

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672

6118 HOUSE STATE AFFAIRS

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

Mary Van Nimwegen

HB 353

House State Affairs

2/13/90

HOUSE COMMITTEE ON STATE AFFAIRS

RECAP OF
HB 353

Practice of Public Accountancy

Received May 6, 1989
by Rep. Boyer and Boucher

Heard February 13, 1990
Heard March 22, 1990

Adopted CSHB 353 (SA) March 22, 1990

Passed Out of Committee March 22, 1990
1 Do Pass
3 No Recommendation

TABLE OF CONTENTS

HB 353: Practice of Public Accountancy

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CSHB 353 (SA)
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Commerce & Economic Development
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March 22, 1990

HOUSE COMMITTEE REPORT

(7)

Date Referred: May 6, 1989

FURTHER REFERRALS: LABOR & COMMERCE

Date of Committee Action: _____

The STATE AFFAIRS Committee considered:

HB 353

HOUSE BILL NO. 353

[PRACTICE OF PUBLIC ACCOUNTANCY]

"An Act relating to public accountancy; and providing for an effective date."

RECOMMENDATIONS:

- be replaced with CSHB 353(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 LED
- zero fiscal note _____
- zero with analysis _____

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

SIGNING DO PASS:

[Signature]

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>[Signature]</u>		<input checked="" type="checkbox"/>	
<u>[Signature]</u>		<input checked="" type="checkbox"/>	
<u>[Signature]</u>		<input checked="" type="checkbox"/>	

[Signature]
Chairman's Signature

Item 3

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Economic Dev.
Title: An Act relating to public BRU: Occupational Licensing
accountancy; and providing for an effective date
Sponsor: Representatives Boyer and Boucher Components: _____
Requestor: House State Affairs

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	0
TRAVEL	9.0	9.0	9.0	9.0	9.0	9.0
CONTRACTUAL	4.0	4.0	4.0	4.0	4.0	4.0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	13.0	13.0	13.0	13.0	13.0	13.0
CAPITAL	0	0	0	0	0	0
REVENUE	62.0	62.0		62.0		62.0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (GF/PR)	13.0	13.0	13.0	13.0	13.0	13.0
TOTAL	13.0	13.0	13.0	13.0	13.0	13.0

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

The bill makes a number of amendments to the public accountancy licensing statutes. The fiscal impact of this bill stems from: (1) requiring a minimum of four board meetings each year; and (2) the need to adopt regulations concerning education and experience requirements, and to establish criteria for the quality review program. (CONTINUED)

Prepared by: Jennifer Strickler, Administrative Officer Phone: 465-2144
Division: Occupational Licensing Date: 2/12/90

Approved by Commissioner: Larry Mercurieff Date: 2/12/90
Agency: Department of Commerce & Economic Development

Distribution (by preparer):

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

**CONTINUATION OF FISCAL NOTE
FOR HB 353**

The operating budget request of the department already provides for two meetings of the Board of Public Accountancy. Travel funds provided in this fiscal note will fund two additional meetings to fulfill the minimum requirement of four meetings as required in Section 3.

The funding in contractual services will cover costs to provide public notices of meetings and regulations, teleconferences for public hearings, printing needs, and other communications costs.

Revenues: Currently, expenditures of the board exceed revenues generated from licensing fees. In the past, at least three board meetings were held each year although revenues did not cover its expenses. Therefore, the mandate of four meetings each year will require an increase in licensing fees to support the board's activities.

This fiscal note reflects a license fee increase of \$120 (\$60 per year) paid by 500 active licensees and \$10 (\$5 per year) paid by 200 inactive licensees. Although the fee increase will be recommended to the board in FY 90, it is conceivable that the increase will not take effect until FY 91 and each renewal thereafter. The increase will be sufficient to cover the \$13.0 identified in this fiscal note and to cover the current deficit by bringing fees closer to covering board costs.

S E C T I O N A L A N A L Y S I S

CS HB353 (STA)

Sec. 1. Adds a policy statement to AS 08.04, relating to public accountancy.

Sec. 2. Amends membership appointments and qualifications of the board. Instead of 5 certified public accountants or public accountants and two non public members, the board will consist of 5 certified public accountants or public accountants, one accountant who is not certified, and one public member.

Sec. 3. Requires that the board of public accountancy to hold at least four meeting per year.

Sec. 4. Effective April 26, 1991, (according to sec. 16), establishes educational and experience requirements for licensure. Requires a four year degree and 2 or 3 years of experience, depending on concentration of studies.

Sec. 5. Effective April 25, 2004, (according to sec. 17), establishes new educational and experience requirements for licensure. Phases in additional post-baccalaureate study so the total educational program includes at least 150 hours.

Sec. 6. Allows an applicant to take an examination before completing educational requirements.

Sec. 7. Effective April 26, 1994, (according to sec. 18), establishes a minimum requirement related to retesting.

Sec. 8. Sets new requirements related to retesting and allows board waiver in particular cases. Also, effective April 26, 1994, (according to sec. 18), establishes a minimum passing requirement for testing.

Sec. 9. Allows the board to establish a quality review program.

Sec. 10. Allows the board to impose sanctions for failure to satisfactorily pass a quality review.

Sec. 11. With exceptions, prohibits an unlicensed person from

issuing a report on financial statements of another person, firm, organization, or governmental unit. Requires board to adopt a form of acceptable language for compilation reports for use by unlicensed persons or firms under this section.

Sec. 12. Sets new requirements related to partnership posing as accountants or auditors.

Sec. 13. Sets new requirements related to use of title with corporate name.

Sec. 14. Sets parameters for confidentiality of communications with a public accountant.

Sec. 15. Adds new definitions related to other sections of the bill.

Secs. 16 - 18. Special effective dates.



UNIVERSITY OF ALASKA FAIRBANKS

School of Management
Fairbanks, Alaska 99775-1070

RECEIVED

FEB 20 1990

Item 4

February 15, 1990

The Honorable Red Boucher
The Honorable Mark Boyer
Alaska House of Representatives
Juneau, Alaska

Dear Messrs. Boucher and Boyer:

I regret to report that we have been unable to reach a consensus within Alaska's accounting community on House Bill 353. The State Board has engaged in discussion with both the Alaska Society of Independent Accountants and the Alaska Society of Certified Public Accountants since the teleconference committee hearing on Tuesday, but to no avail. Neither side will budge from their positions on the composition of the Board. I don't see how any compromise on this issue could satisfy both groups. As a matter of fact, the positions seem to be hardening as now both sides have engaged lobbyists to "protect their interest."

I believe the State Board of Accountancy speaks for the public interest in this matter. We view this Board composition question as a relatively minor issue especially when examined in the context of the entire bill. Allow me to elaborate on the Board's view of the important provisions of this bill.

1. The bill brings our statute up to date. Our Accountancy Act was written 1960. At that time public accountants issued only audit reports or unaudited reports. Now public accountants issue review and compilation reports as well as audit reports. This bill would specifically reserve review reports (which offer some limited assurance) to licensed accountants while allowing non-licensed accountants to issue compilation reports (which offer no level of assurance.) This would bring Alaska into conformity with most other states, while protecting the livelihood of non-licensed accountants. More importantly, the bill would explicitly reserve to licensed individuals the right to offer assurance on the fair presentation of financial statements. Such individuals have exhibited through the licensing process the professional expertise to offer assurance.

The bill would also bring our statute up to date in other sections such as the purpose language which was adopted from the American Institute of Certified Public Accountants (AICPA)/National Association of State Boards of Accountancy (NASBA) model act.

2. Quality Review has been the principal NASBA concern over the last several years. Now the AICPA has a requirement for mandatory quality review, but all licensed CPAs are not members of the AICPA. The provisions of this legislation tie closely to the AICPA program to insure that AICPA members are not burdened with a duplication of programs, and insures that all licensees are subject to a quality review program. The legislation mandates a level playing field for all CPAs and protects the public interest by insuring that all CPA firms engage in quality review programs.

3. Alaska is one of a very few states that does not require a baccalaureate degree for licensure. I think it's well past the time that a baccalaureate degree be required. Following the AICPA/NASBA lead, this bill also provides for a post-baccalaureate requirement (150 university credits) in 2004. I feel that these increased educational requirements will be beneficial to our state in several respects.

A. As the technical requirements of generally accepted accounting principles and generally accepted auditing standards have proliferated in recent years it has become obvious that a baccalaureate degree is necessary for entrance into the profession. An increase in the educational requirements assures the level of professionalism the public has a right to expect from licensed individuals.

B. The 150 hour requirement would increase the educational effectiveness of the accounting programs within our universities. For example, each unit within the University of Alaska system would be obliged to review its accounting curriculum to organize a 150 hour program. A change in statute would give each unit the political authority necessary to engage in such an exercise. I think the result would be a significant improvement in accounting education in our state.

C. Hopefully, each unit of our university system would draw upon the expertise and experience of the accounting community as their accounting curricula are revamped. Such a process would strengthen the link between academe and the accounting profession in our state.

The question we now face is whether to give up on all these positive aspects of the bill because of the disagreement over the composition of Board membership. I understand the legislature's reluctance to become involved in controversy. You will not receive much public appreciation from passing this legislation and you may well incur the wrath of individuals who could cause you considerable political damage. I would still urge you to pass a bill in this session of the Legislature. Perhaps the Board Composition section could be taken from this bill and inserted in a new bill. That would allow the State Board's bill to be considered on its merits, while allowing the Board Composition question to be considered separately. Another alternative might be to have your State Affairs Committee vote the Board Composition question up or down after listening to the arguments from both sides. However the bill might proceed from this point forward, I want to thank both of you and your staffs, specifically Christine Underwood and Dennis Burns, for the time, energy, and interest you devoted to the bill.

At the February 1, 1990 meeting of the State Board of Accountancy, the Board did unanimously vote to endorse the Committee Substitute to HB 353. This week two members of the Board were replaced by new Governor appointees. No vote has been taken by the revised Board membership on any position we might take on the current impasse. The thoughts in this letter represent my position on these matters though I do believe they represent the feelings of a majority of the current Board. They should be viewed from that perspective and not as the official position of the State Board of Accountancy.

If I can be of any additional assistance, please do not hesitate to call on me.

Sincerely,



Tom Bartlett, CPA
Associate Professor of Accounting
Chair, Alaska State Board of Accountancy

cc: Members, Alaska State Board of Accountancy
Brian Tinker, Alaska Society of CPAs
Dave Stephenson, Alaska Society of Independent Accountants

Alaska State Legislature

REPRESENTATIVE
MARK BOYER

VICE-CHAIRMAN, HOUSE
HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

MEMBER, HOUSE LABOR AND
COMMERCE COMMITTEE

CHAIR, CHILDREN'S CAUCUS



House of Representatives

FAIRBANKS

1098 LAKEVIEW TERRACE
FAIRBANKS, ALASKA 99701
(907) 456-6473

JUNEAU

P.O. BOX V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3466

February 22, 1990

Mr. Tom Bartlett, CPA
Chair, Alaska State Board of Accountancy
UAF, School of Management
Fairbanks, Alaska 99775-1070

Dear Tom:

Thank you for your letter dated February 15, 1990. I am sorry to hear that no consensus has been reached relating to composition of the Board members. At the time of the hearing, I understood that the State Board was in support of our proposed committee substitute; this is even stated in your letter. It is unfortunate that only the negative aspects perceived of the bill were brought up in the committee hearing.

I understand the implications of not reaching a compromise that is acceptable to the both the Alaska Society of Independent Accountants and the Alaska Society of Certified Public Accountants. Perhaps the best solution is to let the State Affairs Committee vote on the legislation after it hears both sides' arguments relating to the bill.

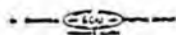
I will contact you when CSHB 353 (STA) is scheduled for its next hearing. Your opinions are appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Mark Boyer".

Mark Boyer
Representative

FAIRBANKS 20B





Representative H.A. "Red" Boucher

Chairman House Committee on State Affairs • Special Committee on Telecommunications
Member Labor & Commerce Committee • Chairman Commission on the Future of the Permanent Fund

February 24, 1990

Mr. Brian Tinker, President
Alaska Society of CPA's
1300 E. 68th, Suite 210
Anchorage, Alaska 99518

Dear Mr. Tinker:

I recently received a letter (attached) from Tom Bartlett which indicated that a consensus has not been reached within Alaska's accounting community regarding HB 353. That disagreement appears related to the Board composition issue.

Mr Bartlett indicated in his letter that, while the disagreements over the Board structure appeared to be at an impasse, he believed that to be a minor issue relative to the importance of the overall proposed law.

It would be very helpful to know how your members feel about HB 353. For example, have you polled all of your members regarding their support of HB 353 excluding the issue of the Board seat? If a poll was taken, would you be willing to provide the results of that poll to the State Affairs Committee for their consideration?

Thank you for your help in this matter, and I will look forward to hearing from you soon.

Sincerely,

H. A. "Red" Boucher
Representative

cc: Kevin Walsh, Legislative Committee, CPA Society
Members, State Board of Accountancy
Dave Stephenson, Ak. Society of Independent Accountants
Representative Mark Boyer

ASCPA

Alaska Society of Certified Public Accountants

March 20, 1990

The Honorable H.A. "Red" Boucher
Chairman House Committee on State Affairs
Room 102 Capitol
Box V
Juneau, Alaska 99811

Dear Mr. Boucher:

Thank you for your letter requesting information about our member's feelings about HB 353.

I am sorry that we caught you off guard during the February testimony on this bill. Our office was not notified about the hearing until 3pm on Monday prior to the Tuesday morning hearing.

The Alaska Society of CPAs (ASCPA) had worked very hard with the Alaska State Board of Accountancy (ASBA) during the summer and fall of 1989 to draft a committee substitute bill that we both could support. As part of this process, the ASCPA formally surveyed its membership in August 1989 to determine what the legislative issues were and what they would support and what they would not. This draft was completed December 18, 1989 and reflects the results of that survey. It was my understanding that it had been submitted to your committee. I now believe that you may not have seen it and therefore I have faxed your office a copy. Apparently, at the ASBA in Juneau on February 2-3, 1990, the Alaska State Board was informed by members of the Alaska Society of Independent Accountants (ASIA) that they would fight to defeat this legislation unless two changes were made. The ASBA negotiated those changes at that meeting without our consent and submitted the committee substitute dated 2/3/90. The ASBA informed us they had done this because the bill would otherwise not pass and they felt these were minor changes. Our survey clearly indicated that our members would not be in support of the two changes. We informally resurveyed our members by phone and found that upon reflection and after our having gone through the joint drafting process with the ASBA, our members were even more adamantly against these two changes than the original survey had indicated.

Immediately after the hearing, at the request of the ASBA, we agreed to a teleconference meeting with the ASBA, ASIA, and ourselves to try and come to an agreement. Just prior to the meeting an ASIA representative informed the ASBA that they would not participate in the teleconference as they felt it would be a

waste of their time since they were not willing to compromise on these two issues.

The two issues are:

1. The designation of a seat on the ASBA solely for an "unlicensed accountant".
2. The requirement that the ASBA have a regulations project and provide regulatory language for use by "unlicensed and unregulated accountants" for use in issuing compiled financial statements.

The ASCPA opposes the designation of a seat on the ASBA solely for an unregulated class of accountants. We believe that they should be able to fulfill any of the public designated seats. We understand that an AG ruling exists indicating that current statutory language precludes their appointment to such a seat. Accordingly, we agreed to the correction of this by adding Section 08.04.021 on page two of the 12/18/89 draft indicating that ANY person not licensed under this chapter shall be eligible for appointment as a public member.

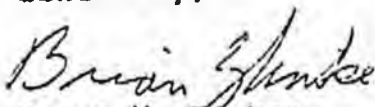
The statutory requirement that a regulations project provide regulatory language for what they have termed, but not defined, as "unlicensed accountants" would create a second class of accountants. These accountants would be totally unregulated but would be able to cite statutes and regulatory authority for their financial statement cover letters. This issue has arisen in many states over the years across the nation. For the most part it has been defeated. We have informally surveyed those states where such a statute has been passed and they tell us that they wish there was some way they could change it back because it has really caused them problems.

Other than these two changes, made without our consent, the ASCPA still supports the 12/18/89 joint draft with the ASBA.

I have tried to briefly summarize the critical issues and events. I have available for detailed background and support for the issues and events.

If I can be of any further assistance, please give me a call. I will participate in the teleconference hearing 3/22/90.

Sincerely,


Brian M. Tinker
President

CC: Representative Mark Boyer

Enclosures: 12/18/89 CS HB 353 draft.

ASCPA

Alaska Society of Certified Public Accountants

March 20, 1990

The Honorable Mark Boyer
Box V
Juneau, Ak. 99811

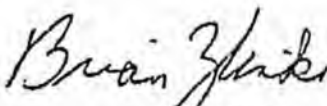
Dear Mr. Boyer:

On behalf of the Alaska Society of CPAs I would like to apologize for any inconvenience brought about by our unexpected testimony on the hearing on CS HB 353. I have also written Representative Boucher regarding this matter and have enclosed a copy of that letter for your reference. It explains in more detail the chain of unfortunate events which led to the testimony the day of the hearing.

Please be assured that the Alaska Society of CPAs is desirous of having good laws and regulations concerning the licensure and practice of CPAs. We worked long and hard with the Alaska State Board of Accountancy to arrive at the joint 12/18/89 committee substitute draft. We will still support that draft under your sponsorship as we originally agreed. We do not feel that the 12/18/89 version in any way restricts the practice or endangers the livelihood beyond the current statutes of any nonregulated or unlicensed accountant. It does in fact, as outlined in the letter to Representative Boucher, attempt to clarify that the Governor can appoint any person not licensed to the public seats on the Alaska State Board of Accountancy. This would include unlicensed accountants.

We remain open to discussion and working towards positive legislation concerning licensees. If I can be of any assistance, please call or write.

Sincerely,



Brian M. Tinker
President

CC: Representative Boucher

Enclosures: Letter to Representative Boucher
12/18/89 joint draft with ASBA

REPRESENTATIVE
C.E. "SWACK" SWACKHAMMER

Alaska State Legislature



House of Representatives

SOLDOTNA

312 TYEE STREET
SOLDOTNA, ALASKA 99699
(907) 262-7841

JUNEAU

BOX V
JUNEAU, ALASKA 99811
(907) 485-2689

March 1, 1990

James A. Arness, CPA
P.O. Box 1061
Kenai, AK 99611

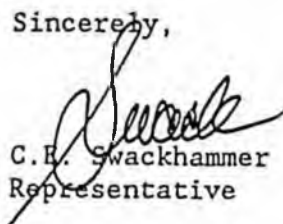
Dear Mr. Arness:

Thank you very much for your letter stating your opposition to House Bill 353, practice of public accountancy.

I understand the bill is experiencing some difficulty in the House State Affairs Committee concerning composition of the board. I will follow the bill's progress. I will also share a copy of your letter with the State Affairs Committee for their review as they work on this bill.

Thank you, again, for relaying your concerns regarding this legislation.

Sincerely,


C.E. Swackhammer
Representative

cc: State Affairs Committee w/encl.
CES/lsg

Item 4

Alaska State Legislature

WHILE IN SESSION
PO BOX V
UNEAU ALASKA 99811
907 465-3779
HOUSE MAJORITY LEADER



HOME ADDRESS
PO BOX 169
KENAI ALASKA 99811
907 282-9366
DISTRICT 5

Representative Mike Navarre

MEMORANDUM

TO: Representative "Red" Boucher, Chairman
State Affairs Committee

From: Representative Mike Navarre

Date: March 13, 1990

Subject: House Bill 353, An act relating to the practice of public accountancy

I have enclosed a letter from a long-time CPA and friend from the city of Kenai. I found his comments relative to House Bill 353 interesting and thought you and your committee might find them useful.

If you or your committee wish any additional information regarding the comments of these letter please feel free to contact me.

JAMES A. ARNESS
CERTIFIED PUBLIC ACCOUNTANT
P. O. BOX 1061
KENAI, ALASKA 99611
907 283-4700

RECEIVED

FEB 25 1990
February 22, 1990

Mike Navarre
Alaska State Legislature
PO Box V
Juneau, Ak 99811

Dear Mike:

The purpose of this letter is to express my concern with house bill number 353. As I understand HB353, all self employed certified public accountants operating within the State of Alaska as a proprietorship, partnership or corporation would be required to periodically undergo a peer review by an authorized certified public accounting firm.

I would like to list the results of such legislation that I feel to be contrary not only to members of the profession but also to the general public.

First, I have not been able to find evidence that there have been a significant number of complaints by the general public, business community or third party users of information prepared by my profession to indicate a need for this legislation. These types of problems are most prevalent during difficult economic times. As Alaska has experienced severe economic hardship in the last several years, it would seem that this has been a period in which such problems, if they exist, would have been large in number and easy to identify.

Second, this legislation would require all firms to contract with these firms qualified to provide peer reviews and pay for the service. As this is a new program, it is difficult to determine the cost per unit. I would expect fees for small firms, such as mine, to incur cost somewhere in the neighborhood of \$5,000. per review. Such a cost is inflationary and difficult for

the smaller firms to absorb. In addition, it appears that if this bill became law the individual practice units would still be responsible for any problem which may arise, not the State Board of Public Accountancy.

Third, the results of such a review is that the practicing firm will be allowed to continue to practice or would be precluded from the preparation of audited or reviewed financial statements. Such a legislated authority provides the reviewer with the arbitrary authority to deprive the CPA from his or her ability to produce an income. Such an arbitrary authority could lead to the willful elimination of practice units. The effect of such a restraint of trade would be to restrict the number of practice units allowed to provide this type of work. This would make the process of selection of an accounting firm less competitive and probably increase the fees by the remaining practicing units.

Fourth, the concept of peer review has been in affect for some time. As I understand, most large firms are already involved in having their firms reviewed in some form by an outside firm. Therefore, this legislation is directed at the smaller practicing units. I would estimate that the effect of this legislation would apply to no more than fifty practice units currently operating within the state.

The concept of peer review was first presented by the American Institute of Certified Public Accountants several years ago. The program was not successful as only the larger firms who are involved in the type of work which provided a need for this service and can properly amortize such a cost participated. The AICPA is now making peer reviews mandatory for membership in their organization. Throughout the nation, they are attempting to require such reviews by legislation such as HB353.

As I understand other states, such as Colorado, have rejected the idea of legislating the peer review concept and have left the decision to the individual practice units.

From my perspective, I am already controlled by a variety of factors. First, I had to pass the CPA exam and meet the required education and experience requirements in order to become a CPA.

Second, if my work is considered substandard, my clients would not return and third party users (such as banks and investors) of the financial statements I prepare would require that my clients use the services of another firm. Third, the type of work we all are involved in is limited by our size and the needs of prospective clients. Fourth, I, as well as all other CPA's, already participate in continuing education programs required to renew our certificates.

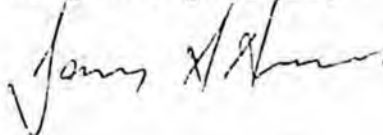
To legislate the ability of one firm (in this case a competing firm) to jeopardize or destroy the livelihood of another firm sets a dangerous concept. As stated earlier, this bill has the ability to restrict the right of individuals to do business today and in the future. This bill is inflationary and burdensome, particularly to smaller firms such as mine.

I have been a practicing CPA in Alaska since 1970. I have had my own practice in Kenai since 1973. As I believe is the case with all CPA's, I am constantly concerned with the level of my work and the financial well being of my clients. We constantly try to improve our firms as we are well aware that if we don't problems from clients, third party users of our work and other outside interest (such as the Department of Revenue or Internal Revenue Service) would destroy our practices. In my opinion, this legislation will not improve our concern to provide as good a service as we are capable of doing.

In closing, it would seem that if the legislature of the State of Alaska wishes to require a need for peer review in the accounting profession that such a requirement should be expanded to apply to all business organizations providing goods or services within the State.

In my opinion HB353 should not become law. I appreciate the opportunity to present my view and ask that this legislation not become law.

Very truly yours,



James A. Arness

Item 5

STATE OF ALASKA
THE LEGISLATURE

FOLD - STATE CAPITOL
JUNEAU ALASKA 99811
507 465 2811


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 22, 1990

SUBJECT: Interpretation of "Public Member"
(CSHB 353(State Affairs))

TO: Representative Mark Boyer

FROM: Terri Lauterbach 
Legislative Counsel

You have asked for an opinion as to whether an accountant who is not licensed under AS 08.04 would be eligible to be a "public member" of the Board of Public Accountancy established under AS 08.04.010.

In my opinion, an accountant would not be eligible to be a public member of the Board of Public Accountancy because an accountant is engaged in "the occupation that the board regulates." AS 08.01.025

The restrictions on public members of boards and commissions are contained in AS 08.01.025, which reads:

Sec. 08.01.025. PUBLIC MEMBERS. A public member of a board may not:

- (1) be engaged in the occupation that the board regulates;
- (2) be associated by legal contract with a member of the occupation that the board regulates except as a consumer of the services provided by a practitioner of the occupation; or
- (3) have a direct financial interest in the occupation that the board regulates.

In my opinion, the Board of Public Accountancy regulates the occupation of accountancy, not merely the occupation of public accountancy. If a person practices a particular type of accountancy, the board requires that the person be licensed. If a person does not have a license, the statutes administered by the board, and the regulations the board may adopt, prohibit the person from practicing the types of accountancy that require licensure. Whether licensed or

TWO ISSUES

DESIGN SEAT FOR NONCERT -
UNEMPLOYED PERSON (ACCOUNTANT)
TWO PUBLIC MEMBERS

1. BOARD COMP

REMOVE PUBLIC MEMBERS - UNEMPLOYED

NONCERT SEAT COULD BE HELD BY EMPLOYED

2. COMPILATION ISSUE

ARRIVED AT COMPROMISE - BOARD MUST

FORWARD SET LANGUAGE IN REQ

CS - SUPPORTIVE BY BOARD / NONCERT

CPA NOT IN AGREEMENT

DAVID STEVENSON ASIA

HAULEY - ED REQ? FOR CPA

A. NOT CERT - ? GROUP UNEMP

PART REQUIREMENTS, NOT IN THE BILL

DEF. NON + CPA'S

DIFF: CIA EXTENSIVE TRAINING - TESTS/STUDY

RELIABLE - DECISION MAKING

ADVOCATE

NON - PROVIDE INFO - ASSIST

PROD FIN STATEMENT - BUT

NO MORE - TWO FINANCED DUE

TO CPA

NON NOT FULLY EXCLUSIVE

CORRECTION

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

Item 5

STATE OF ALASKA THE LEGISLATURE

ALASKA STATE CAPITOL
GENERAL ASSEMBLY
407 4th Street
Juneau, Alaska 99801


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 22, 1990

SUBJECT: Interpretation of "Public Member"
(CSHB 353(State Affairs))

TO: Representative Mark Boyer

FROM: Terri Lauterbach 
Legislative Counsel

You have asked for an opinion as to whether an accountant who is not licensed under AS 08.04 would be eligible to be a "public member" of the Board of Public Accountancy established under AS 08.04.010.

In my opinion, an accountant would not be eligible to be a public member of the Board of Public Accountancy because an accountant is engaged in "the occupation that the board regulates." AS 08.01.025

The restrictions on public members of boards and commissions are contained in AS 08.01.025, which reads:

Sec. 08.01.025. PUBLIC MEMBERS, A public member of a board may not:

- (1) be engaged in the occupation that the board regulates;
- (2) be associated by legal contract with a member of the occupation that the board regulates except as a consumer of the services provided by a practitioner of the occupation; or
- (3) have a direct financial interest in the occupation that the board regulates.

In my opinion, the Board of Public Accountancy regulates the occupation of accountancy, not merely the occupation of public accountancy. If a person practices a particular type of accountancy, the board requires that the person be licensed. If a person does not have a license, the statutes administered by the board, and the regulations the board may adopt, prohibit the person from practicing the types of accountancy that require licensure. Whether licensed or

Representative Mark Boyer
Page 2
March 22, 1990

not, an accountant's practice of accountancy is regulated by the board.

See, for instance, secs. 11 - 13 of CSHB 353(State Affairs). They prohibit certain actions by unlicensed persons. So does AS 08.04.560, which is not in the bill. Under the authority of AS 08.04.630, the Board of Public Accountancy may apply to a court for an injunction against a person who violates any of these sections. That clearly involves regulation of accountants other than accountants actually licensed by the board.

The purpose behind having public members supports my interpretation of AS 08.01.025, as well as the literal language. The purpose is to ensure that persons who are not necessarily qualified technically in a particular field have a hand in regulating persons who are providing services to the public in that field. Public members provide a consumer perspective on the various boards and commissions. If AS 08.01.025 were interpreted to allow members of an occupation who were not licensed to be on the board regulating that occupation, there would not necessarily be a consumer, nontechnical perspective represented on the board; in the worst of possible situations, it could mean that a board was made up entirely of accountants (licensed and unlicensed) who merely had "turf battles" and no concern for the interests of consumers of accountancy services.

AS 08.01.025 could have been written to say that public members may not be licensed by the board they serve on; but AS 08.01.025 does not say that. While there may be plausible counterarguments, I think the better view is that "occupation" is a broader term than "licensees" and its use in AS 08.-01.025 was intentional. In the context of AS 08.04 and CSHB 353(State Affairs), the broader term "occupation" includes all accountants, regardless of whether they are licensees.

In summary, accountants are members of the occupation regulated by the Board of Public Accountancy, regardless of whether they obtain licenses issued by the board, because the practice of their occupation is restricted by laws enforced by the board and because the purpose and language of AS 08.01.025 support that interpretation. As such, they would not be eligible to be public members of the board.

Please let me know if I can be of further assistance.

TML:lmb
L10/022

TWO ISSUES

DESIGN SEAT FOR NONCERT -
UNLICENSED PERSON (ACCOUNTANT)
TWO PUBLIC MEMBERS

1. BOARD COMP

REMOVE PUBLIC MEMBERS - UNL. + UNL.

NONCERT SEAT COULD A MEMBER (EMPLOY
BY

2. COMPILATION ISSUE

ARRIVED AT COMPUD - PLU O NOW

FORWARD SET LANGUAGE IN REQ

CS - SUPPORTIVE BY BOARD / NONCERT

CPA NOT IN AGREEMENT

DAVID STEVENSON ASIC

HAULEY - ED REQ? FOR CPA

A. NOT CERT - ? GROUP UNL

NOT REQUIREMENTS, NOT IN

THE BILL

Def. NOW + CPA

Dist: CIA extensive training - TESTS/STOR

Reliable - DECISION MAKING

Advocate

NOW - PROVIDE INFO - ACCRIT

PROD FIN STATEMENT - BUT

NO MORE - TWO FUNDED USE

to CPA

NON NATURALLY
EXCLUDED

Douley

EXISTING STATUS: REQUIRES QUART
LEVEL? WHAT IF

should be not in regulation? BOARD
LANGUAGE - NOT A GOOD DRAFTING;
REQUIREMENT: WHAT IF THING CHANGE?
E.G. ?0 MAY BE SAFER THAN SCOR
#.

JIM ARNESS CPA

CONCERN

SEC. 9, PAGE 4 - PEER REVIEW PROVISION
LEGISLATE NEED FOR PEER REVIEW

PTS:

1) LG FIRM ALREADY DO THIS

SMALLER FIRMS REPORTED DOING THIS -
TO RETAIN MEMBERSHIP HAVE TO
COMPLY - ~~NAFTA~~. NSPA

Q: HAVE THERE BEEN PROBLEMS?
IMPROPER REPORTS?

- PROBLEM OF RESTRAINT OF TRADE PROBLEMS?
- WHO BECOMES LIABLE IF THERE IS
A PROBLEM - PROBLEM OF BOARD, PEER,
STATE?

TINKER

- ① 1/2000
- ② COM
- ③ ED REQUIREMENTS...

Tiuten

② CONTINUING ED - under reg, license
 CPA Accountants have to have CONTINU ED
 but not about NON-CERT'S -

③ compilation

1. Amendment #1

2. shall - "MAY" COMPILATION
 page 8

3. REMOVE ISSUE. A to get...

ASCPA's -

"SECOND CLASS OF ACCOUNTING" ANOTHER
 CLASS OF ACCOUNTANT - UNDER
 CLASS THAT HAS REPRESENTATION -
 HAS A DESIGNATED -"

NOT ISSUE OF VOTER -

Rob Board CPA's

Majority of Bill deals with clients -
enhance protection of public -
quality is secured

Agrees with Tinker area of concern -
suggest modify these areas -
can go forward -

OPPORTUNITY MEMBER

? serve public interest to have
CONCERT? - Perception of public -
have a competition report by
non licensed S - contribution on
public type of work - 2nd class
update the Watch's - ident
CPA has req. group should
clarify

BRANSON CPA

All society CPA - ... C ISSUES -
CONTROVERSY -

is that CONFUSION

TOM Martlett

Important issues:

- bring statute up to date (1960)
- Reserve CPA's to have final word
- Adopting "purpose" language
- Provisions - quality Review

- Ed Requirements - need BA degree
- 2004 Regs' outline # has
allow University system to make
adjusting

- Rep. } minor issues
- Cooper
- "

"NON-VOTING SEAT?"
MEMBER

Mike Cook

Model - Authorized - Dis Occupations
licensing

"minor grade" "passing grade"

unlicensed - public member -



Kirk's Accounting & Tax Service
Ed Kirk, Accountant

*Dennis
referred*

March 19, 1990

Representative H. A. Boucher
P. O. Box V
Juneau, Alaska 99811

Dear Representative Boucher:

A committee substitute for HB 353 (State Affairs) has been considered by the House State Affairs Committee. This CS represents revised language submitted by the State Board of Accountancy, the State Society for CPA's, and the unlicensed accountants of this state.

In its present form, the CS contains important legislation that will modernize statutes relating to the practice of public accountancy in Alaska. Provisions for quality reviews of licensees, extended educational requirements and increased required performance in testing for certification will insure an improved level of service to the public. In addition, the licensees of our state will now meet the minimum standards of other states in which they may desire to practice.

A negotiated agreement between the State Board of Accountancy and the unlicensed accountants included language regarding the composition of the State Board of Accountancy. Currently, unlicensed accountants are prohibited from holding a seat on the seven member board. An agreement was reached to require that one of the seven seats be filled by an unlicensed accountant.

Unfortunately for this important piece of legislation, there are those who strongly oppose the idea of an unlicensed accountant having Board representation. Therefore, opposition to the legislation based on that singular issue has impeded the passage of what many accountants feel is substantive legislation attempting to add significant value to the profession of accountancy in Alaska. The issue of the board seat seems minor by comparison as indicated through the compromise between the State Board and the independent accountants.

Therefore, I would request that you assist in all necessary actions toward expeditious adoption of CSHB 353 (State Affairs).

Please call on me if I can be of any assistance in this matter.

Sincerely,

Ed Kirk
Accountant

HB

365

HOUSE COMMITTEE ON STATE AFFAIRS

**RECAP OF
HB 365**

PFD Checkoff for Alc/Drug Abuse Grants

Received February 7, 1990
by Reps. Ulmer, Boyer, Ellis, Brown, Menard,
Finkelstein, Gruenberg, Koponen

Heard February 21, 1990

Adopted CSHB 365 (HESS) February 21, 1990

Passed Out of Committee February 21, 1990
3 Do Pass
1 No Recommendation

TABLE OF CONTENTS

HB 365: PFD Checkoff for Alc/Drug Abuse Grants

- Item 1: HB 365 by Reps. Ulmer, Boyer, Ellis, Brown,
Menard, Finkelstein, Gruenberg, Koponen

Adopted CSHB 365 (HESS)
- Item 2: Fiscal Note and Analysis by Dept. of Revenue
- Item 3: Memorandum from Rep. Ulmer, February 8, 1990
- Item 4: Position Paper from Dept. of Health & Social
Services
- Item 5: Letter from Don Dapcevich, January 31, 1990
- Item 6: Committee Report from HESS, February 6, 1990

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 7, 1990

FURTHER REFERRALS:

FINANCE

Date of Committee Action: _____

The STATE AFFAIRS Committee considered:

HB 365

HOUSE BILL NO. 365

PFD CHECKOFF FOR ALC/DRUG ABUSE GRANTS

"An Act relating to the alcohol and drug abuse grant fund and contributions to the fund; and providing for an effective date."

RECOMMENDATIONS:

- be replaced with CS HB 365 (HESS) 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 _____
- zero with analysis _____

- fiscal note(s) 2/7/90 • Revenue
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING:
(Check approp. column)

Do Not Pass No Rec Amend

[Handwritten Signature]

[Handwritten Signature]

[Handwritten Signature]

SIGNING:	Do Not Pass	No Rec	Amend
<i>[Handwritten Signature]</i>		<input checked="" type="checkbox"/>	

[Handwritten Signature]

Chairman's Signature

Item 1

Offered: 2/7/90
Referred: State Affairs, and Finance

6-1652J

UNDEQUANTIFIED COMMUNITIES / NON-PROFIT
① A LOT OF ENTITIES WOULD BE AVAILABLE.
② VOUCHER ACCOUNT ABUSE MAJOR PROGRAM/HEALTH RELATED

Original sponsor(s): REP. ULMER, Boyer, Ellis, Brown, Menard, Finkelstein, Gruenberg, Koponen

1 IN THE HOUSE BY THE HESS COMMITTEE

2 CS FOR HOUSE BILL NO. 365 (HESS)

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 the alcohol and drug abuse grant
7 fund and contributions to the fund; and providing for
8 an effective date."

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

10 * Section 1. AS 43.23 is amended by adding a new section to read:

11 Sec. 43.23.016. CONTRIBUTIONS FROM DIVIDENDS. The department
12 shall prepare the permanent fund dividend application to allow an
13 applicant or person applying on behalf of a minor or incompetent
14 individual to elect to have \$10 subtracted from the dividend check and
15 contributed to the alcohol and drug abuse grant fund (AS 47.37.055).
16 Contributions shall be deposited in a special dividend contribution
17 account and allocated by the department to the alcohol and drug abuse
18 grant fund, except that the department shall use money in the account
19 to pay administrative costs incurred by the department under this
20 section.

21 * Sec. 2. AS 47.37 is amended by adding a new section to read:

22 Sec. 47.37.055. ALCOHOL AND DRUG ABUSE GRANT FUND. (a) There
23 is established in the department the alcohol and drug abuse grant
24 fund, which shall be administered by the office. The fund consists of
25 money appropriated to it and donations, gifts, and grants received by
26 it. The fund may be used by the office only to make grants for alco-
27 hol and drug abuse prevention or treatment programs approved by the
28 office and for costs of administering the grant fund. Priority in the
29 award of grants shall be given to programs aimed at youth.

1 (b) The department shall by regulation establish grant eligibil-
2 ity requirements and grant application procedures.

3 * Sec. 3. This Act takes effect January 1, 1991.

Item 2

FISCAL NOTE

REQUEST

Revision Date: _____
Title: Alcohol and drug abuse grant fund and contributions to the fund
Sponsor: ULMER, Bover, Ellis, et al
Requestor: House HESS

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	24.1	11.9	11.9	11.9	11.9	11.9
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	5.0	5.0	5.0	5.0	5.0	5.0
SUPPLIES	0.2	0.2	0.2	0.2	0.2	0.2
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	29.3	17.1	17.1	17.1	17.1	17.1
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	29.3	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	17.1	17.1	17.1	17.1	17.1
TOTAL	29.3	17.1	17.1	17.1	17.1	17.1

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME	3	2	2	2	2	2
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS: See attached.

Prepared By: Ervin Jones
Division: Permanent Fund Dividend Division

Phone: 465-2323
Date: January 24, 1990

Approved by Commissioner: [Signature]
Agency: Revenue

Date: Jan 24, 1990

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

Department of Revenue
Permanent Fund Dividend Division
Fiscal Note Analysis
HB 365
January 24, 1990

No. 1
CSHB 365 (HESS)
HOUSE 2/7/90

Assumptions:

1. The bill will take effect for the 1991 permanent fund dividend year and application. It is too late to amend the 1990 dividend application.
2. There are other bills which if signed into law, would result in some form of "check-off" on the 1991 dividend application. The Department of Revenue has no insight as to which, and how many, of these bills will become law. This fiscal note is prepared on the assumption that the subject bill is the only bill of this nature which will become law. The passage of multiple bills with varying formulas will inevitably have a compounding effect. Whereas there may be savings in some areas, there will be increased costs in others.
- 3) Income from the account will not be available until FY92, and a general fund appropriation will be required in FY91. The costs of administering this law will be borne by the trust fund in FY92 and subsequent years.
- 4) The incremental cost of computer resources will result in a chargeback by the Department of Administration.
- 5) The Olympic check-off will be repealed effective December 31, 1989 by passage of SB 102.
- 6) Whereas the cost of programming changes will be a one-time cost, the cost of document review, data capture, and data processing chargeback will be continuing.
- 7) Contributions will only be honored to the extent of available funds. Garnishments and assignments will take precedence in the order established by statute. Contributions and elections will then be honored in the order listed on the form schedule, which will be in the order they become law.
- 8) The check-off will apply to both adult and child applications.

Program Summary:

The provision of a new contribution decision on the dividend application will cause additional administrative cost in several areas:

- a) The computer system will need to be changed to account for the change in the program, to establish new accounting controls and to provide for the transfer of funds to the alcohol and drug abuse grant fund (see Attachment A).
- b) Each of approximately 525,000 PFD applications will need to be visually reviewed and coded as to decision on the contribution decision. Each application will be data captured with additional attention and keystrokes expended on each positive decision.

Department of Revenue
 Permanent Fund Dividend Division
 Fiscal Note Analysis
 HB 365
 January 24, 1990

No. 1
 CSHB 365(HESS)
 HOUSE 2/7/90

1. Positions

	<u>FY 90</u>	<u>FY 91</u>
1 PPT Analyst/Programmer V, R21 @ \$6,110.86/Mo including salary and benefits for 2 months	=	\$12.2

PCN 04-1125 would be funded for an additional two months, in accordance with Attachment A. Ongoing maintenance of new programs would be accomplished by existing staff.

1 PPT Document Processor I, R7 @ \$2,340.37/Mo, including salary and benefits for 3 months	=	\$7.0	\$7.0
--	---	-------	-------

This position would assist in the manual review and coding of 525,000 applications for the new contribution decision. This position represents the equivalent of the additional time and effort.

1 PPT Data Processing Clerk I, R8, @ \$2,446.08/Mo, including salary and benefits for 2 months	=	\$4.9	\$4.9
--	---	-------	-------

This position would assist in the data capture of the additional contribution decision. The position represents the equivalent value of the additional time and effort.

TOTAL Personal Services	\$24.1	\$11.9
-------------------------	--------	--------

2. Other Expenditures:

a) <u>Travel:</u>	\$0.0	\$0.0
-------------------	-------	-------

b) Contractual:		
Data Processing Chargeback	\$5.0	\$5.0

c) Supplies:	\$0.2	\$0.2
--------------	-------	-------

d) Equipment: Use existing equipment	\$0.0	\$0.0
--------------------------------------	-------	-------

TOTAL COST	<u>\$29.3</u>	<u>\$17.1</u>
------------	---------------	---------------

Department of Revenue
Permanent Fund Dividend Division
Fiscal Note Analysis
HB 365
January 24, 1990

3. Funding: General Fund in FY91, thereafter from the special dividend contribution account.
4. Section Cost Analysis: N/A.

Computations: N/A.

Economic Impact: N/A.

Impact on Local Government: N/A.

Suggested Amendments:

- 1a. Section 1, line 13 could be amended to read, ". . . applicant or the sponsor of a child applicant to elect to have \$10 subtracted from the dividend check and . . ."
- 1b. Alternatively, a sentence could be added to Section 1 to read, "This contribution shall not be allowed on children's applications."

Discussion: There have been concerns raised in the last few months as to the legislature's intent regarding parents contributing \$10 of their children's permanent fund dividends towards any purpose. This intent could be clarified by a choice of one of the above amendments.

Attachments: Attachment A: "Summary of DP Needs"

Department of Revenue
Permanent Fund Dividend Division
Fiscal Note Analysis
HB 365
Summary of Data Processing Requirements
January 24, 1990

Wang data entry processing 75.0 hours
Includes: Data entry
Batch lists
Corrections
Wang to IBM transfer

IBM Update jobs 30.0 hours
Includes: Edits
Batch listings
Log sheets

DMS Online programs for lookup and changes 37.5 hours

Nightly Update of Changes 22.5 hours

Warrant Jobs 90.0 hours
Includes: Printing warrants with different
amounts. Include check stub messages.
Modify warrant registers as needed
for balancing.
Create new program(s) for transferring
accumulated decisions to the
alcohol and drug abuse grant fund, and to
account for the reserve necessary due to
returned and cancelled PFD warrants.

Miscellaneous
45.0 hours
Includes: Setting up test files on IBM
Systems testing
Administrative functions, i.e.
paper work required by Admin. DP
to add files and programs to tables.

TOTAL HOURS 300.0 hours

Alaska State Legislature

HOUSE OF REPRESENTATIVES



REPRESENTATIVE FRAN ULMER

MEMORANDUM

February 8, 1990

TO: Rep. Red Boucher, Chairman
House State Affairs Committee

FROM: Rep. Fran Ulmer

RE: CSHB 365, relating to voluntary contributions to the alcohol and drug abuse grant fund

CSHB 365 authorizes a Permanent Fund Dividend checkoff for substance abuse programs in Alaska. Specifically, it allows a dividend applicant the option of authorizing \$10 to be subtracted from the dividend check and deposited to a special alcoholism and drug abuse fund which will be administered by the State Office of Alcoholism and Drug Abuse.

The checkoff is entirely voluntary. Those who do not wish to participate will see no effect on their dividend check.

Over the course of the four years the Olympic checkoff appeared on the PFD application, the Olympic Committee realized an average of \$750,000 per year. The total amount contributed to the Olympics through the PFD checkoff, from 10/1/86 to 1/17/90 is \$2.817 million. I believe the high level of concern expressed by Alaskans regarding the incidence of drug and alcohol abuse we experience in our communities will result in a considerably higher contribution rate than the Olympic checkoff received. An additional million dollars would go a long way towards increasing local efforts to treat and prevent substance abuse.

The bill has been drafted to give first priority to programs for youth. The greatest financial and social returns clearly result from those strategies which alleviate drug and alcohol problems before they become severe.

Administrative costs associated with the checkoff will be borne by the new program.

District 4B — Juneau

P.O. Box V • Juneau, Alaska 99801-3100 • (907) 465-4947

Item 4

210 checkoff / TX - prevention
allow people error their concern

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

HOUSE BILL NO. 365

"An Act relating to the alcohol and drug abuse grant fund and contributions to the fund; and providing for an effective date."

Analysis

Section 1. of the Bill would have the Department of Revenue change the permanent fund dividend application form to allow an applicant to have \$10.00 subtracted from their dividend and contributed to the alcohol and drug abuse grant fund. Contributions, less an administrative fee, would be deposited in a special dividend contribution account.

Section 2. would establish a grant fund within the Department of Health and Social Service that would be administered by the Office of Alcoholism and Drug Abuse. In awarding grants the Office should place priority on programs aimed at youth. By regulation the Department is to develop eligibility requirements and application procedures.

Section 3. establishes the effective date of this legislation as January 1, 1991.

Discussion

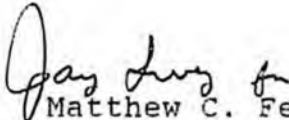
The need for additional financial resources for alcohol and drug abuse prevention and treatment services is well documented. In FY 90 grant application requests from community based organizations exceeded the amount of available funding by more than \$6,000,000. Several geographical areas of the state are unable to offer residents as comprehensive array of services as they feel are necessary due to lack of funding. Salaries in the alcohol and drug abuse grant-in-aid program are quite low according to a House Research Agency study that was conducted last year. With various budget cuts in recent years due to declining oil prices, many grant-in-aid programs are operating with less state funding now than they had available in FY 83. Of course this has resulted in fewer services being provided.

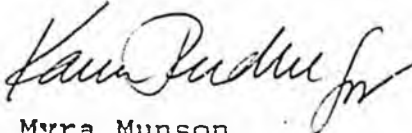
Sufficient resources for alcohol and drug abuse services are a problem in other states as well, and they too have sought new and innovative methods of raising the funding level. Florida, for example, recently instituted a .50 cent a day special charge on all automobile rentals to raise money for their

alcohol and drug programs. California is currently considering a .05 cents a drink tax on alcoholic beverages for the same purpose.

Position

The Department of Health and Social Services recognizes that abuse of alcohol and drugs is one of the most serious problems facing Alaska and that addressing problems associated with this abuse will require additional State resources. HB 365 offers a way to generate these funds. However, the Department defers to other agencies regarding the cost of implementing a permanent fund checkoff for this purpose.


Matthew C. Felix
Coordinator


Myra Munson
Commissioner

Mr. Donald Dapceвич
P.O. Box 021571
Juneau, Ak 99802

bill 365

January 31, 1990

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

Dear Representative Ulmer:

First I would like to commend you and your staff for your willingness to tackle alcohol and other drug abuse among Alaskans. House Bill 365 offers real hope for large numbers of Alaskan youth who are suffering from the devastating effects of chemical dependence.

I congratulate your insight in dedicating the funds from this revenue source to the treatment of adolescents suffering from chemical dependence. Currently hundreds of thousands of dollars from both federal and state resources are dedicated to prevention and education programs for youth. In the current legislature I understand that the democratic majority is introducing legislation that will dedicate more prevention/education monies, and without a doubt more is needed.

The problems with securing funds for adolescent treatment is a very complex one. At the core of resistance to dedicating funds for adolescent treatment is an unwillingness to accept chemical dependence as an adolescent problem. Many adults have real problems accepting the possibility of a 16 year old being an alcoholic or an addict. Most people feel that alcoholics are people over fifty who stand on our street corners drinking cheap wine. Those of us in the profession who have embraced the disease concept, understand that the age of the user of drugs and alcohol is only one of many factors of the disease and lately we are seeing more and more full-blown addicts among 14-18 year olds.

We have also learned that prevention/education programs, while helpful, should not have all of our attention any more than should prevention without adequate treatment programs for diabetes or heart disease patients.

Please do not succumb to the pressure to change this bill from treatment oriented to prevention/education oriented measure.

Sincerely,


Don Dapceвич

HOUSE COMMITTEE REPORT

Item 6

(7)

Date Referred: January 8, 1990

FURTHER REFERRALS: STATE AFFAIRS
FINANCE

Date of Committee Action: 2/6/90

The HEALTH, EDUCATION, & SOCIAL SERVICES Committee considered: HB 365

HOUSE BILL NO. 365

PFD CHECKOFF FOR ALC/DRUG ABUSE GRANTS

"An Act relating to the alcohol and drug abuse grant fund and contributions to the fund; and providing for an effective date."

RECOMMENDATIONS:

- be replaced with CS HB 365 (HESS) 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 DOR
- zero fiscal note _____
- zero with analysis _____

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

SIGNING DO PASS:

[Signature]
[Signature]

SIGNING:
(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>[Signature]</u>		X	
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<u>[Signature]</u>		X	
<u>[Signature]</u>			

[Signature]
 Chairman's Signature

H B

380

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

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- Item 6: Letter from REACH, Inc., January 11, 1990
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January 18, 1990

Item 2

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: *Ervin Jones* 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

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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 Hudson

BH:lh

Enclosures





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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

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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. Vest 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 Vest, 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
Attorney for E. J. G

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

E J G ,)
Appellant,)
v.) Case No. JAN-38-5268 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

BRIEF OF APPELLANT

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CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS
PRINCIPALLY RELIED UPON

United States Constitution

No person shall... be deprived of life, liberty,
or property, without due process of law....

U.S. Constitution, Amendment V.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Constitution, Amendment XIV.

Alaska Constitution

This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.

Constitution of Alaska, Section 1.

No person shall be deprived of life, liberty, or property, without due process of law. The right of all persons to fair and just treatment in the

course of legislative and executive investigations shall not be infringed.

Constitution of Alaska, Section 7.

Alaska Statutes

A.S. 43.23.005. Eligibility. (a) An individual is eligible to receive one permanent fund dividend each year in an amount to be determined under AS 43.23.025 if the individual applies to the department, and if on the date of application the individual

(1) is a state resident; and

(2) has been a state resident for a period of at least six consecutive months immediately preceding the date of application.

* * *

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

AS 43.23.015. Application and proof of eligibility. (a) The commissioner shall adopt regulations under the Administrative Procedure Act (AS 44.62) for determining the eligibility of individuals for permanent fund dividends....

* * *

(c) Except as provided in (d) of this section or as may be provided by regulations adopted by the department, an individual must personally sign the application for permanent fund dividends, including the certification of residency required under (b) of this section.

(d) The application and certification of residency of an unemancipated individual under 18 years of age or of an incompetent individual must

be signed by the individual's parent, legal guardian, or other authorized representative.

* * *

(g) If an individual is aggrieved by a decision of the department determining the individual's eligibility for a permanent fund dividend or the individual's authority to claim a permanent fund dividend on behalf of another, the individual may appeal that decision to the superior court in accordance with AS 44.62.560....

AS 43.23.055. Duties of the department. The department shall

* * *

(3) adopt regulations under the Administrative Procedure Act (AS 44.62) that establish procedures and time limits for an individual upon emancipation or upon reaching majority to apply for permanent fund dividends not received during minority because the parent, guardian, or other authorized representative did not apply on behalf of the individual; and

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

Alaska Administrative Code

15 AAC 23.645. APPLICATION ON BEHALF OF AN INCOMPETENT, DISABLED, OR OTHER ADULT. (a) An application for a permanent fund dividend may be filed on behalf of an incompetent adult only by the incompetent adult's guardian or conservator appointed under AS 13.26 or other similar provision of law of this state or of another jurisdiction.

(b) An application for a permanent fund dividend may be filed on behalf of a disabled adult only by the adult's spouse, parent, legal guardian, or other authorized representative.

(c) For good cause shown, the following persons may file an application for a permanent fund dividend on behalf of an adult who is neither incompetent nor disabled: (1) the adult's legal guardian; or (2) the adult's spouse, parent, or other authorized representative having a power of attorney.

(d) Evidence of the authority of the individual applying on behalf of an adult under this section must be attached to the application and the circumstances requiring the signature by someone other than the applicant must be clearly set out. The individual making application on behalf of another adult must certify to the facts underlying the adult's eligibility for a permanent fund dividend payment and must sign the application on behalf of that adult.

(e) An individual applying on behalf of another adult must comply with 15 AAC 23.625.

I. JURISDICTIONAL STATEMENT

This action is an administrative appeal from a final decision of the Department of Revenue of the State of Alaska made on April 12, 1988. Jurisdiction is conferred on the superior court by AS 43.23.015 and AS 44.52.560.

II. STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

This case presents the following issues for review:

1. Whether the Department of Revenue has violated Mr. G's rights by not having a system in place under AS 43.23.055(4) to assist people with disabilities in applying for Permanent Fund Dividends.

2. Whether the Department of Revenue has denied Mr. G equal protection of the laws in violation of the U.S. and Alaska constitutions by treating people with mental disabilities differently than minors are treated.

3. Whether the Department of Revenue has unlawfully discriminated on the basis of disability against Mr. G under AS 18.80.255(3).

III. STATEMENT OF THE CASE

A formal hearing was held by telephone by Revenue Hearing Examiner Myron W. Klein on March 23, 1988. [Record at 5] Mr. Klein found on April 8, 1988 that Mr. G was

not eligible for a 1986 Permanent Fund Dividend because no timely application had been filed for him. [Record at 9] An order of adoption of Mr. Klein's decision was signed by Hugh Malone, Commissioner of Revenue on April 12, 1988. The present action is an appeal of that decision.

IV. FACTS

E J G is an Alaskan Native who has been diagnosed as having mild mental retardation, a seizure disorder and severe mixed hearing loss. [Record at 38] In 1986 he was a resident of a Hope Cottages group home in their Intensified Learning Services division. [Record at 38] Mr. G did not wish to stay with Hope Cottages but recognized that he needed continued assistance in managing money. [Record at 39] Hope Cottages agreed to

continue to act in a fiduciary capacity for him until such time as a conservator can be appointed or such time as Mr. G determines that he is ready to manage his own financial affairs.

[Record at 39] No one applied for Mr. G 's 1986 Permanent Fund Dividend by July 1 of that year.

By October, Mr. G had moved into another facility, the Full Circle Boarding Home in Wasilla. [Record at 30] The administrator of the home, Ms. Bonnie Darnell, realized that Mr. G had not received his check at the same time as other residents and ascertained that no

application had been made. She then assisted Mr. G in making his application on December 8, 1986. [Record at 28-30a] That application was denied by Janette Hieb, PFD Specialist I on June 16, 1987 on the basis that the application was not timely filed. [Record at 31-33] Ms. Darnell assisted Mr. G in appealing that decision. [Record at 34-43]

V. APPLICABLE STANDARD OF REVIEW

The standard of review in any given case depends on the nature of the relief sought. Four standards have been recognized by the courts in interpreting AS 44.62.570. As stated succinctly in a footnote to Jager v. State, 537 P.2d 1100 (1975):

"These are the "substantial evidence test" for questions of fact, the "reasonable basis test" for questions of law involving agency expertise; the "substitution of judgment test" for questions of law where no expertise is involved; and the "reasonable and not arbitrary test" for review of administrative regulations." [Citations omitted.]

Jager at 1107, n. 23.

Here there are no questions of fact to be decided. It is agreed that Mr. G did not apply before June 30, 1986 for his 1986 Permanent Fund Dividend. The only questions here are ones of law: whether Mr. G has a right to receive his 1986 Permanent Fund Dividend because other

statutory and constitutional provisions compel that conclusion. Therefore, the substantial evidence test is not applicable.

Likewise these are not questions involving agency expertise which would require the use of the rational basis test. In Earth Resources Co., v. State, Dept. of Rev., 665 P.2d 960 (1983), the Alaska Supreme Court discussed the distinction between the rational basis test and the substitution of judgment test. The rational basis test is a deferential standard "requir[ing] a reviewing court to consider factors of agency expertise, policy, and efficiency when reviewing discretionary decisions." Earth Resources at 964-965. On the other hand,

[t]he substitution of judgment standard is applied where the questions of law presented do not involve agency expertise and, thus, a court need not take the deferential stance embodied in the rational basis test. Kelly v. Zamarrello, 486 P.2d 906, 916 (Alaska 1971). The standard is appropriate where the knowledge and experience of the agency is of little guidance to the court or where the case concerns "statutory interpretation or other analysis of legal relationships about which courts have specialized knowledge and experience." Id. Application of this standard permits a reviewing court to substitute its own judgment for that of the agency's, even if the agency's decision had a reasonable basis in law. [Citation omitted.]

Earth Resources at 965. In the Earth Resources case the court found that a question for which the Department of Revenue relied completely on court decisions, rather than on agency-related activities must be reviewed under the substitution of judgment standard rather than the rational basis standard. See also Borkowski v. Snowden, 665 P.2d 22, 27 (1983).

The court has also stated that statutory construction issues "fall into the realm of special competency of the courts" and therefore require the application of the substitution of judgment standard. Madison v. Alaska Dept. of Fish and Game, 696 P.2d 168, 173 (Alaska 1985).

Again, here, the question is one of statutory construction of AS 43.23.055(4) and AS 18.80.255(3) as well as constitutional analysis of the actions of the Department of Revenue. Agency expertise does not enter into these questions. Therefore, the substitution of judgment standard of review is required to be used in review of these questions.

In looking at the regulations at issue, Borkowski v. Snowden, supra, supports the use of the substitution of judgment standard for these regulatory questions also. An earlier case, Kenai Pen. Fisherman's Co-op. Ass'n. v. State, 628 P.2d 897, 906 (1981), supports the use of the reasonable and not arbitrary standard. As will be seen in Mr. G's

argument, use of either of these standards to review the regulations in question will compel the same result.

VI. ARGUMENT

- A. The Department of Revenue has not fulfilled its statutory obligation under AS 43.23.055(4) to assist residents of the state who because of disability need assistance to establish eligibility and to apply for permanent fund dividends.

Mr. G has a combination of disabilities which makes it difficult for him to handle adequately his own affairs. [R. at 38-42] It is well-established that Mr. G has difficulty functioning independently. In fact, the Department of Revenue deferred to Ms. Bonnie Darnell during the course of Mr. G's hearing and had her speak for him. [R. at 18] He has been a resident of two different state-funded residential facilities (Full Circle Boarding Home and Hope Cottages) which require a threshold level of impairment. See AS 47.80.900(7)¹ and R. at 36. He also receives

¹ Under AS 47.80.900(7):

"person with a developmental disability"
means a person having a disability which

(A) is attributable to

(i) mental retardation...; and

(B) constitutes a substantial handicap to the person's ability to function normally in society...

disability benefits under the Social Security Act which also require a person to be functioning at a level where they cannot work independently.² Mr. G did not apply on time for his 1986 Permanent Fund Dividend because he was not able to apply on his own behalf and had no one who could apply for him.

The Alaska Legislature anticipated that people such as Mr. G would have difficulty in making application for Permanent Fund Dividends. In enacting the Permanent Fund legislation, they specifically provided for the Department of Revenue to assist people who would have difficulty in applying. AS 43.23.055(4). The Department of

AS 47.80.900(9) goes on to define "substantial handicap" as

a disability which prevents or substantially impedes the person's participating in and benefiting from the social, economic, educational, recreational, or other opportunities generally available to peers in the community who are not similarly handicapped.

² See 42 U.S.C. §§ 416(1)(1) and 1382c(3)(A):

An individual shall be considered to be disabled for purposes of this title if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months....

Revenue has not established any procedures which would assist people with mental disabilities in knowing they are to apply or assisting them with the application process.

The Department did establish regulations at 15 AAC 23.645 which allow an application for a Permanent Fund Dividend to be filed by someone other than the applicant under certain circumstances. This is the only accommodation which the Department has made to those the legislature had sought to assist. In other words, only those disabled people who have someone already looking after their interests are contemplated under the Departmental regulations. It is difficult to see how this meets the requirements of AS 43.23.055(4).

In the decision of the Department on this matter, the hearing officer relied heavily on the regulations of the Department at 15 AAC 23.645. [R. at 8-9] Nothing was said about the statutory requirement that the Department assist disabled people in applying for Permanent Fund Dividends.

AS 44.62.030 provides:

[N]o regulation adopted is valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute.

In Kelly v. Zamarello, 486 P.2d 906 (1972), the Alaska Supreme Court dealt with this principle. They stated that first the court should look to: