
| EXCEPTIONS TO THE APPROPRIATION LIMIT | | |
| GO Debt | | -148.0 |
| TOTAL EXCEPTIONS | | -148.0 |
| TOTAL APPROPRIATIONS SUBJECT TO LIMIT | | 1,890.0 |
| Multiply by 5% plus the change in population and inflation | | 1.0498 |
| 1988 SESSION APPROPRIATION LIMIT | | 1,984.2 |
| APPROPRIATIONS - 1988 SESSION (Subject to Spending Limit) | | |
| Operating | | |
| FY89 | | 1,973.1 |
| Capital | | |
| FY89 | | 88.2 |
| FY88 (signed by Governor 7/23/87) | | 88.5 |
| Loans | | |
| FY89 | | 16.7 |
| FY88 (signed by Governor 7/23/87) | | 1.0 |
| Other Debt | | 11.8 |
| Special Appropriations | | |
| Science & Technology Endowment (Sec 1, Ch 5, FSSLA 87 repealed & reauthorized at Sec 189, Ch 173, SLA 88) | | 100.0 |
| Ch 10, SLA 88, Jobs Bill | | 75.2 |
| Ch 137, SLA 88, Circumpolar Health Studies | | 0.3 |
| Ch 171, SLA 88, Enforcement of Alcohol Laws | | 0.2 |
| Supplementals (for FY88 and prior years) | | 8.6 |
| TOTAL APPROPRIATIONS | | 2,363.6 |
| BALANCE OF SPENDING LIMIT OVER APPROPRIATIONS | | -379.4 |

Assumptions: According to the statute "an appropriation is considered to be made in the fiscal year in which it is enacted." This would require all appropriations included in the FY87 base to be any that were made during the FY87 legislative session, whether it relates to FY87 or FY88.

Debt Retirement - The statute refers only to general obligation bonds as an exception.

FY88 SPENDING LIMIT COMPUTATION
MULTIPLICATION FACTOR

PERCENTAGE
CHANGE

SET BY STATUTE

5.0000

CHANGE IN POPULATION

Source: Greg Williams, Dept. of Labor, Research and Analysis

| | |
|------|----------------|
| 1986 | 547,600 |
| 1987 | <u>537,800</u> |
| | -9,800 |

-0.0179

CHANGE IN INFLATION

Source: Dept. of Labor, Research and Analysis
CPI - Urban Consumers - Anchorage

| | |
|--------------------|--------------|
| First half of 1986 | 289.0 |
| First half of 1987 | <u>289.2</u> |
| | 0.2 |

0.0007

TOTAL

4.9828

| | | | | |
|---|-------------------|---------|---------|------|
| STATE OF ALASKA | | | | |
| ENACTMENT OF APPROPRIATIONS | | | | |
| GENERAL FUNDS AND GENERAL FUND PROGRAM RECEIPTS | | | | |
| YEAR OF ENACTMENT | Date of Enactment | FY87 | FY88 | FY89 |
| Ch 95, SLA 87 | 6/30/87 | | | |
| Conference Committee | | 1,632.0 | | |
| New Legislation | | 12.5 | | |
| Program Receipts | | 45.4 | | |
| Sec 19 & 20 Legal Proceedings | | 9.8 | | |
| Sec 22, Pers Svcs | | 37.7 | | |
| School Debt | | 109.5 | | |
| GO Debt | | 148.0 | | |
| Loans | | 3.7 | | |
| Ch 2, SLA 87-Disaster Relief | 3/17/87 | 0.0 | | |
| Ch 32, SLA 87-AIDS Program | 5/30/87 | 0.5 | | |
| Ch 86, SLA 87-Arctic Winter Games | 6/15/87 | 0.6 | | |
| Ch 90, SLA 87-FY87 Supplementals | 6/17/87 | 22.6 | | |
| Ch 93, SLA 87 - Student Loans | 6/17/87 | 15.7 | | |
| Ch 3, SLA 87 FSS | 7/23/87 | | | |
| Capital | | | 88.5 | |
| Loans | | | 1.0 | |
| Reappropriations-Operating | | | 2.6 | |
| Reappropriations-Capital | | | 7.6 | |
| Ch 5, SLA 87 FSS | 7/23/87 | | | |
| To budget Reserve Fund | | | 250.0 | |
| Ch 154, SLA 88 | 6/10/88 | | | |
| Conference Committee | | | 1,399.8 | |
| New Legislation | | | 2.1 | |
| GO Debt | | | 135.6 | |
| Other Debt | | | 11.8 | |
| Ch 12, SLA 88 | 3/26/88 | | | |
| Foundation | | | 461.7 | |
| School Debt | | | 109.5 | |
| Ch 172, SLA 88 - Capital | 6/17/88 | | 88.2 | |
| Loans | | | 16.7 | |
| Ch 10, SLA 88 - JOBS | 3/3/88 | | 75.2 | |
| Ch 173, SLA 88 | 7/8/88 | | | |
| Reappropriations - Operating | | | | 10.4 |
| Reappropriations - Capital | | | | 30.2 |
| Reapprop-Ch 5, SLA 87-GF* | | | | |
| FY38 Supplementals | | | | 55.9 |
| Ch 6, SLA 88 - FY88 Supplemental | 2/25/88 | | 0.3 | |
| Ch 20, SLA 88 - FY88 Supplemental | 4/22/88 | | 8.3 | |
| Ch 137, SLA 88-Circumpolar Hlth | 6/8/88 | | 0.3 | |
| Ch 153, SLA 88-Disaster Relief | 6/9/88 | | 0.0 | |
| Ch 171, SLA 88-Alcohol Laws | 6/17/88 | | 0.2 | |

| YEAR OF ENACTMENT | Date of Enactment | FY87 | FY88 | FY89 |
|------------------------------------|-------------------|---------|---------|---------|
| Ch 116, SLA 89 | 6/17/89 | | | |
| Conference Committee | | | | 1,886.8 |
| New Legislation | | | | 3.1 |
| School Debt | | | | 107.8 |
| Shared Taxes | | | | 18.6 |
| Fisheries Enhancement | | | | 10.5 |
| GO Debt | | | | 120.4 |
| Other Debt | | | | 12.1 |
| Loans | | | | 10.0 |
| Ch 117, SLA 89 | 6/30/89 | | | |
| Capital | | | | 132.8 |
| Reappropriation - Operating | | | | 5.7 |
| Reappropriation - Capital | | | | 47.4 |
| Ch 87, SLA 89-FY89 Supplementals | 6/1/89 | | | 87.7 |
| Ch 43, SLA 89-FY89 Supplemental | 5/26/89 | | | 3.5 |
| Ch 103, SLA 89-Arctic Winter Games | 6/13/89 | | | 0.1 |
| Ch 62, SLA 89-Business Incentive | 5/30/89 | | | 0.3 |
| Ch 13, SLA 89-Oil Spill | 4/12/89 | | | 20.0 |
| | | | | |
| TOTALS | | 2,038.0 | 2,659.4 | 2,563.3 |

* Original Appropriation to Budget Reserve Account, Reappropriation changed it to Science & Technology Endowment and reduced amount to \$100.0 million. Also added contingency.

security claims. Frick, acting on behalf of ARCO, sent a form to the Employment Security Division indicating the reason for Akers' discharge as insubordination in willful disregard of the employer's interest.

At trial, Akers claimed that ARCO had, in bad faith, attempted to prevent Akers from obtaining unemployment compensation. At the close of Akers' case, however, this claim was dismissed because insufficient evidence had been presented. ARCO later moved that the Frick report be removed from the jury's consideration because the unemployment compensation claim had been dismissed and because there had been no evidence connecting the content of the report to any of the individuals responsible for the discharge. The trial court rejected this argument and allowed the jury to consider the report.

ARCO argues that since none of the individual defendants had anything to do with the filing of the Frick report, this evidence could not be probative of bad faith by either those individuals or ARCO.

Akers argues that the report is attributable to ARCO. The report was ARCO's response to Akers' claim for unemployment compensation. Akers claims that since the report is attributable to ARCO, the fact that the reason for termination stated in the report was different from the reason Akers was given is relevant to the claim that ARCO acted in bad faith. "Obviously, if an employer gives inconsistent reasons for the discharge of the employee, this inconsistency casts doubt on whether reasons exist for the discharge and which, if either, is the true reason."

Although the Frick report may not be attributable to any of the individuals involved in the termination of Akers, the report was nonetheless attributable to ARCO. The fact that this report listed a reason for termination that was different from the reason Akers was previously given by ARCO is relevant to the issue of whether ARCO was acting in good faith.

3. We have reviewed the issues raised by Akers on cross-appeal and find they do not warrant

Thus, the trial court did not err in allowing the jury to consider the Frick report.

CONCLUSION

The award of punitive damages is REVERSED. In all other respects the judgment of the trial court is AFFIRMED.³



FAIRBANKS NORTH STAR BOROUGH
and Fairbanks North Star Borough
School District, Appellants,

v.

STATE of Alaska, William Sheffield Governor of the State of Alaska, Marshall Lind, Commissioner of Education, Eleanor Andrews, Commissioner of Administration, Emil Notti, Commissioner of Community and Regional Affairs, Loren Lounsbury, Commissioner of Commerce and Economic Development, Milton Barker, Acting Commissioner of Revenue, all in their official capacities, Appellees.

No. S-2254.

Supreme Court of Alaska.

May 6, 1988.

Borough and borough school district brought suit challenging the constitutionality of Executive Budget Act section pursuant to which governors withheld or reduced appropriations to state agencies in view of anticipated revenue shortfalls. The Superior Court, Fourth Judicial District, Fairbanks, James R. Blair, J., found the statute an unconstitutional delegation of legislative power. State appealed. The Supreme Court, 736 P.2d 1140, affirmed and remanded. On remand, the Superior Court concluded that later legislation was a valid

the granting of a new trial in this case.

curative act. appealed. The held that legis approving all o the governor the legislation thiorize those the governor authority to : withhold payr tions and the l vested rights . Affirmed.

1. Constitutio
Legislatio
proving gover
legislative app
tive act; legi
statute author
payment on sp
islation did no
power over ent
or limitation, l
lored only to
ments. AS 37

2. Constitutio
Legislatio
proving restri
when governo
appropriations
rights of loc
thus, legislati
litical subdivi
serting due p
claims against
local governm
to receipt of r
fectively plac
judiciary, whic
to possess th
37.07.080(g)(2)
14.

1. Former Gov
tive Order No.
1141. A very
der No. 91, w
per in Decem
poses of conve
tive actions he
nor."

2. We decided
However, we g