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whether the regulation is consistent with and reasonably necessary to carry out the provisions conferring rule-making authority on the agency. This aspect of review insures that the agency has not exceeded the power delegated by the legislature.

Id. at 911. They go on to require that the regulation must be "reasonable and not arbitrary." Id.

Here, the regulations do not consistently carry out the provisions of the statute requiring that the Department assist people with disabilities in establishing eligibility for Permanent Fund Dividends. This is contrary to the clear statutory mandate. Therefore, the regulations which were relied upon by the Department in denying Mr. G his 1986 Permanent Fund Dividend are arbitrary and invalid and should not be applied to deny him that benefit.

B. Mr. G was denied equal protection of the laws in violation of the Alaska and U.S. Constitutions.

AS 43.23.055(3) provides for the Department of Revenue to establish procedures for individuals 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...

No such provision is made for those who because of disabilities are unable to apply on their own behalf. This is a denial of equal protection under the Alaska and U.S.

Constitutions. Alaska Const. Art I, § 1 and U.S. Const. amend. XIV, § 1.

The Alaska Supreme Court has not yet dealt with the issue of how the class of people with mental disabilities fits into the Alaska "uniform-balancing" test. This test:

place[s] a greater or lesser burden on the state to justify a classification depending on the importance of the individual rights involved.

Herrick's Aero-Auto-Agua Repair Service v. State, Dept. of Transportation, --P.2d-- (Op. No. 3309 at p. 8, April 29, 1988) (citing Alaska Pacific Assur. Co. v. Brown, 687 P.2d 264, 269 (Alaska 1984)). "The minimum burden the state must meet is the rational basis test...." Id.

This rational basis test questions whether the classification is "reasonable and not arbitrary" and rests "upon some ground of difference having a fair and substantial relation to the object of the legislation." [Citation omitted.] Under this test, we will not "hypothesize facts which will sustain otherwise questionable legislation."

Id. at 8 (citing Isakson v. Rickey, 550 P.2d 359 (Alaska 1976)). At the other end of the scale of scrutiny are those cases where fundamental rights and suspect categories are involved. In those cases, the burden upon the state becomes great to justify the classification.

The equal protection clause of the U.S. Constitution has been said to be "essentially a direction that all persons similarly situated should be treated alike." Cleburne v. Cleburne Living Center, 473 U.S. 432, 439 (1985). The same can be said of the equal protection clause of the Alaska Constitution.

In the Cleburne case, the U.S. Supreme Court declined to give heightened scrutiny to a zoning ordinance which discriminated against group homes for people with mental retardation. Id. at 441. The Court, in a lengthy discussion of mental retardation and the many legitimate forms which legislation affecting people with mental retardation takes, concluded that creating a new "quasi-suspect" class would not further the interests of people with mental retardation. Id. at 446. They were, however, quick to assert that the equal protection clause nonetheless protects the interests of people with mental retardation. Id. at 446-447.

In Mr. G 's case, we are faced with a different kind of equal protection question: can the State treat different categories of people who are unable to apply for Permanent Fund Dividends differently? If children are allowed to apply when their legal disability has been removed, it would seem that a person under an actual disability should

be able to apply for a Permanent Fund Dividend when they acquire the support to make that application possible.

Under other circumstances, childhood and disability are treated similarly by the law. For example, statutes of limitations are tolled during minority and incompetence. See AS 09.10.140. Contracts entered into by minors are voidable as are contracts entered into by a person who is incompetent. See Restatement (Second) of Contracts §§12, 14 and 15. While Mr. G has not been found to be incompetent by any court, the analogy is apt.³

Since there is no indication in the Permanent Fund Dividend Statute as to why people with disabilities were treated differently than minors, it is not up to Mr. G to speculate as to what reasons the legislature may have had. It is enough to show that he is similarly situated with all the minors who are able to later acquire Permanent Fund Dividends which were not applied for during their childhood. Therefore, he should be able to apply for and

³ There is no public agency in Alaska which files petitions for guardianship against people who may arguably need some protection. Thus, unless a disabled person has an interested family member or friend willing to go to court, the disabled person is on their own. This places legal incompetency to handle one's affairs in a strange position in Alaska--those who have supportive family and friends are the most likely to have a court-appointed guardian or conservator. People with no one continue to have no one to protect their interests.

receive a Permanent Fund Dividend check for 1986 now that he is in a position to be able to apply.

- C. The Alaska Department of Revenue has unlawfully discriminated against Mr. G in violation of AS 18.80.255.

Under 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.

By failing to accommodate Mr. G's disabilities, the Department of Revenue has discriminated against Mr. G.

This statute and its definition of physical and mental disability closely track the language of Section 504 of the Rehabilitation Act of 1973. 29 U.S.C. § 794. It has been recognized by the Alaska Supreme Court in analyzing other provisions of AS 18.80 that where the employment discrimination provisions of this law were modeled on federal law⁴, federal case law is relevant. Wondzell v. Alaska Wood Products, 601 P.2d 584, 585 (1979). In addition, the Alaska court has found that due to the Alaska legislature's strong statement of purpose (at AS 18.90.200) to eliminate

⁴ Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e.

discrimination, the Alaska statute has more "teeth" than the federal anti-discrimination statutes. Wordzell, id.

Section 504 of the Rehabilitation Act of 1973 was intended to give meaningful access to federal programs to people with disabilities. See Cook, The Scope of the Right to Meaningful Access and the Defense of Undue Burdens Under Disability Civil Rights Laws, 20 Loy. L.A. L.Rev. 1471, 1472-1479 (1987). It was recognized by Congress that it might be costly to accommodate the needs of people with disabilities. Id. at 1479.

While the Alaska State Commission for Human Rights has not yet promulgated final regulations which would shed some light on how the state will enforce these provisions of AS 18.80, it is clear that our legislature also intended to remediate some harms being done to people with disabilities. Coupled with AS 43.23.055, it is also apparent that the Alaska legislature was very concerned about the ability of Alaskans with disabilities to participate fully in the benefits of life in Alaska. The regulations promulgated by the Department of Revenue are in conflict with these statutory provisions in that they do not provide adequate accommodation for people with disabilities. They should not be enforced in a discriminatory manner by the Department of Revenue.

VII. CONCLUSION

Mr. G is entitled to his 1986 Permanent Fund Dividend. The Department of Revenue failed in its statutory obligation to assist people with disabilities in their application process. It is probable that Mr. G would have applied for his 1986 Dividend had there been a system in place to search out people who would have difficulty applying on their own. In addition, it is a violation of Mr. G's rights under the equal protection clauses of the U.S. and Alaska Constitutions to treat people with disabilities differently than minors are treated for purposes of applying for and receiving Permanent Fund Dividends. The State of Alaska should be required to have a system which treats all people similarly situated in a fair and equal manner. In addition, Mr. G's right to reasonable accommodation of his disability under AS 18.80.255(3) has been violated.

Appropriate relief in this case would allow Mr. G to receive his 1986 Permanent Fund Dividend since he meets all other requirements.

Respectfully submitted at Anchorage, Alaska this
20th day of July, 1988.

Rebecca E. Graham
Rebecca E. Graham
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

E J G ,)
)
 Appellant.)
v.)
)
 HUGH MALONE, Commissioner)
 Department of Revenue,)
 State of Alaska, in his)
 official capacity.)
_____)

Case No. 3AN-88-5266 CI

APPELLEE'S BRIEF

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Filed this _____ day of
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By: _____

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STATUTES AND REGULATIONS PRINCIPALLY RELIED ON

AS 18.80.255(3)

(3) to refuse or deny to a person any local, state, or federal funds, services, goods, facilities, advantages or privileges because of physical or mental disability.

AS 43.23.015(g)

(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. 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.

AS 43.23.055

Duties of the department. The department shall

(1) annually pay permanent fund dividends from the dividend fund;

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

(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.

AS 44.62.560

Judicial review. (a) Judicial review by the superior court of a final administrative order may be had by filing a notice of appeal in accordance with the applicable rules of court governing appeals in civil matters. Except as otherwise provided in this section, the notice of appeal shall be filed within 30 days after the last day on which reconsideration can be ordered, and served on each party to the proceeding. The right to appeal is not affected by the failure to seek reconsideration before the agency.

(b) The complete record of the proceedings, or the parts of it which the appellant designates, shall be prepared by the agency. A copy shall be delivered to all parties participating in the appeal. The original shall be filed in the superior court within 30 days after the appellant pays the estimated cost of preparing the complete or designated record or files a corporate surety bond equal to the estimated cost.

(c) The complete record includes (1) the pleadings, (2) all notices and orders issued by the agency, (3) the proposed decision by a hearing officer, (4) the final decision, (5) a transcript of all testimony and proceedings, (6) the exhibits admitted or rejected, (7) the written evidence, and (8) all other documents in the case.

(d) Upon order of the superior court, appeals may be taken on the original record or parts of it. The record may be typewritten or duplicated by any standard process. Analogous rules of court governing appeal in civil matters shall be followed where this chapter is silent, and when not in conflict with this chapter.

(e) The superior court may enjoin agency action in excess of constitutional or statutory authority at any stage of an agency proceeding. If agency action is unlawfully withheld or unreasonably withheld, the superior court may compel the agency to initiate action.

15 AAC 23.615(f)

(f) An individual who has reached majority, or who has become an emancipated minor, may apply to the department if (1) he or she was a child during the six-month period described in (a)(2) of this section, (2) a permanent fund dividend application was not filed on the individual's behalf or was not timely filed, and (3) the individual was eligible to receive a payment under AS 43.23.005 - 43.23.095. The department, in its discretion, will waive the time limit provided in 15 AAC 23.625 for that individual. A waiver of the time limit under this subsection will not extend beyond one year after the individual reaches majority or becomes an emancipated minor.

15 AAC 23.625(a)

Applications. (a) An application for a dividend payment under AS 43.23.005 - 43.23.095 must be filed before July 1 of the year of application on a form provided by the department. An application postmarked June 30 or earlier will be considered timely filed.

15 AAC 23.645

Application of 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 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 23.525.

JURISDICTIONAL STATEMENT

This is an appeal from a final administrative decision of the Department of Revenue dated April 8, 1988. This court has jurisdiction over this appeal under AS 44.62.560 and Appellate Rule 601.

ISSUES ON APPEAL

1. Whether the issues raised by G in this appeal should not be considered because they are outside the scope of record of the administrative proceeding.
2. Whether the appropriate standard of review is "substantial evidence," "rational basis," or "reasonable and not arbitrary."
3. Whether the Department of Revenue has provided sufficient assistance to disabled applicants.
4. Whether the different treatment given to minors as compared to disabled persons satisfies the equal protection clause.
5. Whether there is sufficient evidence that the regulations of the Department of Revenue discriminate against disabled persons.

STATEMENT OF FACTS

This is an appeal filed on behalf of Mr. E J G (hereinafter "G ..") following the denial of his application for a permanent fund dividend for 1986. The application was denied by the Department of Revenue, Permanent Fund Division

(hereinafter "Department") because it was filed too late. The due date for the 1986 dividends was July 1, 1986, however, G filed his application on December 8, 1986, Record (hereinafter "R") 29, along with a document entitled "Request to Reapply or File Late," in which G claimed he was unable to file during the filing period due to circumstances beyond his control. R 30.

Following the initial denial of his late application and the filing of his initial appeal, G's application was informally reviewed by Jeanette Heib, PFD Specialist I, who again denied the application. R 31-33. The sole issue at the informal review was whether G provided sufficient evidence that his failure to timely file was due to circumstances beyond his control. R 33.

G appealed again, requesting a formal hearing. R 34. In connection with that appeal, G was informed that he should state the reason for his appeal and refer to facts and supporting law. R 35. G was granted a formal hearing on March 23, 1988 before Revenue Hearing Examiner Myron Klein. At the formal hearing which G attended, he was advised that all factual information and issues were to be presented at that hearing and that any appeal from the Hearing Examiner's decision would be based on the record created at that hearing. R 13, lines 11, 12; R 14, lines 3, 4.

At the formal administrative proceeding the issues raised by G were limited to residency (R 18, 11 24, 25; R 19, 11 1, 2; R 25, 11 20-22), G's noncomprehension of the

significance of dates (R 19, 1 4), the failure of Hope Cottages, a care facility for developmentally disabled persons, to file G 's application in a timely manner (R 19, 11 5-8) and G 's failure to make a timely application not being his fault (R 19, 11 9-16). The Hearing Examiner then issued a written decision which denied G 's appeal, (R 5-9) containing the ruling that, "A late filed application may not be paid even if the reason for late filing is that a mentally retarded applicant relied on another who failed to make the application."

This superior court appeal was then filed against Hugh Malone, Commissioner of the Department of Revenue, in his official capacity. (For the purposes of this Appellee's Brief, reference to the Department of Revenue or the Department refers to the named Appellee, Hugh Malone, in his official capacity.) In this appeal G . raises claims that the Department has not complied with the mandate of AS 43.23.055(4) requiring the Department to provide assistance to disabled persons, that G was denied equal protection in view of the different treatment provided to minors as compared with disabled persons with regard to late filed applications and that the Department has discriminated against G . under AS 18.80.255(3) by denying him a dividend on the basis of his disability.

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ARGUMENT

I. ALL ISSUES RAISED BY G. . . IN THIS APPEAL SHOULD NOT BE CONSIDERED AS THEY ARE OUTSIDE THE SCOPE OF THE ADMINISTRATIVE PROCEEDING

A. The Issues Raised By G Do Not Comply With AS 43.23.015(g)

In this superior court appeal, G . . . does not raise any of the issues which he raised in the earlier administrative proceeding. All the issues he raises for this court's review are raised for the first time in this case. This is in violation of AS 43.23.015(g), which provides as follows:

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. 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.

(Emphasis added.) By virtue of § 015(g), the scope of G 's appeal is therefore required to be limited to those matters contained in the record of the administrative proceeding from which he appeals.

Section .015(g) cannot state the point more clearly. As the administrative proceeding raised only issues of residency and excuses regarding G 's failure to file, this appeal can only be limited to those issues. However, in this appeal G raises issues alleging violation of the equal protection clause and AS 18.80.255(3) and the Department's noncompliance with AS

43.23.055(4). As G did not raise these issues at the administrative proceeding, they should not be considered by this court.

B. G Should Not Raise New Issues On Appeal

As a general rule, parties cannot raise new issues on appeal in order to secure a reversal of a lower court's determination. Wickwire v. McFadden, 633 P.2d 278, 281, n.6 (Alaska 1981); Von Brimer v. Whirlpool Corporation, 536 F.2d 838, 848 (9th Cir. 1976); O'Neill Investigation, Inc. v. Illinois Employer's Insurance of Wausau, 636 P.2d 1170, 1175, n.7 (Alaska 1981); Williams v. Alyeska Pipeline Service Co., 650 P.2d 343, 351 (Alaska 1982). Furthermore, the record on appeal in this case contains no reference that G raised at the administrative proceeding the issues he has now raised in this appeal. Hence, this court may presume they were not made, Fendler v. Phoenix Newspapers, Inc., 636 P.2d 1256, 1260, N.2 (Ariz. App. 1981), and G may be considered to have waived his right to address those issues before this court. Ryeful v. Ryeful, 650 P.2d 369, 374, 375, n.16 (Alaska 1982).

While an appellate court will not consider an issue unless it has been argued in the trial court and properly raised on appeal, according to Vest v. First National Bank of Fairbanks, 659 P.2d 1233 (Alaska 1983), an appellate court may consider such an issue if it amounts to plain error as set forth in Alaska Rule of Criminal Procedure 47(b) or if it involves a question of law

that is critical to a proper and just decision and the parties have had the opportunity to brief the issue. Vest, at p. 1234, n.2; See, Buford v. State, 515 P.2d 382, 383 (Alaska 1973).

The first alternative described by the Vest court is inapplicable to our case because Alaska Rules of Criminal Procedure do not apply. The second alternative is also inapplicable because G's claims have been raised in such a factual vacuum that this court will be unable to make a reasoned decision on those claims even if it received further briefing from the parties on the status of the law. In light of the incomplete record in this case, this court should therefore not consider those issues.

Additionally, a case may not be tried on one theory of law in the trial court and upon another theory on appeal. An appellate court is therefore not obliged to review theories other than those which were presented to the trial court. O'Neill Investigation, Inc. at p. 1175, n.7, and Plancich v. State, 693 P.2d 855, 857, n.1 (Alaska 1985); Crunk v. State Farm Fire and Casualty Company, 686 P.2nd 1132 (Wash. App. 1984); Southern Pacific Co. v. Loden, 508 P.2d 347, 351 (Ariz. App. 1973).

As is evident from the record on appeal, G's arguments at the administrative level were that as a life-long resident of the state he considered he was entitled to a dividend and that the untimely filing was not his fault. After failing on those issues G has now taken a different tack and seeks to

prevail on new arguments he has raised. This court should not consider them.

The source of G's error may be that he received inadequate representation at the agency level and received the benefit of a law trained representative only in this latest appeal. However, that does not change the fact that AS 43.23-.015(g) and other well-established case law controls and requires this court to disregard the new issues.

II. APPROPRIATE STANDARDS OF REVIEW: "SUBSTANTIAL EVIDENCE," "RATIONAL BASIS," AND "REASONABLE AND NOT ARBITRARY"

The Appellee agrees that the "substantial evidence" standard should be applied to issues of fact, that the "rational basis" standard should be applied to issues of law concerning agency expertise, policy and efficiency, that the "reasonable and not arbitrary" standard should be applied to a review of administrative regulations, and that the "substitution of judgment" standard should be applied to issues of law where no agency expertise is involved. Jager v. State, 537 P.2 1100, 1107, n.23; Earth Resources Company v. State, 665 P.2nd 960, 964, 965 (Alaska 1983). However, had G had raised the arguments he now raises in this appeal in the proper manner, that is, by first raising them in the administrative proceeding, the record at hand would have most likely contained evidence and argument against which these standards of review could have been applied by this court. Thus, while these standards should be applied, they cannot be applied by reason of the paucity of the record on appeal.

For clarity of illustration, the various issues of fact, issues of agency expertise and issues pertaining to the reasonableness of the Department's regulations involved in this case are discussed in the following subheadings: III, IV, and V.

III. THE DEPARTMENT PROVIDES SUFFICIENT ASSISTANCE TO DISABLED APPLICANTS.

G raises for the first time in this case the claim that the Department has not complied with AS 43.23.055(4), which states as follows:

The Department shall
... (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.

G's claim concerning subsection .055(4) thus raises questions as to what the Department has done to follow the legislative directive, that is, what facts the Department has considered, what its experiences have been, what assistance it offers and what its policy is on the type of assistance it offers. Because G did not raise his claim concerning subsection .055(4) at the administrative proceeding, these questions were not addressed at that proceeding.

In view of the factual inquiries which must be made to make a reasoned decision as to the Department's compliance with Subsection .055(4), G is incorrect when he asserts at page 3, ¶ 3 of the Brief of Appellant (hereinafter "Brief") that, "Here there are no questions of fact to be decided." Similarly, G

lately states at page 8, ¶ 3 of his Brief that, "Nothing was said [at the administrative proceeding] about the statutory requirement that the Department assist disabled in applying for Permanent Fund Dividends." The reason nothing was said should have been obvious to G : he did not raise it as an issue!

G also asserts that 15 AAC 23.645, which permits an application of an incompetent or a disabled person to be filed by another person, does not satisfy AS 43.23.055(4). Brief, p.8 ¶2. However, G 's assertion that § 645 is insufficient raises other questions of fact: whether the Department could reasonably be expected to provide more assistance, whether more assistance is need by incompetent and disabled persons, how the Department can be expected to identify disabled persons if they don't make themselves known to the Department and the extent to which other care providing institutions should be held responsible to provide needed assistance to potential applicants. In conducting an inquiry into these issues this court will also need to consider the Department's expertise, experience, and the policies it has formulated and these issues should be addressed in the record for this court to be able to make a reasoned decision.

Had the Department addressed these issues at the administrative proceeding, it would have been able to provide evidence that its regulations permit a person to file on behalf of a disabled applicant, that it maintains three offices in the state manned by staff who are instructed to assist applicants, to answer their questions, to provide assistance over the telephone

if the applicant is unable to travel to one of the Department's offices, to sign as witnesses if the applicant cannot sign his name but can only draw an "X", and that the Department is prepared to send its assistants to various places in the state to provide personal assistance to applicants who have no other practical means of obtaining such assistance.

G's assertions regarding AS 43.23.055(4) and .645 require the application of the "substantial evidence" standard to the extent questions of fact are to be reviewed and the "reasonable basis" standard to the extent the Department's policies and decisions regarding assistance to incompetent and disabled persons are to be reviewed. Unfortunately, this court will be unable to apply either of these standards of review and make a reasoned decision because the record in this case is completely inadequate.

IV. THE DIFFERENT TREATMENT GIVEN TO MINORS AS COMPARED TO DISABLED PERSONS SATISFIES THE EQUAL PROTECTION CLAUSE

Under AS 43.23.055(2),

The Department shall set the time limits for applications for permanent fund dividends so that the number of eligible applicants is determined by October 1 of the year for which the dividend is declared and permanent fund dividends for a year are paid before April 30 of the year following that year;

The deadline for dividend applications is described in 15 AAC 23.625(a) as "July 1 of the year of application." One exception to that rule is mandated, however, by AS 43.23.055(3), which states as follows:

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;

Pursuant to this directive, the Department enacted 15 AAC 23.615(f), which provides as follows:

An individual who has reached majority, or who has become an emancipated minor, may apply to the department if (1) he or she was a child during the six-month period described in (a)(2) of this section, (2) a permanent fund dividend application was not filed on the individual's behalf or was not timely filed, and (3) the individual was eligible to receive a payment under AS 43.23.005-43.23.095. The department, in its discretion, will waive the time limit provided in 15 AAC 23.625 for that individual. A waiver of the time limit under this subsection will not extend beyond one year after the individual reaches majority or becomes an emancipated minor.

(Emphasis added.) G again raises for the first time in this case the claim that requiring disabled persons to comply with the deadline in § 625(a) while providing minors an exception to that deadline violates the equal protection clause of the United States and Alaska Constitutions. Brief at p.9. To determine whether to apply the "reasonable basis" or the "substitution of judgment" standard of review to this claim, it is necessary to determine initially whether the issue involves agency expertise or is purely a question of law.

An analysis of the applicable statutes and regulations leads to the conclusion that the determination to provide

different treatment to minors as compared to disabled persons was a decision of the Department, thus it is an issue involving agency expertise. The relevant provisions of AS 43.23.055 require only that a deadline for claiming dividends be set, that disabled persons be assisted and that minors be given an opportunity, upon their emancipation or upon reaching majority, to file for dividends which were not filed for earlier on their behalf. Section .055 does not expressly require that minors be treated differently from disabled persons. In implementing the directive of subsection .055(4) the Department could have, for example, assisted disabled persons by providing them with a relaxation of the filing deadline under certain circumstances. However, the Department chose not to do that. That decision is therefore assumed to be the product of the Department's experience, expertise and policy making. Because the issue involves agency expertise, it is appropriate to use the "reasonable basis" rather than the "substitution of judgment" standard of review in judging the validity of the different treatment given to these two types of applicants.

The Department agrees with G that the burden the Department must bear to justify the constitutionality of the different treatment is satisfaction of the "rational basis" test. Brief, p.10, ¶ 1. The Department also agrees with G that for equal protection purposes, mentally retarded persons do not represent a suspect class. Brief, p.22, ¶ 2; City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 442, 87 L. Ed. 2d 313, 321,

105 S. Ct. 3249 (1985). Therefore, all the Department needs to show is that its regulations meet the "rational basis" test, City of Cleburne, 473 U.S. at 448, 87 L. Ed. 2d at 325, that is, that the distinction created is reasonable, not arbitrary, and rests upon some ground of difference having a fair and substantial relation to the object of the legislation. Herrick's Aero-Auto-Aqua Repair Service v. State, --P.2d--, (Op. 3309 at p. 8, April 29, 1988).

Because this constitutional issue was not raised by G at the administrative proceeding, the record on appeal contains no reference to any inquiry as to the reasonableness of the Department's decision to treat minors differently than disabled persons. Because the record is totally inadequate, this court cannot make a reasoned decision on the constitutional issue. This court should therefore not consider it.

Furthermore, in compliance with Herrick's Aero-Auto-Aqua Repair Service dicta at p. 8, this court should not hypothesize facts in order to analyze the Department's compliance with this legislation. In this connection, G states, albeit incorrectly, "...it is not up to Mr. G to speculate as to what reasons the legislature may have had [as to why people with disabilities are treated differently than minors]." Brief, p. 12, ¶ 3. Nonetheless, while one should not speculate on such reasoning, in order to properly review the constitutionality of the Department's regulation, it is

nonetheless necessary to consider the reasons for the different treatment in order to determine whether they are reasonable, etc.

Had the constitutional issue been raised at the administrative proceeding, the Department would have presented testimony that it had provided as much assistance to disabled persons as it could have without giving impermissible preferential treatment to disabled persons. The Department would have also presented evidence in this connection that if a disabled person could not meet the present deadline, giving them later deadlines would not guarantee a solution. Ideally, no deadline may be appropriate for a disabled person. The Department would then have taken the position that if it were to enact a regulation to that effect, it would probably be found unconstitutional.

In his Brief G refers to the different treatment given to minors by analogizing to various provisions in the Alaska Statutes which reflect the legal incapacities of minors. Brief at p. 12, ¶ 2. However, the different treatment given to minors as compared to disabled persons in the case at hand is more than a manifestation of the general rule that minors are not legally responsible for their civil actions whereas adults are legally responsible. The different treatment exists not because disabled persons are assumed to be without the legal incapacities of a minor, but rather, because to do more for disabled persons than what is already being done will amount to giving to them impermissible preferential treatment. The Department is also concerned with its practical limitation on providing more

assistance to disabled persons, the most immediate of which is that a disabled person cannot be assisted unless the Department knows that that person needs assistance. Furthermore, as a policy matter, the Department considers a disabled person's care taking institution to be in the best position to provide assistance and that if that institution fails to submit an application, the disabled person has the ability to seek legal recourse against it. In light of these concerns, the Department's decision to provide different treatment to these two types of applicants meets the "reasonable basis" standard.

V. THERE IS NO EVIDENCE THAT THE DEPARTMENT'S REGULATIONS DISCRIMINATE AGAINST DISABLED PERSONS

G also raises for the first time in this case the claim that by denying him the dividend for 1986, the Department violated AS 18.80.255(3), which provides as follows:

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

(Emphasis added.) However, to the extent the record in this case addresses the reason for the denial of the application, it is clear the denial was for the reason that the application was untimely. In this light, § 255(3) does not support G 's claim for that subsection applies only to denials because of mental disability, thus referring to a direct connection between the disability and the denial. However, to the extent that G

intends to take a broader view of § 255(3), the result would still be the same.

G appears to argue that the department's regulations fail to provide "adequate accommodations" to persons with disabilities. Brief, p. 14, ¶ 3. Unfortunately, G fails to provide any evidence that this is so in the case at hand, apart from providing the bare facts that he needed assistance to file his application and that his assistant filed the application late. G also fails to prove that the Department has a duty to personally provide an assistant to him, even when he does not let the Department know that he needs assistance or that the Department knew or should have known that he needed assistance.

Finally, G states in his brief at p. 15, ¶ 1, that, "It is probable that Mr. G would have applied for his 1986 dividend had there been a system in place to search out people who would have difficulty applying on their own." However, G fails to refer to any facts in the record which support such a conclusion. Furthermore, to the Department's knowledge no such facts exist. G's statement that but for the Department's inaction he probably would have filed a timely application is therefore pure conjecture. In view of G's failure to provide evidence sufficient to support a finding of a violation of § 255(3) this court cannot make a reasoned decision.

Had the Department been given notice of this issue in the administrative proceeding, it would have produced evidence that several hundred dividends have been obtained by disabled or

incompetent persons, that in the history of the Department it has received only two other appeals of G 's type, that according to its experience, a failure of a disabled person to obtain assistance to file an applications is almost nonexistent and that if the Department had received a request of assistance from G or from G 's guardian, G would most certainly have received assistance.

G 's assertions of discrimination also raise a number of policy questions which the Department should have had an opportunity to address at the administrative proceeding. For example, the extent to which the Department should be required to provide assistance to disabled persons; the mechanism by which the Department is expected to know when a disabled person needs assistance; the extent to which the Department should be required to jeopardize its fiscal efficiency by doing away with filing deadlines for disabled persons; and the extent to which disabled persons are expected to pursue other remedies available to them, such as seeking legal recourse against a negligent spouse, parent, guardian, conservator, or other authorized personal representative who have through their own negligence failed to submit a timely application.

CONCLUSION

In exercising his various rights of appeal G has abandoned in this latest appeal, all of his previous theories of the case and replaced them with new theories. This change of

tactics at this stage of the litigation leaves this court with a completely inadequate record on appeal. AS 43.23.015(g) specifically prohibits G from expanding the scope of this appeal beyond the matters addressed in the administrative proceeding. Had G raised these issues at the administrative proceeding the Department would have had the opportunity to fully address them and to develop a complete record for this court. However, on the basis of the facts in the record before this court, a reasoned decision cannot be made on any of the issues raised by G .

For the reasons stated herein, the Department of Revenue respectfully requests this court to not consider any of the issues raised by G in this appeal and to dismiss the appeal.

DATED this 12th day of August, 1980, at Anchorage, Alaska.

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: *Lawrence C. Delay*
Lawrence C. Delay
Assistant Attorney General

nderstand that these penalties are in penalties imposed.

ture of individual, t, guardian, or other rized representative)

this section or as may be provided by ment, an individual must personally it fund dividends, including the certi- nder (b) of this section.

ication of residency of an unemanci- f age or of an incompetent individual l's parent, legal guardian, or other

permanent fund dividend on behalf of shall hold the dividend in trust for rust under this subsection shall be 1 accordance with AS 37.10.070.

individual may not maintain a claim employee of the state based on the rdian, or authorized representative state managed or disposed of perma- behalf of the minor or incompetent

ed by a decision of the department bility for a permanent fund dividend claim a permanent fund dividend on ay appeal that decision to the supe- S 44.62.560. An appeal under this ved individual to a trial de novo. The ord of the administrative proceeding he scope of appeal is limited to mat- the administrative proceeding.

nt provisions of AS 43.23.035 apply rmanent fund dividend on behalf of am § 2 ch 159 SLA 1988; am § 4 ch

permanent fund dividends. The commis- sioner may require an individual to pro- vide proof of eligibility, and the commis- sioner may use other information avail- able from other state departments or agencies to determine the eligibility of an individual.

"(b) The department shall prescribe and furnish an application form for claiming a permanent fund dividend. The application must contain a statement of eligibility

§ 43.23.025

and a certification of residency in substan- tially the following form:

I certify that

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

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

I understand that a false claim of resi- dency to obtain a permanent fund divi- dend for myself or for another is a crim- inal offense and that if convicted I will for- fore future permanent fund dividends and that I will lose or must repay all perma- nent fund dividends that have been cred- ited or paid to me, and any accrued inter- est in my annuity account. I understand that this penalty is in addition to any criminal penalties imposed.

(signature of individual, parent, guardian, or other authorized repre- sentative)

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

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

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

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

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

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

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

"(i) The permanent fund dividend appli- cation form shall be prepared to allow an applicant, other than a person who is ex- empt under AS 47.45.015(b), to elect to receive the dividend either in cash or as an annuity credit."

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

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

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

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

Item 4

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

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

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

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

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

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

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

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

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

NOTES TO DECISIONS

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

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

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

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

matter to a five day may 102 SL

Revised ch. 99, S section, amendments a 1985 is 1985). If section w criminal an indivi connectio a certif 43.23.015 reversed, th nent fund gether wi individual igitible for dend.

"(b) If that a cast claimed by commissio cedures or tion of tax

Sec. 4 lished as shall be the comr

(b) No commissi income o ending or However. Amerada District) Alaska pe to the div pal of th

(c) [Re] (d) Unl pended ar chapter l: which the the amou

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

Item 5
STEVE COWPER, GOVERNOR

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

April 2, 1990

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

Dear Representative Hudson:

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

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

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

Sincerely,

Clifford Cook for
Hugh Malone
Commissioner

HM:RW:sp

90-75

cc: All Members of House State Affairs Committee

Register

1990

REVENUE

15 AAC 23.135

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

Authority: AS 43.23.015

AS 43.23.055

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

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

(2) a complete permanent fund dividend application was
not filed by an eligible sponsor on the individual's behalf, was
not timely filed, or, solely as a result of competing applications
being filed, ~~was~~ ^{not} paid; and
^

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

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

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

(1) a mailing receipt;

(2) a delivery receipt; or

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

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

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

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

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

Authority: AS 43.23.015

AS 43.23.055

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

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

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

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

Authority: AS 43.23.015
AS 43.23.055
AS 43.23.095



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

January 11, 1990

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

Dear Representative Hudson:

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

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

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

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

With regards,

Rod Moline

Rod Moline
Executive Director

RM/lc



Item 7



ADVOCACY SERVICES OF ALASKA

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

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

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

January 18, 1990

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

Attn: Landa

Re: Permanent fund dividend checks for people
with disabilities

Dear Representative Hudson:

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

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

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

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

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

Sincerely,

Rebecca E. Graham

Rebecca E. Graham
Staff Attorney

H B

381

FISCAL NOTE

REQUEST

Revision Date: _____
Title: An act relating to the amount of a PFD, and disclosure of reductions
Sponsor: PHILLIPS
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: See attached.

Prepared By: Ervin Jones
Division: Permanent Fund Dividend Division

Phone: 465-2323
Date: February 20, 1990

Approved by Commissioner: [Signature]
Agency: Revenue

Date: 2/21/90

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 381
February 20, 1990

ANALYSIS:

Section 1 of this bill makes a very clear statement that any appropriation reduces the value of each individual dividend, and requires full disclosure of each such appropriation and its effect.

The department supports full accountability for the earnings of the Permanent Fund and supports the language of the bill. It is noted, however, that this bill does not go as far as HB 563 in adopting the recommendation of the Commission on the Future of the Permanent Fund.

Section 1 also clarifies the calculation of the dividend (page 2, line 7-10).

Section 2 makes the requirement effective in 1990. This poses no administrative difficulties.



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

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

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

Memorandum

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

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

DATE: February 20, 1990

RE: House Bill 381, entitled;
"An Act relating to the amount of a permanent fund dividend
and to disclosure of amounts by which dividends are
reduced; and providing for an effective date."

This bill would make two changes to current law:

AS.43.23.025 (a)

The first change would require that the public notice of the value of each permanent fund dividend that is published by the Commissioner of Revenue each October 1 include a statement of the amount that each individual dividend is reduced due to each appropriation from the dividend fund. Current law requires only that the costs of administering the program and the hold harmless provisions be disclosed.

AS.43.23.025 (a)(1)(E)

The second change adds a missing piece to the formula for computing the amount of the permanent fund dividend. The formula in current law ignores the costs of administering the program, the hold harmless provisions and any other appropriations from the fund. This change makes explicit in law the current practice.

HB

385

HOUSE COMMITTEE ON STATE AFFAIRS

RECAP OF
HB 385

Veterans' Burial Allowance Eligibility

Received January 8, 1990
by Reps. Hudson, Gruenberg

Heard February 6, 1990

Adopted CSHB 385 (SA) February 6, 1990

Passed Out of Committee February 6, 1990
5 Do Pass

TABLE OF CONTENTS

HB 385: Veterans' Burial Allowance Eligibility

- Item 1: HB 385 by Rep. Hudson, Gruenberg
CSHB 385 (SA)
- Item 2: Fiscal Note and Analysis by Dept. of Military & Veterans Affairs
- Item 3: Letter from Rep. Hudson, January 9, 1990

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 8, 1990

FURTHER REFERRALS: FINANCE

Date of Committee Action: _____

The STATE AFFAIRS Committee considered:

HB 385

HOUSE BILL NO. 385

VETERANS' BURIAL ALLOWANCE ELIGIBILITY

"An Act relating to eligibility for veterans' burial allowance."

RECOMMENDATIONS:

- be replaced with CS HB 385 (SA) the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS: _____
(Date/Dept)

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

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

SIGNING DO PASS:

SIGNING:
(Check approp. column)

Do Not
Pass No Rec Amend

[Handwritten signatures]

	Do Not Pass	No Rec	Amend

[Handwritten signature]

Chairman's Signature

BY REP. HUDSON

CS -

1 IN THE HOUSE

2

HOUSE BILL NO. 385

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 eligibility for veterans' ^{death} burial allowance." *quoth!*

7

8

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

9

* Section 1. AS 26.10.080(a) is amended to read:

10

(a) The Department of Military and Veterans' Affairs shall pay,

11

upon application, a death gratuity in the amount of \$750 to the sur-

12

living spouse of a qualified veteran [WHOSE BURIAL IN THE STATE OCCURS

13

ON OR AFTER MAY 13, 1984, AND] who was a resident of the state at the

14

time of death. If the veteran has no surviving spouse, the gratuity

15

shall be paid to the personal representative of the veteran. A veter-

16

an is qualified under this subsection if the veteran's burial occurred

17

(1) in the state on or after May 13, 1984; or

18

(2) elsewhere on or after the effective date of this Act.

Fed Benefitor - Not a burial allowance

Original sponsor(s): REP. HUDSON, Gruenberg

1 IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 385 (State Affairs)

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 eligibility for veterans' death
7 gratuities."

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

9 * Section 1. AS 26.10.080(a) is amended to read:

10 (a) The Department of Military and Veterans' Affairs shall pay,
11 upon application, a death gratuity in the amount of \$750 to the sur-
12 viving spouse of a qualified veteran [WHOSE BURIAL IN THE STATE OCCURS
13 ON OR AFTER MAY 13, 1984, AND] who was a resident of the state at the
14 time of death. If the veteran has no surviving spouse, the gratuity
15 shall be paid to the personal representative of the veteran. A veter-
16 an is qualified under this subsection if the veteran's burial occurred

17 (1) in the state on or after May 13, 1984; or

18 (2) elsewhere on or after the effective date of this Act.

Item 2

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION : HB 385
PUBLISH DATE : _____

FISCAL NOTE

REQUEST:

Revision Date: February 5, 1990
Title An Act relating to eligibility
for veterans burial allowance.
Sponsor: Rep. Hudson
Requestor: House State Affairs

Agency Affected: DMVA
BRU: Veterans Affairs
Components: Death Gratuity

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The additional death gratuities paid to survivors of the additional qualified veterans created by this bill are projected to be negligible based on past experience. This negligible increase in death gratuities will be absorbed within the existing budget for this component.

Prepared by Jeff Morrison, Director
Division: Administrative & Support Services, DMVA

Phone 465-4600
Date 2/05/90

Approved by for MG John Schaeffer
Agency: Department of Military & Veterans Affairs

Date 2/05/90

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

Alaska State Legislature



REPRESENTATIVE BILL HUDSON

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

COMMITTEES:
Transportation
Resources
Foreign Trade

FINANCE SUBCOMMITTEES
DOT/PF
C & RA

January 9, 1990

RECEIVED

JAN 11 1990

Representative H. A. Boucher,
Chairman
House State Affairs Committee
Alaska State Legislature
Juneau, Alaska

Dear Representative Boucher:

HB 385, relating to eligibility for veterans' burial allowance, was referred to the House State Affairs Committee.

Several veterans have approached me with the request that the legislature eliminate the requirement that burial be in the state for a surviving spouse to receive the \$750 allowance.

I have introduced the legislation because I believe the intent of the allowance is to provide relief to the family and to honor Alaskan veterans, not necessarily to assure their interment in Alaska.

In the enclosed letter from John W. Schaeffer, Major General Alaska National Guard, The Adjutant General, he predicts this legislation will have very little fiscal impact.

For your convenient reference, I have also enclosed a copy of the bill and a copy of the statute.

Your scheduling HB 385 for an early hearing in the House State Affairs Committee will be very much appreciated.

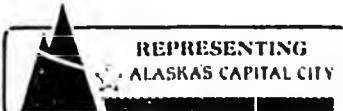
If you or your staff require further information, please call me or Landa Holtan at 3744 or 4919.

Respectfully,

Bill
Bill Hudson

BH:lk

Enclosures



STATE OF ALASKA

DEPARTMENT OF MILITARY AND VETERANS AFFAIRS

OFFICE OF THE ADJUTANT GENERAL

STEVE COWPER, GOVERNOR

FRONTIER BUILDING
SUITE 620
3601 C STREET
ANCHORAGE, ALASKA 99503 5989
PHONE 1907 243 0656
AUTOVON 626 1444
(907) 249-1565

August 4, 1989

The Honorable Bill Hudson
P.O. Box V
Juneau, AK 99811-0101

Dear Representative Hudson,

Thank you for your letter of July 7th concerning an amendment to AS 26.10.080, the Death Gratuity Program.

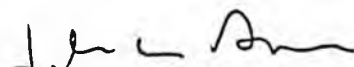
In FY88 we paid 304 claims for a total of \$228,000. In FY89 the number was 360 for an expenditure of \$270,000. According to our records, there has been only one claim last year denied because the survivors planned an out of state burial. The statute is pretty clear on that issue and most applicants/survivors appear to know the requirements before submitting their claim. It's hard to predict what sort of fiscal impact your amendment would have, but I anticipate not too great.

The biggest problem with the Death Gratuity Program is that people in rural Alaska are not making claims. According to our recent analysis, out of 304 applications in 1988, only twelve were received from the areas of the North Slope Borough, Northwest Arctic Borough, Bering Straits, Western Alaska, Bristol Bay and the Aleutian Chain.

We're taking steps in the Division of Veterans Affairs to improve our outreach/information program in hopes of striking a better balance of applicants. I expect the outreach effort will have a noticeable impact.

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

Sincerely,


John W. Schaeffer
Major General
Alaska National Guard
The Adjutant General

JWS/hah



Alaska State Legislature

REPRESENTATIVE BILL HUDSON

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

COMMITTEES:

Transportation
Resources
Foreign Trade

FINANCE SUBCOMMITTEES
DOT/PF
C & RA

July 7, 1989

Major General John W. Schaeffer
The Adjutant General
Commissioner
Department of Military and
Veteran Affairs
3601 "C" Street, Suite 620
Anchorage, AK 99503-5989

Dear General Schaeffer: *John*

I am considering an amendment to AS 26.10.080 Death Gratuity and would like your professional opinion prior to filing.

Specifically John, I have been approached by several veterans asking that we eliminate the requirement that burial be in the state for a surviving spouse to receive the \$750 allowance.

This seems reasonable because the original purpose of the allowance was to provide some relief to next of kin and was to honor veterans.

Before I file this change, I would appreciate your analysis of its effect. For example how many claims are paid annually and how many are turned down because the deceased was not buried in Alaska?

Your candid opinion will also be appreciated.

Respectfully,

Bill
Bill Hudson

BH/klc



JAN 17 '90 14:41

P.1/1



VETERANS OF FOREIGN WARS OF THE U.S.
DEPARTMENT OF ALASKA
P.O. Box 102320
Anchorage, Alaska 99510

Telephone 907-276-8213

January 17, 1990

Mr. Oliver
Oliver's Trophies
P.O. Box 2405
Juneau, Ak 99803-2495

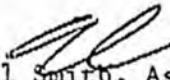
Dear Mr. Oliver:

We have reviewed the two bills you have sent us and locally we generally approve of the two issues. HB 385 removes the penalty of a widow who decides to bury her veteran husband "back home" where he grew up and where the widow now may be forced to move (in with children, etc.,) It's a good bill.

HB 382 removes the penalty for "wintering outside" for our older citizens who have great difficulty with the cold and who do not have sufficient money to return promptly within 90 days. Let's be fair and pass it.

Thanks for keeping us informed. We appreciate your interest and helpfulness.

Sincerely,


Al Smith, Asst Service Officer
Authorized Respondent

P.S.

Best wishes from all of us.


Sec. 26.05.280. Transportation, subsistence, and supplies.

Editor's notes. — Because of the amendment of this section by § 26, ch. 106, SLA 1986 by § 27, ch. 65, SLA 1987, the 1986 amendment of this section by § 26, ch. 106, SLA 1986 is effective January 1, 1988.

Chapter 10. Veterans.

Article

2. Miscellaneous Provisions (§ 26.10.080)

Article 2. Miscellaneous Provisions.

Section

80. Death gratuity

Sec. 26.10.080. Death gratuity. (a) The Department of Military and Veterans' Affairs shall pay, upon application, a death gratuity in the amount of \$750 to the surviving spouse of a veteran whose burial in the state occurs on or after May 13, 1984, and who was a resident of the state at the time of death. If the veteran has no surviving spouse, the gratuity shall be paid to the personal representative of the veteran.

(b) A death gratuity may be paid for a veteran otherwise eligible under (a) of this section even if the veteran died while temporarily absent from the state.

(c) The Department of Military and Veterans' Affairs may not pay a death gratuity unless the veteran for whom payment is made received an honorable discharge or a general discharge under honorable conditions.

(d) In this section

(1) "personal representative" includes administrator, executor, special administrator, successor personal representative, and persons who perform substantially the same function under the law governing their status;

(2) "veteran" means

(A) a person who served in a branch of the armed services of the United States

(i) who at the time of entry into the service was a resident of the territory or state, who had been a resident for not less than one year immediately before entry into the service, and who returned to the territory or state within one year after discharge as a resident with the intention of remaining in the territory or state; or

(ii) who was a resident of the state for not less than one year immediately preceding the time of death; or

(B) a person who served in the Alaska Territorial Guard, the Alaska Army National Guard, the Alaska Air National Guard, or the Alaska Naval Militia, or who served in a reserve unit of the United

States armed forces in Alaska if the reserve unit required a minimum of one weekend of duty each month and 15 consecutive days of active duty training each year for not less than three years. (§ 1 ch 98 SLA 1982; am § 14 ch 67 SLA 1983; am § 1 ch 7 SLA 1984; am E.O. No. 58, § 12 (1984); am § 1 ch 16 SLA 1985)

Editor's notes. — This section is set out above to correct a minor error in item (d)(2)(ii) in the main pamphlet.

Chapter 15. Veterans Loans.

Section

40. Veterans' loans

60. [Repealed]

Sec. 26.15.040. Veterans' loans. (a) The commissioner of commerce and economic development may, under regulations and policies, make the following loans:

(1) Personal loans may be made for educational, domestic, remote area family housing and other personal purposes, not exceeding \$10,000. The loans shall be secured by acceptable collateral when available but if not available the commissioner may make loans on the basis of good character. The rate of interest may not exceed nine and one-half per cent a year on the unpaid balance.

(2) [Repealed, § 77 ch 106 SLA 1980.]

(3) Business loans not exceeding \$125,000 may be made to acquire, finance or refinance or equip businesses, including mining and fishing but not including farming, if the loan applicant has had three or more years of general business experience. The loans shall be secured by acceptable collateral and may not exceed 75 per cent of the appraised value of the collateral offered as security. The rate of interest may not exceed nine and one-half per cent a year on the unpaid balance.

(4) Multiple dwelling loans not exceeding \$110,000 may be made to purchase, remodel, repair, build, furnish, refinance or equip multiple dwellings. The loans shall be secured by acceptable collateral and may not exceed 75 per cent of the appraised value of the collateral offered as security. The rate of interest may not exceed nine and one-half per cent a year on the unpaid balance.

(b) The commissioner of commerce and economic development may enter into agreements with private banks, other lending institutions and individuals for the purpose of guaranteeing loans made to qualified applicants. The guarantees may not exceed 90 per cent of the amount loaned and the loans shall be secured in the same manner provided for direct loans under this section. A loan made under this subsection and guaranteed by the commissioner of commerce and economic development and the state shall bear an interest rate not exceeding nine and one-half per cent a year on the unpaid balance.

HB

386

HOUSE COMMITTEE ON STATE AFFAIRS

RECAP OF
HB 386

Eligibility for Permanent Fund Dividends

Received January 8, 1990
by Rep. Finkelstein

Heard March 14, 1990
Heard April 5, 1990

Passed Out of Committee April 5, 1990
4 Do Pass
1 No Recommendation

TABLE OF CONTENTS

HB 386: Eligibility for Permanent Fund Dividends

- Item 1: HB 386 by Rep. Finkelstein
- Item 2: Fiscal Note and Analysis from the Department of Revenue
- Item 3: Memorandum from Rep. Finkelstein, February 27, 1990

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 8, 1990

FURTHER REFERRALS: JUDICIARY
FINANCE

Date of Committee Action: _____

The STATE AFFAIRS Committee considered:

HB 386

HOUSE BILL NO. 386

ELIGIBILITY FOR PERMANENT FUND DIVIDENDS

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

RECOMMENDATIONS:

- [] be replaced with _____ [] the same title
[] a new title
[] have attached amendment(s)
[X] 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)

- 2[X] fiscal impact DOR
[] zero fiscal note _____
[] zero with analysis _____

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

SIGNING DO PASS:

[Handwritten signatures]

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend
<i>[Handwritten signature]</i>		✓	

[Handwritten signature]
Chairman's Signature

Item 1

Introduced: 1/8/90
Referred: State Affairs, Judiciary, and Finance

6-1666A

BY REP. FINKELSTEIN

1 IN THE HOUSE

2 HOUSE BILL NO. 386

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 eligibility for permanent fund
7 dividends; and providing for an effective date."

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

9 * Section 1. AS 43.23.005(a) is amended to read:

10 (a) An individual is eligible to receive one permanent fund
11 dividend each year in an amount to be determined under AS 43.23.025 if
12 the individual applies to the department, and if

13 (1) on the date of application the individual is a state
14 resident;

15 (2) the individual was a state resident for a period of at
16 least 24 consecutive months immediately preceding April 1 of the
17 current dividend year; and

18 (3) the individual has been physically present in the state
19 at some time during the period beginning July 1 two years before the
20 date of application and ending on the date of application, or the
21 commissioner determines that it has not been practical for the indi-
22 vidual to return to the state due to job requirements, educational
23 pursuits, military obligations, health considerations, or other sig-
24 nificant factors.

25 * Sec. 2. AS 43.23.015(b) is amended to read:

26 (b) The department shall prescribe and furnish an application
27 form for claiming a permanent fund dividend. The application must
28 contain a statement of eligibility and a certification of residency in
29 substantially the following form:

show change to return / opens the door

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I certify that

() I am a state resident on the date of this application, I have been a state resident for at least 24 months immediately preceding April 1 of the current dividend year, and

() I have been physically present in the State of Alaska at some time during the period beginning July 1 two years before the date of application and ending on the date of this application; or

() it has not been practical for me to return to the state due to the following significant factors:

_____ ; or

() (name), the individual on whose behalf I am applying, is a state resident on the date of this application, has been a state resident for at least 24 months immediately preceding April 1 of the current dividend year, and

() has been physically present in the State of Alaska at some time during the period beginning July 1 two years before the date of application and ending on the date of this application; or

() it has not been practical for the individual to return to the state due to the following significant factors:

_____ .

I understand that a false claim of eligibility to obtain a permanent fund dividend for myself or for another is a criminal offense, that if convicted I will forfeit future dividends, and that I must repay all dividends that have been paid to me. I understand that if I wilfully misrepresent, exercise gross negligence, or recklessly disregard a material fact regarding my eligibility for a permanent fund dividend I will forfeit the dividend, be subject to a civil fine of up

1 to \$5,000, and lose my eligibility for the next five dividends. I
2 understand that these penalties are in addition to any criminal penal-
3 ties imposed.

4

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8

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

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

FISCAL NOTE

REQUEST

Revision Date: _____
Title: An Act relating to eligibility
for permanent fund dividends
Sponsor: FINKELSTEIN
Requestor: _____

Agency Affected: Revenue
BRU: Commissioner's Office
Components: Commissioner's Office

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
OPERATING						
PERSONAL SERVICES	-0-	636.7	636.7	636.7	636.7	636.7
TRAVEL	-0-	5.0	5.0	5.0	5.0	5.0
CONTRACTUAL	-0-	50.7	50.7	50.7	50.7	50.7
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	112.1	-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-	804.5	692.4	692.4	692.4	692.4
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 (PFD)	-0-	804.5	692.4	692.4	692.4	692.4
TOTAL	-0-	804.5	692.4	692.4	692.4	692.4

POSITIONS:

FULL-TIME	-0-	13	13	13	13	13
PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS: See attached.

Prepared By: Deborah Vogt
Division: Commissioner's Office

Phone: 465-2300
Date: March 13, 1990

Approved by Commissioner: _____
Agency: Revenue

Date: 3/14/90

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

See letter to

Department of Revenue
 Commissioner's Office
 Fiscal Note Analysis
HB 386
 March 13, 1990

Analysis:

If this bill becomes law, it is estimated that approximately 5,500 additional applicants will appeal to the formal hearing level as a result. Since there are often several applicants in a household, 5,500 applications means approximately 2,400 cases to be reviewed. Discretionary decisions by the division result in a higher (90%) percent rate of appeal.

Summary judgment motions would not be appropriate and would not be utilized. This means that in each case, a formal hearing would be held. In the interest of economy, most hearings would be by correspondence or by telephone, but would be long distance.

If the hearing officer is expected to do actual review of the specific facts to determine practicality in each case, it is my estimate that a hearing officer could complete a caseload of approximately 230 cases per year. This fact alone renders the situation ridiculous. We would need approximately 10 hearing officers and a staff of 1 paralegal assistant and clerical support to keep up with the volume on a year to year basis without impacting our ability to hold hearings on other Permanent Fund Dividend cases, Child Support cases, and more importantly, tax cases.

<u>1. Personal Services</u>	<u>FY 91</u>	<u>FY 92</u>
10 Hearing Officers, R19 @ \$4,445.52/mo including salary and benefits for 12 months	= -0-	\$533.5
1 Paralegal Assistant II, R16 @ \$3,683.96/mo including salary and benefits for 12 months	= -0-	\$44.2
1 Clerk IV, R9, @ \$2517.60/mo including salary and benefits for 12 months	= -0-	\$30.2
1 Clerk Typist III, R8 @ \$2,397.48/mo including salary and benefits for 12 months	= -0-	<u>\$28.8</u>
 Total Personal Services	 <u>-0-</u>	 <u>\$636.7</u>
 <u>2. Travel</u>		
To hold a limited number of hearings in Anchorage.	= -0-	\$5.0

11
Department of Revenue
Commissioner's Office
Fiscal Note Analysis
HB 386
March 13, 1990

3. Contractual Services

a) Telephone Costs for long distance	=	-0-	\$40.7
b) Westlaw legal research	=	<u>-0-</u>	<u>\$10.0</u>
Total Contractual Services		<u>-0-</u>	<u>\$50.7</u>

4. Equipment

a) System furniture for 13 employees @ \$4,000/each employee	=	-0-	\$52.0
b) Telephone system upgrade	=	-0-	\$25.0
c) Computer Equipment:			
13 Wang PC 240 terminals for employees @ \$2,700/each	=	<u>-0-</u>	<u>\$35.1</u>
Total Equipment		<u>-0-</u>	<u>\$112.1</u>
 TOTAL COST		<u>-0-</u>	<u>\$804.5</u>

FISCAL NOTE

REQUEST

Revision Date: _____
Title: An Act regarding eliability
for a permanent fund dividend
Sponsor: FINKELSTEIN
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	157.2	920.1	920.1	920.1	920.1	920.1
TRAVEL	2.0	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	28.2	28.2	28.2	28.2	28.2
SUPPLIES	5.0	5.0	5.0	5.0	5.0	5.0
EQUIPMENT	249.8	-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	414.0	953.3	953.3	953.3	953.3	953.3
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 (PFD)	414.0	953.3	953.3	953.3	953.3	953.3
TOTAL	414.0	953.3	953.3	953.3	953.3	953.3

POSITIONS:

FULL-TIME	4	28	28	28	28	28
PART-TIME	6	6	6	6	6	6
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS: See attached.

Prepared By: Ervin Jones
Division: Permanent Fund Dividend Division

Phone: 465-2323
Date: March 13, 1990

Approved by Commissioner: [Signature]
Agency: Revenue

Date: 3/14/90

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

See letter

Department of Revenue
Permanent Fund Dividend Division
Fiscal Note Analysis
HB 386
March 13, 1990

Analysis:

The two-year return rule [AS 43.23.005(a)(3)], is a good law. It is a workable law because it is a test which can be met and which can be measured.

The proposed modification in HB 386 requires the department to make a decision on a question which is not subject to reasonable standard setting: is it "practical" for an individual to return to the state?

In 1989, approximately 8,000 individuals were not eligible for the dividend because they had been gone from Alaska for over two years. Those are people who would otherwise claim to be Alaskan residents, but who had not seen Alaska since at least July 1, 1987. We have heard from many of these individuals claiming that it would be cost-prohibitive to visit their "home state" for the value of two years worth of dividends (three years if they visit in June and July). Some have argued that they cannot get away from school or their job during the two year period. The point is, given the opportunity to claim hardship, impracticality, financial drain, etc., most people will make the claim. We believe we will see an increase of approximately 10,000 claims.

Once this bill becomes law, the division would be inundated with calls and letters from all over the world, wanting advance determination by the division on their particular hardship reason. We do not give advance approval on eligibility because the circumstances always seem to turn out a little different than first described, and then the public is outraged that "we changed our mind." Nonetheless, there would be a great deal of pressure for this type of determination. We now know what we always suspected, that the vast majority of persons who leave the state on allowable absences do not return, at least not in two years. The pressure on the division by the applicants and by all the national, state, and local officialdom whom they will recruit as allies and character witnesses will be intense.

In the initial document processing, the applications which claim such hardships will have to be identified and sorted for further review. This incremental effort is expected to require six seasonal permanent part-time document processors during the three month filing period.

There is no standard provided in the bill which will allow the department to resolve these claims easily. Like most hardship type programs, each case will have to be examined on its own merits, with the final judgment being perceived as arbitrary.

Department of Revenue
Permanent Fund Dividend Division
Fiscal Note Analysis
HB 386
March 13, 1990

The current caseload for a PFD Specialist is approximately 1,500 cases. Adding hardship determinations for another 10,000 cases will require another eight specialists plus two clerical staff to get out the determination letters and keep the computer records up to date. This results in a doubling of our current review staff, and will result in expanded equipment and space needs. It is likely that the Permanent Fund Dividend Division will have to move from the State Office Building to private leased space to accommodate the increased staff.

I estimate that 7,000 will be denied with approximately 6,300 appealing. Our experience has shown that where the public perceives the decision as one based on judgment, and as discretionary, they almost always appeal all the way to formal hearing. The increase of 6,300 cases to the informal conference staff will result in a tripling of current workload. We will need an additional eight conferees, two clerk typists, and related equipment and space. These conferees also represent the division at formal hearings of which we expect approximately 5,500 per year. Again, experience has shown that the public will take advantage of a free appeal process when the decision is perceived as discretionary. There would be no motions, so each hearing would result in preparation and an actual hearing, a very time-consuming process. Since most of these hearings would be telephonic, we can expect our long-distance contractual costs to go up as well.

In summary, there are two factors which will drive the costs of administering this change.

1. The test to be applied is one which cannot be standardized. Each case will represent a unique set of family, job, transportation and financial problems which will have to be weighed.
2. The decision by the division will naturally be seen as one which involves a great deal of discretion, leading to a high percentage of appeals.

Department of Revenue
 Permanent Fund Dividend Division
 Fiscal Note Analysis
HB 386
 March 13, 1990

1. Personal Services FY 91 FY 92

Public Information

4 PFT Document Processor II's, R8
 @ 2,397.48/mo including salary
 and benefits for 12 months = \$115.1 \$115.1

These positions, assigned to the Dividend Information Offices in Anchorage, Fairbanks, and Juneau, will field general questions from the public about the applicability of the new hardship clause to their particular set of circumstances.

Document Processing

6 PPT Document Processor I's, R7
 @ 2,340.37/mo including salary
 and benefits for 3 months = \$42.1 \$42.1

These positions will assist in the initial identification and selection of the hardship cases. They will also mail questionnaires to the applicants, and process the responses before assignment to the PFD Specialists for review.

Review

8 PFT PFD Specialists I, R13
 @ \$3,086.97/mo including salary
 and benefits for 12 months = -0- \$296.3

These positions will review the hardship claims and make the initial determination on eligibility.

1 PFT PFD Specialist III, R18
 @ \$4,230.65/mo including salary
 and benefits for 12 months. = -0- \$50.8

This position would become the supervisor of the 8 new PFD Specialists I, above.

Department of Revenue
 Permanent Fund Dividend Division
 Fiscal Note Analysis
HB 386
 March 13, 1990

1. <u>Personal Services (continued)</u>	<u>FY 91</u>	<u>FY 92</u>
<u>Appeals</u>		
8 PFT PFD Specialists I, R13 @ \$3,086.97/mo including salary and benefits for 12 months	= -0-	296.3
These positions will hold informal conferences on all denied applicants who appeal the initial decision, and will represent the divisions and the formal hearing requested by approximately 5,500 applicants. They will be part of the Dividend Appeals Unit in Juneau.		
1 PFT PFD Specialist III, R18 @ \$4,230.65/mo including salary and benefits for 12 months.	= -0-	\$50.8
This position would become the team leader for the 8 new PFD Specialists I holding appeals, and the current PFD Specialist III would continue to supervise the 8 PFD Specialists as currently staffed.		
1 PFT PFD Specialist IV, R20 @ \$4,771.19/mo including salary and benefits for 12 months	= -0-	\$57.3
This position would oversee the expanded Dividend Appeals Unit.		
<u>Clerical support</u>		
4 PFT Clerk Typist IIIs, R8 @ \$2,397.48/mo including salary and benefits for 12 months	= -0-	<u>\$11.4</u>
Two of these clerical positions will provide clerical, word processing and computer support for the new initial review team. The other two will serve as support for the new informal conferees in the Dividend Appeals Unit in Juneau.		
Total Personal Services	= <u>\$157.2</u>	<u>\$920.1</u>

Department of Revenue
 Permanent Fund Dividend Division
 Fiscal Note Analysis
HB 386
 March 13, 1990

	<u>FY 91</u>	<u>FY 92</u>
2. <u>Travel</u>		
Administrative Travel by the Field Services Manager to oversee the initial start-up of this new function in Anchorage	= \$2.0	-0-
3. <u>Contractual Services</u>		
a) Telephone Costs:	-0-	\$28.2
All of the contacts with this class of applicant will be out-state and many will be overseas. Telephone costs will rise dramatically.		
b) VERY IMPORTANT NOTE: The cost of providing leased space in Anchorage and Juneau is not included at this time (see analysis).		
4. <u>Supplies</u>		
General office supplies will increase due to increase in staff. Form letters, questionnaires, etc. will be used in this process.	\$5.0	\$5.0
5. <u>Equipment</u>		
a) <u>System Furniture</u> for 31 employees @ \$4,000/employee including desks, chairs, partitions, file cabinets, etc.	= \$124.0	-0-
b) <u>Computer Access:</u>		
4 Wang PC 240 computer terminals with emulator boards for the additional clerk typists who will be doing both word processing and file maintenance.	= \$13.2	-0-
27 Telex or equivalent dumb terminals for file look-up with no word processing requirement.	= \$23.0	-0-
One time costs of providing access to mainframe at \$1,600 per address for 31 addresses	= \$49.6	-0-
c) <u>Telephone System Upgrade</u> , in both Anchorage and Juneau	= \$40.0	-0-
Total Equipment	<u>\$249.8</u>	<u>-0-</u>
 TOTAL COST	 <u>\$414.0</u>	 <u>\$953.3</u>

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

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

March 14, 1990

The Honorable David Finkelstein
Alaska State House
P.O. Box V
Juneau, AK 99811

Dear Representative Finkelstein:

The department estimates that HB 386 will cost reduce the size of the average dividend check by about \$8.00 to \$10.00 (estimating 8000 non-returnees outside Alaska will be receiving checks under the bill at say \$1000 per check is \$8 million. Administrative costs will cut about another million dollars from the amount available in the dividend fund to pay to people here in Alaska).

In addition, the administrative difficulties raised by the bill are severe. There is no good way of estimating the costs of administering the proposal, but there is no doubt that the effort will meet no one's satisfaction, creating a perception of unfairness in the program.

The legislation requires the department to be able to read folk's minds, which is not always an easy task (for this reason the fiscal notes are a very rough "blue-sky" estimate, but I think they do reflect the practical problems involved).

The present law is straight-forward. Extended absence from the state requires that a person forgo the benefits available to people who live here.

I would recommend that it be maintained.

Sincerely,



Hugh Malone
Commissioner

HM:m11
SC-58

Item 3



Alaska State Legislature

Official Business

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

MEMORANDUM

TO: Representative Red Boucher
Chairman, House State Affairs Committee

FROM: Rep. David Finkelstein

A handwritten signature in black ink, appearing to be "DF", written over the name "Rep. David Finkelstein".

DATE: February 27, 1990

RE: HB 386, Eligibility for Permanent Fund Dividends

I hope you will be able to schedule HB 386 at your earliest convenience.

HB 386 would allow persons with legitimate reasons for extended absences from the state to remain eligible to receive permanent fund dividends. Individuals could be determined to have allowable absences by the Commissioner of Revenue in cases where a military absence, particular ailment treatable only outside Alaska, or other valid reason for absence is found to exist. All other requirements regarding the dividend application including civil and criminal penalties are unaffected by this bill.

Н В

396

HOUSE COMMITTEE ON STATE AFFAIRS

RECAP OF
HB 396

PERS Benefits for Probation Officers

Received January 8, 1990
by Reps. Swackhammer, Koponen, Ulmer, and
Hudson

Heard January 17, 1990

Passed Out of Committee January 17, 1990
5 Do Pass

TABLE OF CONTENTS

HB 396: PERS Benefits for Probation Officers

- Item 1:** HB 396 by Swackhammer, Koponen, Ulmer, and Hudson
- Item 2:** Fiscal Note and Analysis by Division of Retirement and Benefits
- Item 3:** Memorandum from Rep. Swackhammer, January 11, 1990
- Item 4:** Position Paper from Alaska Probation & Parole Association, January 10, 1990
- Item 5:** Letter from Lynda L. Zaugg, Probation Officer, January 11, 1990

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 8, 1990

FURTHER REFERRALS: FINANCE

Date of Committee Action: _____

The STATE AFFAIRS Committee considered:

HB 396

HOUSE BILL NO. 396

PERS BENEFITS FOR PROBATION OFFICERS

"An Act granting probation officers status as peace officers under the public employees' retirement system; and providing for an effective date."

RECOMMENDATIONS:

- be replaced with _____ 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 DOA 1/2/90

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

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not
Pass
No Rec
Amend

James H. ...
...
Gilbert P. ...
...
David ...

	Do Not Pass	No Rec	Amend

...
Chairman's Signature

Item 2

FISCAL NOTE

REQUEST: _____

Revision Date: _____ Agency Affected: Administration
 Title: An Act granting probation BRU: Retirement and Benefits
officers status of peace officers under PERS
 Sponsor: Swackhammer Components: Retirement and Benefits
 Requestor: _____

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	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
LAND & 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: (Attach a separate page if necessary)

The attached sheet discusses the fiscal implications of this bill to the Public Employees' Retirement System.

Prepared by: Sally Smith *Sally Smith* Phone: 465-4470
 Division: Retirement and Benefits Date: 01/12/90
 Approved by Commissioner: Frank S. Baxter *Frank S. Baxter for* Date: 1/12/90
 Agency: Department of Administration

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