

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

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incident such medical, surgical and hospital treatment, including nursing, medical and surgical supplies and appliances, as may reasonably be required at the time of the injury and thereafter during disability. The patient may select the physician to treat his injury, and the hospital in which he shall be treated.

(2) When a compensable incident results in the amputation of an arm, leg or foot, or the loss of hearing, or the enucleation of an eye or loss of teeth, the health care professional or institution shall initially pay for, in addition to the other medical, surgical and hospital treatment enumerated in this Section, a modern artificial member and where required, proper braces.

(3) For all such payments for treatments, artificial members and braces provided for in Subsection (1) and (2), the health care professional or institution shall be entitled to a set off in the amount of all other benefits otherwise recoverable by or on behalf of the patient for such treatments, artificial members and braces less the direct premium costs, over the twenty-four (24) months prior to the occurrence of the incident, to the patient for the right of such benefits.

(4) Upon motion of the health care professional or institution, with sufficient notice to the employee for a response to be filed, if it is shown to the satisfaction

of the board by affidavits or testimony that because of the physician selected by the employee to treat his injury, or because of the hospital selected by the patient in which he is being treated, that the patient is not receiving proper medical treatment and his recovery is being substantially affected or delayed; or that the funds for his medical expenses are being spent without reasonable benefit to the patient; or that because of the physician selected by the patient or because of the type of medical treatment being received by the patient that the health care professional or institution will substantially be prejudiced in any compensation proceedings resulting from the patient's injury or disease; then the board may allow the health care professional or institution to select a physician to treat the patient and the hospital or hospitals in which the patient is treated for his injury or disease.

(5) All fees and charges under this Section shall be fair and reasonable, shall be subject to regulation by the board and shall be limited to such charges as are reasonable for similar treatment of injured persons of a like standard of living in the same community and where such treatment is paid for by the injured person himself. In determining what fees are reasonable, the board may

also consider the increased security of payment afforded by this Act.

(6) Where such requirements are furnished by a public hospital or other institution, payment thereof shall be made to the proper authorities conducting it. No compensation shall be payable for the death or disability of a patient if his death is caused, or if and insofar as his disability is aggravated, caused or continued, by an unreasonable failure to submit to or follow any competent surgical treatment or medical aid or advice.

SECTION 21. A NEW SECTION OF KRS CHAPTER 311A IS CREATED TO READ AS FOLLOWS:

(1) Income benefits for disability shall be paid to the employe as follows:

(a) For total disability, sixty-six and two-thirds percent (66 2/3%) of the patient's average weekly wage but not more than one hundred percent (100%) of the state average weekly wage and not less than twenty percent (20%) of the state average weekly wage as determined in Section 22 during such disability.

(b) For permanent, partial disability, sixty-six and two-thirds percent (66 2/3%) of the patient's average weekly wage but not more than seventy-five percent (75%) of the state average weekly wage as determined by Section 22, multiplied by his percentage of disability caused by

the injury as determined by "guides to the evaluation of permanent impairment," American medical association, 1977 edition, or by his percentage of disability as determined under Section 1 (8) herein, whichever is greater, for a maximum period, from the date the disability arises, of four hundred twenty-five (425) weeks. Any temporary total disability period within the maximum period for permanent, partial disability benefits shall extend the maximum period but shall not make payable a weekly benefit exceeding that determined in subsection (1)(a) of this section. Notwithstanding any section of this Act to the contrary, there shall be no minimum weekly income benefit for permanent partial disability and medical benefits shall be paid for the duration of the disability.

(2) The period of any income benefits payable under this section on account of any injury shall be reduced by the period of income benefits paid or payable under this act on account of a prior injury if income benefits in both cases are for disability of the same member or function, or different parts of the same member or function, and the income benefits payable on account of the subsequent disability in whole or in part would duplicate the income benefits payable on account of the pre-existing disability.

(3) When a patient, who has sustained disability compensable under this section, and who has filed, or could have timely filed, a valid claim in his lifetime, dies from causes other than the injury before the expiration of the compensable period specified, the income benefits specified and unpaid at the individual's death, whether or not accrued or due at his death, shall be paid, under an award made before or after such death, for the period specified in this section, to and for the benefit of the persons within the classes at the time of death and in the proportions and upon the conditions specified in this section and in the order named:

(a) To the widow or widower, if there is no child under the age of eighteen (18) or incapable of self-support; or

(b) If there are both such a widow or widower and such a child or children, one-half to such widow or widower and the other half to such child or children; or

(c) If there is no such widow or widower but such a child or children, then to such child or children; or

(d) If there is no survivor in the above classes, then the parent or parents wholly or partly actually dependent for support upon the decedent, or to other wholly or partly actually dependent relatives listed in paragraph (g) of subsection (1) of Section 22 herein or to

both, in such proportions as the board may provide by regulation.

SECTION 22. A NEW SECTION OF KRS CHAPTER 311A IS CREATED TO READ AS FOLLOWS:

(1) If the incident causes death, income benefits shall be payable in the amount and to or for the benefit of the persons following, subject to the maximum limits specified in Subsections 3 and 4 of this section:

(a) If there is a widow or widower and no children of the deceased, to such widow or widower fifty percent (50%) of the average weekly wage of the deceased, during widowhood or widowerhood.

(b) To the widow or widower, if there is a child or children living with the widow or widower, forty-five percent (45%) of the average weekly wage of the deceased, or forty percent (40%), if such child is not or such children are not living with a widow or widower, and in addition thereto, fifteen percent (15%) for each child. Where there are more than two (2) such children, the indemnity benefits payable on account of such children shall be divided among such children, share and share alike.

(c) Two (2) years' indemnity benefits in one (1) lump sum shall be payable to a widow or widower upon remarriage.

(d) To the children, if there is no widow or widower, fifty percent (50%) of such wage for one (1) child, and fifteen percent (15%) for each additional child, divided among such children share and share alike.

(e) The income benefits payable on account of any child under this section shall cease when he dies, marries, or reaches the age of eighteen (18), or when a child over such age ceases to be physically or mentally incapable of self-support, or if actually dependent ceases to be actually dependent, or, if enrolled as a full-time student in any accredited educational institution, ceases to be so enrolled or reaches the age of twenty-two (22). A child who originally qualified as a dependent by virtue of being less than eighteen (18) years of age may, upon reaching age eighteen (18), continue to qualify if he satisfies the tests of being physically or mentally incapable of self-support, actual dependency, or enrollment in an educational institution.

(f) To each parent, if actually dependent, twenty-five percent (25%).

(g) To the brothers, sisters, grandparents, and grandchildren, if actually dependent, twenty-five percent (25%) to each such dependent. If there should be more than one (1) of such dependents, the total income benefits

payable on account of such dependents shall be divided share and share a' ke.

(h) The income benefits of each beneficiary under paragraphs (f) and (g) above shall be paid until he, if a parent or grandparent, dies, marries, or ceases to be actually dependent, or, if a brother, sister, or grandchild, dies, marries, or reaches the age of eighteen (18) or if over that age ceases to be physically or mentally incapable of self-support, or ceases to be actually dependent.

(i) A person ceases to be actually dependent when his income from all sources exclusive of patients' compensation income benefits is such that, if it had existed at the time as of which the original determination of actual dependency was made, it would not have supported a finding of dependency. In any event, if the present annual income of an actual dependent person including patients' compensation income benefits at any time exceeds the total annual support received by the person from the deceased patient, the patients' compensation benefits shall be reduced so that the total annual income is no greater than such amount of annual support received from the deceased patient. In all cases, a person found to be actually dependent shall be presumed to be no longer actually dependent three (3) years after each time as of

which the person was found to be actually dependent. This presumption may be overcome by proof of continued actual dependency as defined in this subsection, but full payment shall not be suspended during the pendency of any proceeding to determine dependency.

(2) Upon the cessation of income benefits under this section to or on account of any person, the income benefits of the remaining persons entitled to income benefits for the unexpired part of the period during which their income benefits are payable shall be that which such persons would have received if they had been the only persons entitled to income benefits at the time of the decedent's death.

(3) For the purposes of this section, the average weekly wage of the patient shall be taken as not more than the average weekly wage of the state as determined in KRS 342.740. In no cases shall the aggregate weekly income benefits payable to all beneficiaries under this section exceed the maximum income benefit that was or would have been payable for total disability to the deceased, including benefits to his dependents.

(4) The maximum weekly income benefits payable for all beneficiaries in case of death shall not exceed seventy-five percent (75%) of the average weekly wage of the deceased as calculated under KRS 342.140, subject to

the maximum limits in subsection (3) above. The maximum aggregate limitation shall not operate in case of payment of two (2) years' income benefits to the widow or widower upon remarriage as provided under paragraph (c) of subsection (1) of this section, to prevent the immediate recalculation and payments of benefits to the remaining beneficiaries as provided under subsection (2) of this section, but the weekly income benefits as to such remaining beneficiaries shall not exceed the weekly income benefit that was or would have been payable for total disability to the deceased. The classes of beneficiaries specified in paragraphs (a), (b) and (d) of subsection (1) shall have priority over all other beneficiaries in the apportionment of income benefits. If the provisions of this subsection should prevent payment to other beneficiaries of the income benefits to the full extent otherwise provided for by this section, the gross remaining amount of income benefits payable to such other beneficiaries shall be apportioned by class, proportionate to the interest of each class in the remaining amount. Parents shall be considered to be in one class and those specified in paragraph (f) of subsection (1) in another class.

(5) All relations of the dependency referred to in this section shall mean dependency existing at the time of the incident to the patient.

(6) If death occurs as a direct result of the incident, and the deceased had no statutory dependents as determined by this section, a lump sum payment of \$10,000 shall be paid to his estate, in addition to the amount provided for in Section 32 provided, however, that the lump sum payment shall be reduced by any income benefits previously paid on account of that incident.

SECTION 23. A NEW SECTION OF KRS CHAPTER 311A IS CREATED TO READ AS FOLLOWS:

The average weekly wage of the patient at the time of the incident shall be determined as follows:

(1) If at the time of the incident, which resulted in harmful change:

(a) The wages were fixed by the week, the amount so fixed shall be the average weekly wage;

(b) The wages were fixed by the month, the average weekly wage shall be the monthly wage multiplied by 12 and divided by 52;

(c) The wages were fixed by the year, the average weekly wage shall be the yearly wage divided by 52;

(d) The hourly wage had not been fixed or cannot be ascertained, the wage for the purpose of calculating, shall be taken to be the usual wage for similar services.

(2) In seasonal occupations, the average weekly wage shall be taken to be 1/50th of the total wages which the employee has earned from all occupations during the twelve (12) calendar months immediately preceding the incident.

(3) In the case of volunteer firemen, police and civil defense members, compensation shall be based on average weekly wage in regular employment.

(4) If the patient was a minor, or unemployed at the time the incident occurred, and it is established under normal conditions, he would have received wages or his wages should be expected to increase during the period of disability, that fact may be considered in computing average weekly wage.

(5) If the patient is working under agreement with two (2) or more employers, his wages from all such sources shall be considered as if earned from one employer.

(6) Wages as used in this section means, in addition to money, payments for services rendered, the reasonable value of board, rent, housing, lodging and fuel or similar advantage received from an employer or employers and gratuities received in the course of

employment from others than the employer to the extent that such gratuities are reported for income tax purposes.

(7) When the patient, prior to the incident, performs services such as child care or home management for which there was no direct monetary compensation, and which services can no longer be performed, wholly or partially, the Board shall consider the replacement cost for such services and apply the formula set forth in Section 21 in determining an award for lost earnings.

SECTION 24. A NEW SECTION OF KRS CHAPTER 311A IS CREATED TO READ AS FOLLOWS:

Where the patient has a pre-existing disease or disability which effects the degree of disability or length of disability resulting from an incident, the Board shall pro-rate the award for medical and income benefits allowing that percent reasonably attributable to the incident and excluding that percent reasonably attributable to the pre-existing condition.

SECTION 25. A NEW SECTION OF KRS CHAPTER 311A IS CREATED TO READ AS FOLLOWS:

Where more than one health care professional and/or health care institution has responsibility for an incident, the Board shall apportion the award among those responsible in a fair proportion to their individual degree of responsibility.

SECTION 26. A NEW SECTION OF KRS CHAPTER 311A IS  
CREATED TO READ AS FOLLOWS:

(1)Whenever compensation has been paid for not less than six (6) months, thereafter on the application of all parties in any case where the board determines it will be for the best interest of all parties and will not subject the payor to an undue risk of overpayment, future payments of compensation or any part thereof may be computed to a lump sum of an amount which will equal the total sum of the comparable future payments so computed, discounted at four percent (4%) compounded annually on each payment. Upon payment of such lump sum, all liability for the payments therein commuted shall cease.

(2) Whenever the Board considers it necessary, any lump sum which is paid as provided herein above, shall be paid to any suitable person appointed by the proper court of the county of the residence of the patient as trustee, to administer or apply the same for the benefit of the patient or persons entitled to compensation. The receipt of such trustee for the amount so paid shall discharge the health care professional or institution and his insurer.

SECTION 27. A NEW SECTION OF KRS CHAPTER 311A IS  
CREATED TO READ AS FOLLOWS:

If the incident is caused in any degree by the intentional failure of the health care professional or

institution to comply with any specific statute or lawful regulation relative to care or treatment, the compensation for which the institution or professional would otherwise have been liable under this Act, shall be increased fifteen percent (15%) in the amount of each payment period. If the incident is caused in any degree by the intentional failure of the patient to obey any lawful and reasonable rule, order or regulation relative to his care, treatment and safety, the compensation for which the professional or institution would otherwise have been liable under this Act shall be decreased fifteen percent (15%) in the amount of each payment period.

SECTION 28. A NEW SECTION OF KRS CHAPTER 311A IS CREATED TO READ AS FOLLOWS:

(1) After an incident for so long as compensation is claimed, the patient, if requested by a party or the Board, shall submit himself to examination at a reasonable time and place, to a duly qualified physician or surgeon, designated and paid by the requesting party. The patient shall have the right to have a duly qualified physician or surgeon designated and paid by himself present at such examination. The requesting party's right to the examination hereunder shall be absolute at all reasonable times and under all reasonable conditions.

(2) If a patient refuses to submit himself or in any way obstructs such examination, his right to take or prosecute any proceedings thereafter shall be suspended until such refusal or obstruction ceases. No compensation shall be payable for the period during which the refusal or obstruction continues.

SECTION 29. A NEW SECTION OF KRS CHAPTER 311A IS CREATED TO READ AS FOLLOWS:

Any patient receiving benefits under this Act may be required, upon request of any party, to furnish a sworn or affirmed statement of earnings and such other supporting information as the Board may require.

SECTION 30. A NEW SECTION OF KRS CHAPTER 311A IS CREATED TO READ AS FOLLOWS:

(1) The primary purpose of this Act shall be restoration of the patient to gainful employment. To this end there is created a rehabilitation panel which shall be composed of the director of the Board and specialists in medical and vocational rehabilitation to be appointed by the Board.

(2) A patient who has suffered an injury covered by this Act shall be entitled to prompt rehabilitation services for whatever period of time necessary to accomplish physical rehabilitation goals which are feasible, practical and justifiable. If the patient, as a

result of the injury, is unable to perform work for which he has previous training or experience, he shall be entitled to vocational rehabilitation services, including re-training in job placement as may be reasonably necessary to restore him to suitable employment. The Board shall inquire whether such services have been voluntarily offered and accepted.

(3) Where rehabilitation requires travel and expenses incident thereto, the reasonable costs of such expenses shall be paid by the health care institution or health care professional. Refusal to accept rehabilitation shall result in a fifty percent (50%) loss of compensation for each week of the period of refusal.

SECTION 31. A NEW SECTION OF KRS CHAPTER 311A IS CREATED TO READ AS FOLLOWS:

During the period the patient is eligible for permanent total disability benefits and is actively participating in a vocational or physical rehabilitation program, under Board order, the patient's benefit shall be calculated by taking eighty percent (80%) of his average weekly wage, but not more than one hundred percent (100%) of his average weekly wage times the percentage of disability as determined in this Act.

SECTION 32. A NEW SECTION OF KRS CHAPTER 311A IS CREATED TO READ AS FOLLOWS:

If death results from the incident, the health care professional, or institution shall pay the cost of burying in an amount not to exceed \$2,500 to any person who performs such service or incurred the liability for the service, whether or not the patient leaves dependents within the meaning of this Act.

SECTION 33. A NEW SECTION OF KRS CHAPTER 311A IS CREATED TO READ AS FOLLOWS:

There shall be established an Advisory Board to the Patients' Compensation Board which shall have the following responsibilities, as well as such additional responsibilities as may be assigned to it by the Board:

(1) To review and make recommendations to the Board on any cases or requests for advice submitted by the Board in regard to the appropriateness and validity of an "inherent risk" defense.

(2) To consult with any health care professional or health care institution requesting advice concerning the identification and defining of inherent risks in a health care procedure.

(3) To review and make recommendations on cases submitted by the Board as to whether or not a health care professional should be reported to his licensing authority for its consideration of remedial or disciplinary action, or as to whether or not a health care institution should

be reported to its licensing or review authority for review and consideration of remedial or disciplinary action.

(4) To provide to the Board medical or other health care specialty consultative advice as requested.

SECTION 34. A NEW SECTION OF KRS CHAPTER 311A IS CREATED TO READ AS FOLLOWS:

The Advisory Board shall be made up of five (5) members, who will be appointed by the governor from a list of nominees submitted by representatives of the health care system. The Advisory Board shall establish ad hoc committees of expert consultants from each health care specialty to consider and advise on questions within their specialty.

SECTION 35. A NEW SECTION OF KRS CHAPTER 311A IS CREATED TO READ AS FOLLOWS:

(1) All fees of attorneys and physicians, and all charges of hospitals under this Act, shall be subject to the approval of the Board. No attorney fee shall be allowed or approved against any party not represented by said attorney, nor shall any attorney fee be allowed or approved exceeding an amount equal to twenty percent (20%) of the first \$25,000, and fifteen percent (15%) of the next \$10,000 of the remainder of the amount recovered as actuality determined on past and future benefits. In no

case shall the fee exceed \$6,500. Provided, however, the Board in making an allowance of attorneys fees, shall in each case examine the record to ascertain the extent of the services rendered, and fix a reasonable fee for the services rendered, not to exceed the maximum authorized by this section. The Board may reduce the attorneys fee to an amount commensurate with the services performed, or may deny or reduce an attorneys fee upon proof of solicitation of employment.

(2) No attorneys fee in any case involving benefits under this Act shall be paid until the fee is approved by the Board, and any contract for the payment of the attorneys fees otherwise than as provided in this section shall be void. The entire attorneys fee in a lump sum shall be paid directly to the attorney of record, and the Board in allowing or approving an attorneys fee as provided in this section shall order the payment of same directly to the attorney, commuting sufficient of the final payments of compensation payable under the award to a lump sum for that purpose.

(3) The General Assembly declares that by the enactment of subsections (1) and (2), it is the legislative intent to encourage settlement and prompt administrative handling of such claims, and thereby reduce expenses to claimants, and the Board shall give due regard

to such legislative intent in the handling of uncontested claims and the allowance of attorneys fees therein.

SECTION 36. A NEW SECTION OF KRS CHAPTER 311A IS CREATED TO READ AS FOLLOWS:

No person shall knowingly file, or permit to be filed any false or fraudulent claim on his behalf to compensation or other benefits under this Act, or by fraud, deceit or misrepresentation procure or cause to be made or receive any payments of compensation or other benefits under this Act to which the recipient is not lawfully entitled, or conspire with, aid or abet another so to do. No person shall by deceit or misrepresentation or with intent to defraud cause or procure or conspire with, aid or abet another in so causing or procuring any person entitled to compensation or other benefits under this Act to omit to claim title hereto or to accept the payment of a less sum than that to which he may be lawfully entitled thereunder.

SECTION 37. A NEW SECTION OF KRS CHAPTER 311A IS CREATED TO READ AS FOLLOWS:

(1) Every health care professional or institution under this Act shall either insure and keep insured his liability for compensation hereunder in some corporation, association or organization authorized to transact the business of patients compensation insurance in this state

or shall furnish to the Board satisfactory proof of his financial ability to pay directly the compensation in the amount and manner and when due is provided for in this Act. In the latter case, the Board shall require the deposit of an acceptable security, indemnity or bond to secure to such an extent as the Board directs the payment of compensation liabilities as they are incurred.

(2) Every health care professional or institution subject to this Act shall file, or have filed on its behalf, with the Patient's Compensation Board, as often as may be necessary, evidence of its compliance with the provisions of this section and all others relating thereto.

SECTION 38. A NEW SECTION OF KRS CHAPTER 311A IS CREATED TO READ AS FOLLOWS:

(1) In order to comply with Section 37 groups of health care professionals and institutions may form among themselves mutual insurance associations or reciprocal or inter insurance exchanges subject to the insurance laws of this state and such reasonable conditions and restrictions not inconsistent therewith as may be fixed by the board. Membership in such mutual insurance associations or reciprocal or inter insurance exchanges so approved, together with evidence of the payment of premiums due, shall be evidence of compliance with Section 37.

(2) The board may, except as provided in subsection (3), require any mutual insurance association or reciprocal or inter insurance exchange to purchase an annuity or to effect reinsurance with a company authorized to transact insurance in this state or to make such deposit with a bank or trust company of this state as shall in either case be approved by the board for the purpose of fully securing the payment of all deferred installments upon any claim for compensation.

(3) Any mutual insurance association or reciprocal or inter insurance exchange possessing a surplus of not less in amount than the capital required of a domestic stock insurance company transacting the same kind of insurance, shall not be required to purchase an annuity or effect reinsurance with a company authorized to transact insurance in this state or to make such a deposit with a bank or trust company of this state for the purpose of fully securing the payment of all deferred installments upon any claim for compensation.

(4) In addition, the board, under rules and regulations as it shall prescribe, may permit any two (2) or more health care professionals and institutions to enter into agreements to pool their liabilities under this Act for the purpose of qualifying as self-insurers. Health care professionals and institutions securing

certification as group self-insurers are regulated by rules and regulations drawn by the patients' compensation board and are not to be in any way subject to the provisions of subsections (1), (2), and (3) of this section.

SECTION 39. A NEW SECTION OF KRS CHAPTER 311A IS CREATED TO READ AS FOLLOWS:

Upon the request of the board, the attorney general, or, under his direction, the Commonwealth's attorney or county attorney of any county, shall institute and prosecute the necessary actions or proceedings for the enforcement of any of the provisions of this Act arising within his jurisdiction, and shall defend in like manner all actions or proceedings brought against the board or the members thereof in their official capacity.

SECTION 40. A NEW SECTION OF KRS CHAPTER 311A IS CREATED TO READ AS FOLLOWS:

(1) No claim for compensation under this Act shall be assignable; and all compensation and claims, therefore, shall be exempt from all claims of creditors.

SECTION 41. A NEW SECTION OF KRS CHAPTER 311A IS CREATED TO READ AS FOLLOWS:

(1) Upon its own motion or upon the application of any party interested in a showing of change of conditions, mistake or fraud or newly discovered evidence, the Board

may at any time review any award of order, ending, diminishing or increasing the compensation previously awarded, within the maximum and minimum provided in this Act, or change or revoke its previous order, sending immediately to the parties a copy of its subsequent order or award. Review under this section shall be had upon notice to the parties interested and in the same manner as provided for an initial proceeding hereunder but shall not affect the previous order or award as to any sums already paid thereunder, however, the health care professional or institution shall not suspend the payment of benefits during the pendency of any reopening procedures.

(2) Where an agreement has become an award by approval of the Board, and a review of such an award is initiated, no statement contained in the agreement, whether as to jurisdiction, liability of the health care professional or institution, nature and extent of disability, or as to any other matter, shall be considered by the Board as an admission against the interests of any party. The parties may raise any issues upon review of this type of award which could have been considered upon an original application for benefits.

SECTION 42. A NEW SECTION OF KRS CHAPTER 311A IS  
CREATED TO READ AS FOLLOWS:

No patient shall be harrassed, coerced, discharged or discriminated against in any manner whatsoever for filing and pursuing a lawful claim under this Act, or for electing not to come under the provisions of this Act.

SECTION 43. A NEW SECTION OF KRS CHAPTER 311A IS CREATED TO READ AS FOLLOWS:

If the Board or any court before whom any proceedings are brought under this Act determines that such proceedings have been brought, prosecuted or defended without reasonable ground, it may assess the whole cost of the proceedings, which shall include actual expenses, but not be limited to the following: court costs, travel expenses, deposition costs, physician expenses for attendance fees at depositions, attorneys fees and all other out-of-pocket expenses upon the party who has so brought, prosecuted or defended them.

SECTION 44. A NEW SECTION OF KRS CHAPTER 311A IS CREATED TO READ AS FOLLOWS:

Commencing January 1, 1990, the state auditor shall report annually to the Governor and to the General Assembly a cost and benefit analysis of the operations of the Patient Compensation Plan and may recommend any amendments to this Act or administrative changes that should be made to improve the operation of the plan.

SECTION 45. A NEW SECTION OF KRS CHAPTER 311A IS  
CREATED TO READ AS FOLLOWS:

(1) Any health care professional or institution subject to this Act who refuses or willfully neglects to make the report required by Section 5 shall be fined not more than Twenty-five dollars (\$25) for each offense.

(2) Any person who violates Section 36, shall be fined not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00) or imprisoned for not less than ten (10) days nor more than ninety (90) days.

SECTION 46. A NEW SECTION OF KRS CHAPTER 311A IS  
CREATED TO READ AS FOLLOWS:

The provisions of this Act shall be effective as to patients, health care professionals, and institutions ninety (90) days after the Secretary for the Cabinet of Human Resources has certified to the Secretary of State of the Commonwealth that the Patients' Compensation Board and its Advisory Board have been appointed, that regulations for the operation of the system have been adopted, and that the administrative system is prepared to be operational; and further that the Commissioner of Insurance has certified to the Secretary of State of the Commonwealth that there is available to the health care professionals and institutions, on either a self-insured, pool, or commercial basis, patients compensation insurance

to insure risks incurred under this Act. Certifications  
will be made no later than eighteen (18) months following  
the effective date of this Act and in the event either  
cannot be made the Secretary or the Commissioner shall  
file in writing the reasons therefor and the effective  
date shall not occur until both such certificates have  
been filed.

HB

295



# AKPIRG

## ALASKA PUBLIC INTEREST RESEARCH GROUP

Post Office Box 101093 / Anchorage, Alaska 99510-1093

(907) 278-3661 FAX (907) 278-9300

Representative Bill Hudson  
Chairman, House Labor and Commerce  
State Capitol  
Juneau, Alaska  
April 7, 1994

Re: Written testimony to supplement HB 539 and HB 295

Dear Chairman Hudson:


When the legislature determined that consumers would be taxed through a regulatory cost charge to underwrite the costs of the Alaska Public Utility Commission, it is unlikely it could foresee how contemptuous the APUC would be to consumer involvement in the process.

The level of contempt and even concern with the danger of consumer involvement in what has become an ever cozy working relationship between regulated utilities and regulators is well demonstrated in the enclosed transcript of the APUC hearing on the subject of the Citizens Utility Board. The level of perversion in the current situation is demonstrated by the concern expressed by commissioners and their legal staff that an independent advocate might actually raise to a formal level and increase the number of consumer complaints. Questions to advocates for a CUB focused on the source of their funding, questions rarely asked of utility advocates that smacked of the dark days of Red baiting- this after thousands of Alaskans asked AkPIRG to press for an independent consumer advocate.

Why should consumers pay a tax that does nothing more than further the promiscuous relationship between utilities and commissioners? This is taxation without representation.

Please share this transcript with members of your committee. Thank you for your cooperation throughout the legislative session.

Sincerely,

  
Stephen Conn  
Executive Director

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STATE OF ALASKA  
THE ALASKA PUBLIC UTILITIES COMMISSION

SPECIAL PUBLIC MEETING  
HB 295

ALASKA PUBLIC UTILITIES COMMISSION  
HEARING ROOM  
ANCHORAGE, ALASKA  
MARCH 9, 1994

RECEIVED  
APUC  
MARCH 15 PM 4:07

B E F O R E:

DON SCHRÖER, Chairman, APUC

AND:

JAMES E. CARTER, SR., Commissioner, APUC  
ALYCE A. HANLEY, Commissioner, APUC  
DWIGHT D. ORNQUIST, Commissioner, APUC  
DANIEL PATRICK O'TIERNEY, Commissioner, APUC

APPEARANCES:

FOR COMMISSION STAFF: VIRGINIA A. RUSCH, ESQ.  
JEFFREY D. LANDRY, ESQ.  
Assistant Attorneys General  
State of Alaska  
Department of Law  
1031 West Fourth Avenue, Suite 200  
Anchorage, Alaska 99501  
(907) 269-5171

ROBERT A. LOHR  
Executive Director  
SUZAN ARMSTRONG  
ELAINE BAYER  
LEW CRAIG  
JOE FRANCO  
WILLIAM MARSHALL  
JEANNE McPHERREN  
MICHAEL NEISWONGER  
MIKE TAVELLA

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APPEARANCES (Continued):

FOR COMMISSION STAFF PHIL TREUER  
(Continued): JUDY WHITE  
Alaska Public Utilities Commission  
1016 West 6th Avenue, Suite 400  
Anchorage, Alaska 99501  
(907) 276-6222

FOR ALASKA TELEPHONE JIM ROWE  
ASSOCIATION:

FOR ALASKA PUBLIC BONNIE NELSON  
INTEREST RESEARCH  
GROUP:

Via Teleconference: BOB JENKS  
Executive Director  
Citizens' Utility Board of Oregon  
  
ROGER KEMPPPEL  
(Speaking on Behalf of ARECA)  
  
JOEL ROTHBERG  
(Formerly of ACAP)  
Anchorage, Alaska  
  
PHYLLIS TURNER  
Citizen's Utility Board Organizing  
Project, Washington, D.C.

1 PROCEEDINGS

2  
3 (On record at 9:00 a.m.)

4 **CHAIRMAN SCHRÖER:** Good morning. It is now  
5 approximately nine a.m., March 9th, 1994. We'll call this  
6 special public meeting to order. At issue today is public  
7 participation, discussion of proposed legislation to  
8 establish a citizen's utility board, known as House Bill 295,  
9 and any other business. Sitting today are Commissioners  
10 Ornquist, O'Tierney, Hanley, Carter, and Schröer.

11 Before we start, is there anybody other than the four  
12 that are on the teleconference that wish to testify?

13 **MR. ROWE:** I would like to testify. My name's Jim  
14 Rowe. I represent the ATA.

15 **CHAIRMAN SCHRÖER:** Jim Rowe, ATA. And what is your  
16 name, ma'am?

17 **MS. NELSON:** I'm Bonnie Nelson. I wish to testify for  
18 Alaska Public Interest Research Group.

19 **CHAIRMAN SCHRÖER:** Bonnie Nelson?

20 **MS. NELSON:** Yes.

21 **CHAIRMAN SCHRÖER:** Well, I don't know any particular  
22 order, so I guess we will take them in the order they are  
23 listed on our information here. Mr. Jenks, and you --

24 **MR. JENKS:** Yes.

25 **CHAIRMAN SCHRÖER:** You have the floor. Go ahead.

1           MR. JENKS:   Okay, thank you.   My name is Bob Jenks.  
2   I'm the executive director of the Oregon Citizens' Utility  
3   Board.  As someone who grew up in Alaska, it's a privilege to  
4   testify to you this morning.  I believe you folks have  
5   written comments from me, so I'm not going to read those.  I  
6   just want to summarize what they are and then answer any  
7   questions you have.  When you look back on sort of -- what's  
8   happened in the Pacific Northwest, Oregon, Washington, Idaho,  
9   all set up consumer advocacy systems for utilities about a  
10   decade ago.  And while they used different models, the theory  
11   behind all three of them were the same.  And there were  
12   really two reasons for setting up those systems, the first  
13   that utility issues have been increasingly technical.

14           It wasn't long ago that the major issues in  
15   telecommunications dealt with issues like touch tone and  
16   directory information, what size of local calling areas.  
17   Today they've gotten much more complicated, as we have to  
18   deal with access charges, lifeline rates, et. cetera.  And  
19   that by the end of this session of Congress, after they pass  
20   a bill that will reopen or change the Communications Act,  
21   we're going to have to deal with on a state level,  
22   interconnectivity, open network architecture, (indiscernible)  
23   subsidy, protecting rural customers from effects of urban  
24   competition, affordable rural access to the information  
25   superhighway, protecting privacy in the context of this new

1 technology, and allocation of costs associated with video  
2 dial tone. As we resolve these issues, it's critical that  
3 residential and small business rate payers have access to the  
4 kind of economic expertise they need to analyze these issues.

5 The second reason is that there's an increasing number  
6 of special interests participating in utility hearings. It  
7 wasn't that long ago in Oregon where some residential  
8 customers and many business customers were paying less than  
9 one cent per kilowatt hour for electricity. Today rates are  
10 more than five cents for most customers. As costs have  
11 increased, large commercial and industrial enterprises have  
12 found that it makes economic sense for them as a business to  
13 intervene in utility rate setting and work to either, A,  
14 reduce rates across the board, or B, push the rates and the  
15 revenue requirements of the utilities onto other classes of  
16 customers. Before CUB was established here in Oregon, we saw  
17 a relatively massive shift of the revenue in electrical  
18 utilities from the commercial and industrial sector onto the  
19 residential and small business sector.

20 The same thing's been happening in telecommunications.  
21 When you have a major rate case in Oregon, you end up with  
22 the phone company involved. Other local phone companies,  
23 other kinds of large national companies like AT and T and  
24 MCI, companies involved in a host of telecommunications  
25 services. There's a trade association for large commercial

1 users of the phone system that participate. And since CUB  
2 was formed, we have CUB there also to represent the  
3 residential and small business customers.

4 And I think in those (indiscernible) it's important to  
5 recognize that we're not trying to duplicate the PUC Staff.  
6 I have a tremendous amount of respect for the Staff. But the  
7 reality is, the Staff ends up having to respond to the  
8 intervening parties. The Staff has to give the Commission an  
9 independent analysis of the arguments for those intervening  
10 parties, so if the intervening parties only represent certain  
11 classes of customers, then the Staff work is inherently going  
12 to more focus on the impacts on those classes of customers.  
13 Having CUB allows us to also put in information and make sure  
14 that the Staff is looking at all issues involved in the case.

15 When Oregon CUB was started in -- in back in 1984, the  
16 ballot measure that created CUB did three things. The first  
17 is, it created an organization to represent consumers. The  
18 second thing is, it authorized that organization to represent  
19 rate payers specifically before the PUC, state courts, and  
20 the Legislature. And finally, it created a mechanism which  
21 would allow consumers to easily and conveniently join CUB  
22 through inserts in mailings.

23 And it's important to realize that when voters did  
24 that, they weren't trying to change the basic process before  
25 the PUC; that what they were trying to do is make sure that

1 when the PUC hears from all the various classes of customers,  
2 that the residential and small business customer is there and  
3 has the kind of professional, competent representation that's  
4 necessary.

5 In addition, what we've done is, we build a record  
6 before the PUC. The Oregon PUC is required to make its  
7 decisions based on the record before it. Any decision not  
8 based on that record will likely be overturned by court. So  
9 there's been several cases that we've been involved in,  
10 whereas if we hadn't submitted the testimony and the evidence  
11 that we did, the PUC wouldn't have been able to arrive at the  
12 decision that they did, because the record wouldn't have  
13 supported it.

14 You don't have to take my word for it. The Oregon PUC  
15 has regularly praised the work of CUB. In a letter signed by  
16 all three Oregon Commissioners to a legislative committee  
17 that dealt with the -- legislature was looking into the issue  
18 of CUB funding; the UC said that CUB was especially valuable.  
19 It quoted its -- itself from a proceeding where it -- the PUC  
20 said that CUB had provided thought-provoking and  
21 (indiscernible) testimony. And then the quote that's, again,  
22 in the written materials I gave you goes on to talk about how  
23 CUB intervened in a Portland General Electric rate case,  
24 saving rate payers about a hundred and twenty-three million  
25 dollars.

1 Attached to my testimony, I've also got a list of some  
2 other cases CUB had an impact on. Until CUB was created,  
3 Oregon rate payers have never seen revenue refunded to them.  
4 Since 1987, we've had that happen five times, the most  
5 recently of which was last October when U.S. West refunded  
6 14.5 million dollars to customers. And that's one of the  
7 highlights, just how that works, as it does show the process  
8 and how CUB does intervene in these cases.

9 In 1987, the PUC determined that U.S. West was over-  
10 earning and ordered them to reduce their earnings by 45  
11 million dollars. Five million of that reduction was to be  
12 implemented by allowing customers to opt out of extended area  
13 telephone service. For reasons unrelated to the revenue  
14 requirement, the optional extended area service was never  
15 implemented, and consequently, U.S. West was earning five  
16 million dollars above their revenue requirement.

17 The following year, we requested that PUC order U.S.  
18 West to reduce their revenue and refund the money that had  
19 been overcollected. The PUC agreed to cut rates and ordered  
20 U.S. West to refund what was then 8.4 million dollars, a year  
21 and a half's worth of the overcollection plus interest on  
22 that overcollection. And while U.S. West admitted to that,  
23 they have gone -- they did go to court, worked their way up  
24 to the state supreme court, where they eventually lost, and  
25 finally last year were ordered to refund the money, which

1 worked out to about \$11 per residential customer and \$26 per  
2 line for business customers.

3 That rate case, that intervention, asking for the U --  
4 for the PUC to reduce U.S. West rates and refund the money,  
5 cost us about \$10,000. So for that investment, we reduced  
6 rates by five million dollars per year. And with interest we  
7 saw a refund of 14.5 million dollars to customers. And  
8 there's little doubt that those would have happened without  
9 CUB intervening.

10 In conclusion, I wanted to say that it's -- that as the  
11 telecommunications system changes, as electric rates get  
12 greater, the need for consumers to be represented before the  
13 PUC will only increase. And that's -- you can see that by  
14 the fact that 43 states have already adopted some sort of  
15 measure to ensure that consumers are represented. In fact,  
16 I would say that you can call -- it's now to the point that  
17 you can call consumer representation before utility  
18 commissions a traditional aspect of state government. And  
19 while there's different models, some states do it through  
20 intervenor funding, some states do it through states offices,  
21 consumer council, some states through groups like CUB. I  
22 think CUB's a sensible approach because it's directly  
23 accountable to citizens, it's not financed by taxes or an  
24 assessment on utility customers; but it's funded by customers  
25 voluntarily. And that means there's little risk in it. If

1 CUB is set up and it doesn't work, consumers are smart,  
2 they're not going to keep funding it. If CUB's set up and it  
3 does work, it does save consumers money directly, then  
4 they'll continue to fund it and the program will be self-  
5 sustaining.

6 So those were my general comments. I'd be glad to  
7 answer any questions any of you folks have for me.

8 **CHAIRMAN SCHRÖER:** Thank you, Mr. Jenks. Commissioner  
9 Hanley, you have any questions?

10 **COMMISSIONER HANLEY:** Just quickly, Mr. Jenks. What --  
11 what's the number of your staff involved there in Oregon?

12 **MR. JENKS:** We have a staff of two and a half  
13 positions, and then we regularly contract for outside legal  
14 representation or for outside economic consultants.

15 **COMMISSIONER HANLEY:** Have you had difficulty in  
16 funding the staff or in getting the expertise that you need,  
17 recognizing the complexity of the issues that are addressed  
18 by, you know, in utility issues?

19 **MR. JENKS:** To some degree, yes. I mean, we never have  
20 the amount of resources we would like. There's consultants  
21 who regularly are contacting me offering to do a study on an  
22 aspect of one of our cases for a hundred thousand or  
23 \$200,000, which does not fit into our budget. But we have  
24 been able to get competent and professional help. We'd  
25 always like to bring in more resources. We'll never have the

1 kind of resources that the industry trade associations do or  
2 that the utilities themselves have, but I don't think that  
3 that's the critical point. I don't think the idea is to put  
4 rate payers on an equal footing with other classes of  
5 customers. I think it's to make sure rate payers are part of  
6 the process; and then with the Commission and the Staff and  
7 other folks looking at this, I think we do end up with  
8 reasonable decisions because of that.

9 COMMISSIONER HANLEY: Thank you.

10 CHAIRMAN SCHRÖER: Commissioner Carter.

11 MS. TURNER: I'm sorry, did you say Ms. Turner? Hello?

12 COMMISSIONER CARTER: Hello.

13 CHAIRMAN SCHRÖER: Yes?

14 COMMISSIONER O'TIERNEY: Did you say Ms. Turner?

15 CHAIRMAN SCHRÖER: No, I said, Commissioner Carter.

16 COMMISSIONER O'TIERNEY: Sorry.

17 COMMISSIONER CARTER: Yes. Mr. Jenkins --

18 CHAIRMAN SCHRÖER: Jenks.

19 COMMISSIONER CARTER: -- or Jenks, I mean, did you --  
20 is your organize -- organization organized through the Oregon  
21 Legislature or did you apply for a corporate license through  
22 commerce?

23 MR. JENKS: We were created statutorily through an  
24 initiative by Oregon voters, which carries the same weight as  
25 a legislative action. We're incorporated as a non-profit

1 charitable organization in the state of Oregon, so we have an  
2 independent incorporation status but we were created by  
3 Oregon statute.

4 COMMISSIONER CARTER: I see. And how many times in a  
5 year would you say you intervene in cases?

6 MR. JENKS: We probably intervene in around eight  
7 significant cases a year, and then participate on a lower  
8 level on several others; though recognize that many -- some  
9 of those cases, when we're intervening in eight significant  
10 cases a year, some of those take more than a year to  
11 complete. If there's court action on them, obviously they  
12 could take several years. Though normally that court  
13 action's initiated by the utility company, not by consumer  
14 groups.

15 COMMISSIONER CARTER: Mm-hm (affirmative). What is the  
16 population of Oregon, roughly?

17 MR. JENKS: The population, I believe is about three  
18 million. We -- I do know that there's 1.2 million  
19 residential electric consumers and 1.1 million residential  
20 telephone consumers, and those are sort of the numbers we  
21 look at sort of what our target audience is.

22 COMMISSIONER CARTER: And does the Oregon  
23 Legislature -- or does the state cover any of your cost when  
24 you intervene?

25 MR. JENKS: Not in front of the PUC. We have -- we,

1 like any other group, if we go to court on an issue, could  
2 potentially get attorney's fees from a utility company from  
3 the PUC from somebody in that case, though I -- I'm not in  
4 the last two years, I'm not aware of us ever getting  
5 attorney's fees for that sort of case. But before the PUC  
6 there's no form of intervenor funding available in Oregon.

7 COMMISSIONER CARTER: Thank you very much.

8 CHAIRMAN SCHRÖER: Commissioner O'Tierney.

9 COMMISSIONER O'TIERNEY: I don't have any questions  
10 (indiscernible).

11 CHAIRMAN SCHRÖER: Commissioner Ornquist.

12 COMMISSIONER ORNQUIST: Mr. Jenks.

13 MR. JENKS: Yes.

14 COMMISSIONER ORNQUIST: I do have a couple of questions  
15 for you. Number one, who or what determines which cases the  
16 Citizen's Utility Board of Oregon addresses?

17 MR. JENKS: We have a board of directors of 15 members  
18 who are elected from our membership by congressional  
19 districts. So in Oregon there's five congressional districts  
20 and each congressional district's members through mail  
21 ballots elect three board members and then it's that board of  
22 governors that decides everything from our annual budget to  
23 what cases do we get involved in to which cases are highest  
24 priority.

25 COMMISSIONER ORNQUIST: And do they look at every case

1 that comes before your Public Utilities Commission and decide  
2 from that list?

3 MR. JENKS: No. Ultimately, the number of cases that  
4 our Commission deals with -- I mean, our Commission goes  
5 beyond most utility commissions. In any affiliate  
6 transaction between a utility, an affiliate of the parent  
7 company has to go through the Commission. The number of just  
8 people filing for -- to become telecommunications providers  
9 seems to number about 10 or 15 a month. So on that basis, we  
10 don't get involved in every case. I would say we get  
11 involved in the significant rate cases and the significant  
12 sort of collaboratives on issues like -- sort of --  
13 integrated resource planning, things like that; issues  
14 reflecting privacy, the caller I.D. was a major issue for us  
15 down here, those sorts of things. But there's lots of issues  
16 that the Commission deals with that we simply don't have the  
17 resources to get involved in, as well as even if we did, I'm  
18 not sure it would ever be a priority for us.

19 COMMISSIONER ORNQUIST: Right. And what I'm really  
20 asking there is, your board --

21 MR. JENKS: Mm-hm (affirmative).

22 COMMISSIONER ORNQUIST: -- does it look at a complete  
23 list or an edited list of issues that are coming up?

24 MR. JENKS: I would say it looks at an edited list,  
25 where we get information from the Commission, we get their

1 agendas, we get notified in most cases. We don't -- I  
2 don't -- not even sure that we get notified for everything  
3 that comes up on all these sort of affiliate transactions and  
4 other things that -- we'd get notified of them. But we get  
5 notified of all, sort of the major cases, and then our board  
6 does consider those.

7 COMMISSIONER ORNQUIST: And who does the editing for  
8 the board's list?

9 MR. JENKS: I'm ultimately the one working with the  
10 president of our board.

11 COMMISSIONER ORNQUIST: So you determine which ones go  
12 on the list for your board to look at and pick from?

13 MR. JENKS: Right, though it's not -- I mean,  
14 oftentimes, it's not even picking for a -- I mean, these  
15 things don't come up. It's not where, on January the Public  
16 Utility Commission will put a list of these -- all the cases  
17 we're going to look at in the next year and we sit down and  
18 do it. It's month -- we meet on a monthly basis here in  
19 Oregon so it's what's -- what issues, what things are before  
20 the PUC that we need to decide whether we're going to have a  
21 role in. Each month we'll go on the agenda for the board to  
22 make that decision.

23 COMMISSIONER ORNQUIST: Right. Then the other question  
24 I had, you did touch on a little bit; which issues do you  
25 find yourself addressing and are you limited to mostly rates?

1 Is that your main concern?

2 MR. JENKS: My belief is that when CUB was set up by  
3 voters, they were first and foremost seeing it as somebody  
4 who would represent them in rate cases. So I think our first  
5 responsibility as -- is to represent the residential and  
6 small business customer in the kind of rate cases, and  
7 where -- and in those cases, invariably, the other classes of  
8 customers have been represented, so I think that -- that's --  
9 I think that that is sort of our first priority. Then beyond  
10 that, our members -- reflected by polls we do of our members  
11 and by our board, have real concerns about sort of long-term  
12 energy resources in Oregon, integrated resource planning.  
13 We've had a history here, a negative history, with nuclear  
14 power that worries people about whether the decisions we're  
15 making now were better than the decisions we made in the  
16 1970's. And then on telecommunications, there's been real  
17 concern about privacy and about both achieving some sort of  
18 digital communication service at a reasonable price, as well  
19 as who's going to pay for the more far-reaching information  
20 superhighway. And our Commission has started to get in front  
21 of those issues by opening up dockets to look at things like  
22 ISDN and video dial tone. And I think that that's -- I'm  
23 encouraged by the way our Commission is sort of focusing,  
24 trying to get ahead of the curve on those kinds of issues,  
25 and -- because it gives us, U.S. West, other players, a

1 chance to sort of sit down and try to develop a consensus  
2 before we're fighting over, sort of every dollar and  
3 everything else.

4 COMMISSIONER ORNQUIST: Okay. One of the things you  
5 mentioned was integrated resource planning, the IRP --

6 MR. JENKS: Mm-hm (affirmative).

7 COMMISSIONER ORNQUIST: -- side of power generation and  
8 distribution and things. Do you find yourself addressing  
9 environmental concerns on that, or is it mostly rate  
10 concerns? Or what kind of positions do you find your CUB  
11 taking?

12 MR. JENKS: I think that those -- the -- they're both,  
13 but I also think that -- I'm not sure that you can  
14 distinguish between them. I mean, there's been talk both  
15 about within the state of Oregon and nationally about  
16 (indiscernible) a carbon tax that will affect the ability to  
17 generate electricity through fossil fuels. So I think on  
18 that level, you can't -- with -- you can't really distinguish  
19 necessarily between the concerns that cleanly. I think our  
20 perspective that we bring to the table is much more of a  
21 perspective of the consumer and making sure that the  
22 consumer's represented there. Oregon has a host of  
23 environmental groups and a host of groups that work on energy  
24 issues directly that are much more aggressive in sort of  
25 pursuing the environmental aspects of these sorts of things

1 on -- from sort of a pure environmental level.

2 So for us, I think when you get into resource planning,  
3 the buzzword is much more the least cost approach. And if  
4 that approach is conservation and energy efficiency, that's  
5 all the much better. But the fundamental principle is what  
6 approach is going to be the least cost to the company and the  
7 least cost to the customers.

8 **COMMISSIONER ORNQUIST:** Okay. That's about all I have  
9 to ask. Thank you very much.

10 **CHAIRMAN SCHRÖER:** Mr. Jenks, I have just one question.  
11 You've been in existence for approximately 10 years. What is  
12 your membership today?

13 **MR. JENKS:** It's -- the number of people who have been  
14 members in the last year is around 20,000.

15 **CHAIRMAN SCHRÖER:** What has been your high?

16 **MR. JENKS:** That probably is.

17 **CHAIRMAN SCHRÖER:** Has it grown steadily over years?

18 **MR. JENKS:** Yes. I think it has or it grew fairly  
19 rapidly in the first couple years. I think then there was a  
20 leveling off period. And then since I've been here two years  
21 ago, we've focused at making sure that we are building up  
22 those numbers, and I think that that will continue.

23 **CHAIRMAN SCHRÖER:** And what dues do you charge your  
24 members?

25 **MR. JENKS:** The -- by law, our dues are between five

1 and a hundred dollars. And we essentially allow our members  
2 to choose within that range. Our membership materials let  
3 people know that they can join for as little as five dollars  
4 but encourage people to contribute more if they can.

5 **CHAIRMAN SCHRÖER:** Thank you. Any other questions?

6 **COMMISSIONER O'TIERNEY:** Mr. Jenks, Commissioner  
7 O'Tierney here. I just had a couple of questions, actually,  
8 in reflection. Is your entity deemed to be an  
9 instrumentality of the state of Oregon?

10 **MR. JENKS:** The -- it -- let me -- you're asking  
11 legally, are we an instrument of the state?

12 **COMMISSIONER O'TIERNEY:** Yes.

13 **MR. JENKS:** And we become some -- I think there,  
14 there's sort of a quasi-relationship. I mean, we were sort  
15 of officially within sort of the network of state government  
16 in the same way that the Workers Compensation Insurance  
17 Corporation, which is independently incorporated, is in  
18 there. We're listed in sort of the blue book of state  
19 government. But we're governed much more by the rules for  
20 non-profit charitable organizations than we are for state  
21 agencies. So we don't end up having to deal with sort of  
22 pensions for state workers, a lot of, sort of the kinds of  
23 rules and regulations, procurement rules of the state. We're  
24 on that level an independent non-profit organization. Our  
25 budget doesn't go through the Legislature. But we are -- in

1 some ways, we're a creature of the state government because  
2 they're the ones that formed our legal charter that governs  
3 us.

4 COMMISSIONER O'TIERNEY: Okay. Are your employees, for  
5 example, are they employees of the state?

6 MR. JENKS: No.

7 COMMISSIONER O'TIERNEY: Okay. So they don't --

8 MR. JENKS: Right, so -- right, on that level, we're  
9 all (indiscernible) like any other sort of non-profit  
10 corporation, though in addition to the rules that apply to a  
11 non-profit corporation we've got -- we're governed by a state  
12 law that sets our membership dues, sets the structure of our  
13 board --

14 COMMISSIONER O'TIERNEY: No, I understand that --

15 MR. JENKS: -- those sorts of --

16 COMMISSIONER O'TIERNEY: I mean, that -- and that would  
17 be applicable to any and all comers under your Non-Profit  
18 Incorporation Act.

19 MR. JENKS: No, no, no. I'm saying there's a CUB  
20 statute itself.

21 COMMISSIONER O'TIERNEY: Oh, I see.

22 MR. JENKS: Says -- puts our dues between five and a  
23 hundred dollars, out -- says how our membership will be  
24 elected, how we will conduct elections for membership, things  
25 like that. So in addition to being a non-profit

1 organization, we have a state law that governs our conduct,  
2 that was passed by voters, and we have to comply with that  
3 state law.

4 COMMISSIONER O'TIERNEY: Let me ask sort of -- well,  
5 same thing, different question; come at it from a different  
6 point -- different angle. I assume Oregon has some version  
7 of what's commonly called the Sunshine Act, or as Alaska  
8 would refer to it as an Open Meetings Act. Are -- is your  
9 organization subject to such --

10 MR. JENKS: Yes, the law says --

11 COMMISSIONER O'TIERNEY: -- compunctions?

12 MR. JENKS: -- specifically that we have to comply with  
13 provisions of the state's open meeting law.

14 COMMISSIONER O'TIERNEY: With respect to your meetings  
15 and with respect to your decision making and the like?

16 MR. JENKS: Right, right. No -- yes, we are required  
17 to comply with that law. We're also required to undergo an  
18 annual audit, a number of requirements like that. We're  
19 required to meet at least once a year in each of the five  
20 congressional districts of the state of Oregon so that we're  
21 accessible to the public and are actually meeting the  
22 concerns of consumers around the state and not just the major  
23 cities. So there's a number of provisions like that that  
24 we're required by law to meet that wouldn't govern a typical  
25 non-profit organization.

1           **COMMISSIONER O'TIERNEY:** Right, and I guess in that  
2 sense then, I -- and without asking you to -- you know, to  
3 recall or interpret your own Sunshine Act statute; but  
4 presumably, that applies to public agencies, public entities,  
5 or quasi-public entities or the like. Would that be a  
6 fair --

7           **MR. JENKS:** Right, right.

8           **COMMISSIONER O'TIERNEY:** -- characterization?

9           **MR. JENKS:** They --

10           **COMMISSIONER O'TIERNEY:** And therefore, it applies to  
11 your organization?

12           **MR. JENKS:** Right. And it applies to us, the open  
13 meetings part applies to us, because the law that governs us  
14 specifically says that it applies to us.

15           **COMMISSIONER O'TIERNEY:** Okay. Okay.

16           **MR. JENKS:** So there -- I mean, there -- there's no  
17 question of legal interpretation. When people wrote the CUB  
18 law, they wrote it specifically to make sure that, sort of  
19 the -- those kinds of laws that are designed to protect and  
20 make sure that organizations and agencies are -- work out in  
21 the open, conduct their business out in the open, would apply  
22 to a group like CUB.

23           **COMMISSIONER O'TIERNEY:** Right. So all the themes of  
24 disclosure apply. Does it also apply to your -- the members  
25 of your board of directors? Are they --

1 MR. JENKS: Yes.

2 COMMISSIONER O'TIERNEY: -- do they file some version  
3 of conflict of interest statements regarding sources of  
4 income, things of that nature?

5 MR. JENKS: Yes, they do, and you -- you're not  
6 eligible to be a member of our board of governors if you have  
7 that kind of conflict of interest. And that is also written  
8 into the law.

9 COMMISSIONER O'TIERNEY: Okay. I mean, in other words,  
10 if you own stock in a given utility, corporation, or  
11 something of that nature --

12 MR. JENKS: Right, right. There's a --

13 COMMISSIONER O'TIERNEY: -- would be an example.

14 MR. JENKS: -- level, I'm not sure if it's a thousand  
15 dollars or what. But there's some level so people's pension  
16 funds and things don't necessarily get them into trouble, but  
17 there -- there's -- there is a requirement that deals with  
18 stock ownership, with what your position is, what your job  
19 and career is, and things like that.

20 COMMISSIONER O'TIERNEY: Right. Okay. Thank you.  
21 Thanks, Mr. Chairman.

22 CHAIRMAN SCHRÖER: Any other questions? If not, thank  
23 you, Mr. Jenks.

24 MR. JENKS: Thank you.

25 CHAIRMAN SCHRÖER: We'll now go to the nation's

1 capitol. Ms. Turner, you're on stage.

2 MS. TURNER: Thank you very much. Good morning,  
3 Chairman Schröer and members of Alaska Public Utilities  
4 Commission. Can you still hear me?

5 CHAIRMAN SCHRÖER: We hear -- we can still hear you.  
6 Go ahead.

7 MS. TURNER: Okay. I heard a buzz, I wasn't sure. My  
8 name is Phyllis Turner, and I'm an attorney and the director  
9 of the Citizen's Utility Board Organizing Project in  
10 Washington, D.C. I want to thank you very much for giving me  
11 the opportunity to testify today.

12 Residential and small business utility consumers need  
13 the resources to become informed and organized and to  
14 effectively advance consumer interests before the regulators  
15 and policy makers on the local, state, and national levels.  
16 HR 295 will facilitate citizens establishing a citizen's  
17 utility board in the state of Alaska, which will be a  
18 consumer-controlled advocacy organization which would have  
19 access periodically to governmental mailings for the purpose  
20 of soliciting membership. CUB would pay the full costs of  
21 producing and printing the enclosures that would be placed in  
22 the governmental mailing, and would pay any incremental  
23 increased costs of postage.

24 The piggy-backing onto the governmental mailings,  
25 whether it is the Permanent Fund application or other mass

1 mailings, such as other government checks or Department of  
2 Motor Vehicles mailings, is a convenient and effective way to  
3 communicate with residential utility consumers. It also  
4 provides a basis for economic self-sufficiency and financial  
5 accountability while being completely voluntary. This self-  
6 starting approach to public participation in energy policy  
7 making appeals to liberals and conservatives alike, because  
8 it does provide a greatly needed mechanism for effective rate  
9 payer representation, but at no cost to the taxpayer.

10 CUB is designed to balance the utility regulatory  
11 process. Around the country, utility companies spend tens,  
12 sometimes hundreds of thousands of dollars of rate payer  
13 monies to advocate their interest before public utilities  
14 commissions such as yours and state legislatures.

15 Residential consumers as a group have a substantial  
16 interest in these issues; however, they lack the financial  
17 resources, the organization, and the expertise to effectively  
18 advance their positions and to be able to respond to utility  
19 company arguments. In fact, the complexity of the process  
20 effectively prohibits many of the individuals from  
21 participating at all. And as Mr. Jenks outlined, of course,  
22 the technical issues and the complexity of the issues and  
23 utilities in telecommunications is only increasing.

24 The Alaska PUC must balance the interests of all  
25 parties, the utilities, the large industrial users, the small

1 businesses, and the residential rate payers. Of course, the  
2 APUC does not exclusively represent residential consumers.  
3 The large industrial companies have their own lawyers and  
4 economists representing their interests in the process, and  
5 they have the ability to negotiate directly with utility and  
6 telecommunications providers, sometimes getting themselves a  
7 better deal when they have that flexibility. However,  
8 there's no one in Alaska with the resources and the sole  
9 mission of advocating for the interests of the residential  
10 rate payer. Just as a judge in a civil case would prefer to  
11 deal with parties who are prepared and who are equally  
12 matched, it would be in the APUC's interest to have effective  
13 advocacy for the smaller rate payer.

14 I'm sure, of course, your proceedings are open, but it  
15 doesn't help you a whole lot in your decision making for a  
16 bunch of rate payers to just come in and say, "Our rates are  
17 too high. Do something." That goes on the record, but it  
18 doesn't give you anything with which you can use to make a  
19 decision.

20 Also, given the reality of the budget constraints as  
21 well as the topography of Alaska in particular, the APUC  
22 Staff is very limited in its ability to conduct, for example,  
23 a grassroots survey of the concerns of Alaska residential  
24 rate payers or to widely conduct energy conservation and  
25 education workshops. CUB can do all of those things, plus

1 bring the residential rate payers' viewpoint and questions  
2 before you. Further, many issues, particularly in the area  
3 of telecommunications, fall beyond the purview of the APUC,  
4 and Alaskans also need expert representation in the shaping  
5 of the policies and regulations that occur outside of your  
6 jurisdiction.

7 The CUB will be able to represent utility consumers'  
8 interests in the rate making and policy making proceedings  
9 addressing utility and telecommunications issues. This is so  
10 important for the residents of your state, which is one of  
11 only seven that does not have a utility consumer advocate  
12 within its governmental structure. Oregon is one of those  
13 seven that has had a CUB operating since 1984.

14 The Wisconsin Legislature established the first CUB in  
15 the country in 1979, and in addition, provides intervenor  
16 compensation as a means of funding rate payer advocacy. So  
17 they recognize the need for a consumer group and has also  
18 given them a way to have funding besides raising their own  
19 funds, which they do as well.

20 The Public Utilities Commission of California, which  
21 has a staff of over a hundred people in the department of  
22 rate payer advocates, understood the importance of direct  
23 citizen involvement in the regulatory process, and  
24 facilitated the establishment of what is called the Utility  
25 Consumer Action Network, which is the only regional CUB.

1 That was in 1984, and the PUC did it at the request of the  
2 consumers in the San Diego area.

3 In fact, the president of the PUC commented in a  
4 proceeding in 1983, the California PUC, stated that the --  
5 quote, "The participation by consumer groups tends to enhance  
6 the record in our proceedings and complement the efforts of  
7 our Commission staff," unquote.

8 The Illinois CUB was enacted by statute in 1983 in a  
9 state that has -- that was already funding utility advocates  
10 in the Attorney General's offices, and there have been  
11 governmental advocates on the county and local levels as well  
12 in Illinois; yet they still saw the need for a CUB.

13 New York has had utility advocates in the Consumer  
14 Protection Board and the Attorney General's offices for  
15 years, yet the Governor of New York issued an executive order  
16 in 1991 which facilitated the creation and the expansion of  
17 the New York CUB this past year.

18 Where there are governmental advocates, they not only  
19 co-exist, but often work in tandem on rate cases with the CUB  
20 staff. The National Association of State Utility Consumer  
21 Advocates, which is known as NASUCA, and is the association  
22 for all the governmental type of entities, also recognizes  
23 the importance of CUBs, and in fact, offers them affiliate  
24 membership, considering them equal partners in the effort to  
25 make sure that rate making is proceeding fairly before the

1 utilities commissions and the legislature.

2 Passage of HR 295 will enable utility consumers in the  
3 cities and in the bush of Alaska to join together. They'll  
4 be able to pool their resources, they'll elect a board of  
5 directors for the CUB. The board will hire attorneys,  
6 engineers, economists, and consultants with the expertise to  
7 inform and represent the residential and small business  
8 consumers at all levels of rate making and policy making  
9 authority.

10 Like the APUC, CUB has a sunset clause. It's not built  
11 in by the legislation, but by the reality of life. Since the  
12 members fund the CUB, if the CUB is no longer needed, people  
13 will vote with their pocketbooks and stop funding the CUB.

14 The conflict of interest provisions, the requirements  
15 placed on the board, and the election procedures of HR 295  
16 protect the CUB from being taken over by any special  
17 interests, and also assure openness and representation from  
18 all parts of the state on the CUB board.

19 At the hearing before the House Committee the other  
20 day, one of the legislators asked, "How can we be assured  
21 that CUB won't carry its own political agenda?" Well, that's  
22 the beauty of the insert process. By that mechanism, you get  
23 to all the residents of the state. No one has any control  
24 over who joins. And then since the law requires that the  
25 board is -- be elected from those various areas and be

1 elected by the members of the organization who run, no one  
2 can control who runs, no one can control who gets on the  
3 board. The membership of the organization's just too diverse  
4 to be able to do that, unlike the small special interest  
5 group which can just put up its own people and advance some  
6 particular interest. So the numbers would decide what the  
7 focus is.

8 You had a question earlier about who decides what cases  
9 to pursue. In -- many of the CUBs have a newsletter and they  
10 have additional mailings to their membership and they are in  
11 direct contact with them through local meetings and they find  
12 out which issues the members want to pursue and how they want  
13 their resources to be allocated.

14 Also, by giving the CUB standing to represent utility  
15 consumers' interests at all levels of proceedings, you're  
16 creating the opportunity for receiving the viewpoint of these  
17 consumers who are often left out of the process. The  
18 perspective that they bring, the questions that they --  
19 residential rate payers ask, the analysis and the data that  
20 CUB advocates bring into the process, will enable the  
21 Commission and the Legislature to be confident that all  
22 voices are being heard of the people being affected by your  
23 decisions. This will ensure just and balanced decision  
24 making and should afford you, I would think, a great measure  
25 of relief to know that everyone's being heard, even though

1 the state has not been able to afford having consumer  
2 advocates specifically responsible for residential consumers.

3 The CUB insert enables residential rate payers to  
4 voluntarily band together. The insert is the cornerstone of  
5 CUB's effectiveness. The experience in other states  
6 demonstrates that if people are made aware of CUB's ability  
7 to protect their rights and they are afforded a simple means  
8 of joining such as the insert, the membership in CUB grows.

9 I also want you to be aware that it -- it's the  
10 experience of the CUBs that the incremental costs incurred by  
11 the mailing by the governmental entities, these costs have  
12 been very minimal. So the state should not be concerned  
13 about whether or not they'll be able to be reimbursed. And  
14 of course, the CUB will be responsible for producing the  
15 enclosure in the first place, so they'll be paying the cost  
16 of production and paying the cost of printing.

17 As I understand, it came up in the legislative hearing  
18 the other day, the Permanent Fund -- I think he was the  
19 director -- mentioned that the printing is done in the Lower  
20 48. But all that would have to have happen is that CUB,  
21 either through the Fund or directly, would send the envelope  
22 to the printers and the printers would simply insert them in  
23 the stapling process. It's a very small thing that needs to  
24 be done. And probably will be little to no cost to the  
25 printer, but the CUB would be able to -- it will already have

1    been raising funds and will be able to afford that.

2           The CUBs have been able to save utility consumers from  
3   unwarranted increases and inform the public about saving  
4   energy. Let me give you a little background on some of the  
5   CUBs.

6           The Illinois CUB alone has assisted in saving consumers  
7   over three billion dollars in the last eight years and helped  
8   force Commonwealth Edison to agree to a 1.34-billion-dollar  
9   settlement of six cases that they had been appealing back and  
10  forth over a period of 10 years, and also to agree to a  
11  three-hundred-and-thirty-nine-million-dollar rate cut. This  
12  will result in a savings over the next 12 months of \$272 --  
13  I'm sorry, \$272 for the average Illinois single-family  
14  residential consumer and seventeen hundred and fifty dollars  
15  for the typical small business in a 12-month period alone.  
16  This landmark settlement is one of the largest involving  
17  electric rate refunds in history.

18           The CUB's -- the Illinois CUB's 150,000-plus members  
19  were instrumental in keeping the heat on the utility, so that  
20  it finally decided to stop wasting the time of the state's  
21  courts and the state's utility commission. The fact that the  
22  settlement represented approximately 90 percent of what  
23  consumers would have won if they'd won everything in the  
24  appeal indicates that Commonwealth Edison knew its chances  
25  were -- for victory were slim, and yet they had persisted

1 through all those years, using consumers' -- residential rate  
2 payers' money to represent their cases and using up the  
3 Commission's time, as well as its staff and resources.

4 The first CUB was established in Wisconsin, and that  
5 one was by State Legislature, the State Legislature's action  
6 in 1979. Within one year, as a result of receiving CUB  
7 membership solicitation inserts in their utility bills,  
8 27,000 Wisconsin residents joined the CUB. Membership nearly  
9 quadrupled by 1984. And in just an 18-month period around  
10 that time, Wisconsin CUB was able to measure what they had  
11 saved the rate payers of the state. And it came out to a  
12 hundred dollars for the rate payers for every membership  
13 dollar that they collected, which wasn't even, of course,  
14 from all the rate payers of the state.

15 The membership of YUCAN (ph), the CUB that's in San  
16 Diego, grew to 50,000 in just nine months through an insert  
17 in utility bills. And by 1985, the CUB's membership equaled  
18 eight percent of area households. In its first three years  
19 alone, YUCAN's advocacy was able to save San Diego rate  
20 payers over 265 million dollars.

21 Also, there was a question earlier about the dues.  
22 Typically, the dues for joining a CUB is five dollars. And  
23 in some cases there's provision for low-income members to  
24 have that fee waived or reduced. However, even with this  
25 five-dollar base membership, Illinois, for example, finds

1 that it receives an average of about \$11 per member. So  
2 they -- you know, they have seen some increase over what is  
3 the minimum. As Mr. Jenks mentioned, some people choose to  
4 contribute more. And, you know, it's their choice. But by  
5 keeping it very low -- five dollars is quite low as an annual  
6 membership for any organization these days -- you're making  
7 the CUB as accessible as possible to the majority of  
8 residents.

9 Also, the -- it's important to realize that CUB is  
10 different from non-profits. Just as Mr. Jenks outlined with  
11 the Oregon CUB, all the CUBs are modeled on the same kind of  
12 basis as the -- as HR 295 provides for, with limitations on  
13 how they can receive money, on who can become members of the  
14 board. It's in the conflict of interest provisions I already  
15 mentioned. And the CUBs are provided a mandate by the state  
16 of what they have to accomplish, at least in the general  
17 terms of protecting the rate payer, residential rate payers'  
18 interests in the rate making proceedings.

19 So by putting a mandate through state legislation on a  
20 non-profit, you're creating a different entity. And that  
21 came up also with the questions for Mr. Jenks. You know, and  
22 I guess that that's why it might be qualified as quasi-  
23 governmental entity. The employees are not state employees,  
24 but yet the sunshine laws would apply and open -- provide for  
25 open meetings other than, of course, what the state law would

1 allow in terms of closed sessions when personnel issues and  
2 litigation strategy's being discussed. Those kinds of laws  
3 would be the same for the CUB. But other non-profits don't  
4 have to operate that way. So you're -- the CUB is a distinct  
5 type of organization with a distinct mandate imposed upon it  
6 by the state, and which equates why they should be allowed to  
7 have the govern -- the access to the governmental mailings,  
8 so that they can meet that mandate and effectively  
9 communicate with all the citizens of the state and be able to  
10 get the funds together to provide that representation.

11 Given today's emphasis on volunteerism and empowerment  
12 of people and fiscal conservatism as well, along with  
13 increasing complexities of utility issues, Alaska needs a  
14 CUB. I hope that you'll take advantage of this opportunity  
15 to help Alaska consumers help themselves. That's what the  
16 legislation comes down to. HR 295 deserves your support, and  
17 I hope that you'll be able to report back to the Legislature  
18 that you see it as a -- something that will be assisting the  
19 people of Alaska as well as the APUC.

20 I want to thank you for your time, and I'd happy to  
21 answer any questions or provide you any additional  
22 information.

23 **CHAIRMAN SCHRÖER:** Thank you, Ms. Turner. Commissioner  
24 Hanley.

25 **COMMISSIONER HANLEY:** Ms. Turner, I have just one

1 question. Do you have any statistics or indication that  
2 Staff is designated a party to a proceeding less when CUBs  
3 serve as a party to a proceeding?

4 MS. TURNER: Interesting question. I have no  
5 information on that, although my gut reaction -- gee, I  
6 better not attempt a gut reaction for something that may go  
7 on the record. I -- if you're looking for a perspective, can  
8 this save Staff money, perhaps. I might -- my job is to help  
9 organize CUBs around the country, so I haven't been directly  
10 on the front lines of working within any of them. So that's  
11 why I'm, unfortunately, so hesitant. But the impression I've  
12 gotten from talking with the CUBs around the country is that  
13 they're able to develop good, positive working relationships  
14 with the staff and be able to provide information and data to  
15 the staff. I don't know if CUB's participation is -- has  
16 decreased the use of the staff in any case. I think if  
17 anything, they've enabled the staff to have the broadest  
18 amount of information possible, which does not necessarily  
19 mean that the staff has more work; it means that the CUB's  
20 doing work that the staff would like to be able to do and  
21 probably doesn't have the funds to do.

22 COMMISSIONER HANLEY: Okay. Thank you.

23 CHAIRMAN SCHROER: Commissioner Carter.

24 COMMISSIONER CARTER: Ms. Turner, what is your  
25 membership and who do you represent?

1           MS. TURNER: Well, my job is simply to help states  
2 organize CUBs around the country, not only actually in the  
3 area of utilities, but to use the same model to work on  
4 financial services issues and telecommunications health care.  
5 I don't have a membership. I'm basically a one-person  
6 project, to help other areas that are interested in  
7 establishing CUBs, give them back-up information and do what  
8 I'm doing now, help the legislatures and the utility  
9 commissions as well as consumer groups be aware of how CUBs  
10 have been effective. So --

11           COMMISSIONER CARTER: And --

12           MS. TURNER: -- I individually don't represent anyone.

13           COMMISSIONER CARTER: Okay. And so how are you funded  
14 then?

15           MS. TURNER: I work for the Center of the Study of  
16 Responsive Law, which is a non-profit.

17           COMMISSIONER CARTER: And that's in Washington?

18           MS. TURNER: Yes.

19           COMMISSIONER CARTER: Uh-huh (affirmative). Being from  
20 Washington and involved in the things that you're doing, how  
21 do you feel that the Rural Electric Administration would look  
22 at such organizations, as an example?

23           MS. TURNER: Do you mean the National Association of  
24 Rural Electric Co-ops, or do you mean a -- an individual  
25 cooperative?

1           COMMISSIONER CARTER: No, I mean the federal agency --  
2           MS. TURNER: Oh, okay, be -- REA.  
3           COMMISSIONER CARTER: -- that helps fund some of the --  
4           MS. TURNER: Okay.  
5           COMMISSIONER CARTER: -- utilities, et cetera, et  
6           cetera.  
7           MS. TURNER: With capital letters, okay, the REA.  
8           COMMISSIONER CARTER: Right.  
9           MS. TURNER: I would expect that they would think that  
10          anything that could help educate consumers on energy  
11          conservation would be a good thing, for one. I would hope  
12          that they would take that position, because that is something  
13          that CUB is very active in doing in all the areas, through  
14          their newsletters and through local energy fairs and through  
15          the local chapters. They can provide a lot of education for  
16          the consumer. So that should help. In terms of advocating  
17          before rural electrical -- what are generally co-ops, the --  
18          I know that a co-op would take the position, well, our  
19          members elect us -- the co-op board -- our members elect us  
20          and so we are representative of them. On the other hand, I  
21          would not see them having any problem with consumers being  
22          educated about the issues. It's a little different than  
23          appearing before the PUC, obviously, because the board is  
24          not -- a co-op board is not regulated by anyone else, but the  
25          membership should still be educated on the -- on conservation

1 issues and on how utilities work and function and be able to  
2 keep their co-op board accountable to them as members of the  
3 co-op.

4 COMMISSIONER CARTER: Right. But as far as you know,  
5 there is nothing from REA that specifically supports these  
6 kind of organizations?

7 MS. TURNER: I cannot say that I've seen anything, but  
8 I've been doing this for less than two years. I should be  
9 aware if it has existed, and I will go back to my files and  
10 check and contact them. I'm glad you brought it up. But not  
11 that I know of.

12 COMMISSIONER CARTER: Okay. And let me just ask you  
13 one last question, and that is, how do you feel about the  
14 cases that the CUBs decide to pursue; do you feel that is not  
15 a political process?

16 MS. TURNER: Well, I have to go back to my definition  
17 of politics, and that's whenever two people get together and  
18 have to make a decision, it's a political process. So using  
19 that very broad definition, yes, it is a political process.  
20 But in terms of some agenda -- overall agenda being advocated  
21 or special interest group being able to have undue influence,  
22 no. Because the membership broadly is able to determine how  
23 the resources should be allocated.

24 The CUB can conduct a poll, you know, through their  
25 mailings and their newsletters. The CUBs are all required,

1 like Mr. Jenks mentioned, to hold meetings in the various CUB  
2 election districts, to hear from their members. And since,  
3 again, the CUB members elect the board of the CUB, they have  
4 input into -- I mean, they've heard the positions of the  
5 people that they're electing to the board who are deciding on  
6 a more -- overall basis of what cases CUBs -- the CUB would  
7 take on.

8 In areas where there are -- like in Illinois, where  
9 commonwealth Edison controls a large -- I think it's a pretty  
10 large majority of the electrical users of the state,  
11 obviously the CUB's going to take on the entity that has the  
12 impact on the most people. But they also can choose to --  
13 it's up to the members, can choose to work on cases that  
14 affect a smaller number of people.

15 So again, it's members' choice, which is why -- which  
16 is the beauty of this kind of organization.

17 **COMMISSIONER CARTER:** Thank you.

18 **CHAIRMAN SCHRÖER:** Commissioner O'Tierney.

19 **COMMISSIONER O'TIERNEY:** Good morning, Ms. Turner. A  
20 few questions, actually, to piggyback on Commissioner  
21 Carter -- one of Commissioner Carter's questions. You  
22 indicated you're a one-man -- one-person -- one-woman show,  
23 to correct myself. Is that correct?

24 **MS. TURNER:** Yes.

25 **COMMISSIONER O'TIERNEY:** Okay. And the funding for the

1 Citizen Utility Board Organizing Project is, I gather,  
2 administered via the -- what was it, the Center for --

3 MS. TURNER: Center for Study of Responsive Law.

4 COMMISSIONER O'TIERNEY: For the Study of Responsive  
5 Law. And is that another subsidiary project of another  
6 organization?

7 MS. TURNER: No, no. It's a stand-alone non-profit  
8 that's been in existence since the late '60's, that does  
9 research and -- on a lot of different consumer issues.

10 COMMISSIONER O'TIERNEY: Yeah. How is that center, the  
11 Center for the Study of Responsive Law, how is that funded?

12 MS. TURNER: I -- since I don't run it, I don't -- I  
13 can't say that I know totally. But through -- some things  
14 are funded through grants. Mine's not -- through our  
15 publications, and through -- not through any kind of  
16 membership contribution and it's not -- we -- no funds are  
17 accepted from any industries or any political entities  
18 (indiscernible).

19 COMMISSIONER O'TIERNEY: So there's probably some  
20 private donation money as well as public grant money, the  
21 latter --

22 MS. TURNER: No, there's no public grant money.

23 COMMISSIONER O'TIERNEY: Oh. Oh, you mentioned grants.

24 MS. TURNER: Oh, I'm sorry. Grants from foundations.

25 COMMISSIONER O'TIERNEY: They're either public or

1 they're private, I suppose.

2 MS. TURNER: I'm sorry. Grants from foundations for  
3 various projects.

4 COMMISSIONER O'TIERNEY: From private foundations or --

5 MS. TURNER: Private, mm-hm (affirmative).

6 COMMISSIONER O'TIERNEY: I see. Do you know what any  
7 of those -- what any one of those might be, the private  
8 foundations?

9 MS. TURNER: Oh --

10 COMMISSIONER O'TIERNEY: I mean, would it be like the  
11 Anenburg (ph) Institute or would it be like -- something  
12 different than that?

13 MS. TURNER: Well --

14 COMMISSIONER O'TIERNEY: Do you have a clue?

15 MS. TURNER: I mean, I know the names of a few of the  
16 foundations that have funded various projects, but I couldn't  
17 say which ones funded which projects. I think Stern Ottinger  
18 (ph), possibly MacArthur (ph), I'm not sure. I don't deal  
19 with any of that stuff, I'm sorry.

20 COMMISSIONER O'TIERNEY: All right.

21 MS. TURNER: I'm not trying to be evasive.

22 COMMISSIONER O'TIERNEY: Yeah. Yeah, okay. I was just  
23 curious. What is the -- actually the -- what's the budget  
24 for the organizing project?

25 MS. TURNER: Basically, my salary and -- which I --

1 which would --

2 COMMISSIONER O'TIERNEY: Well, I don't want you to  
3 disclose your exact salary, but I assume that the budget  
4 for --

5 MS. TURNER: Which isn't a whole lot.

6 COMMISSIONER O'TIERNEY: --- your non-profit is public  
7 information, which would include things other than your  
8 salary, but --

9 MS. TURNER: Yeah. Well, the project -- you know, it's  
10 basically -- my salary comes out of the Center's budget, so  
11 I don't know the overall budget. And to be honest, there's  
12 no real administrative support other than telephone  
13 answering. I pretty much do the -- everything from the  
14 typing to the copying myself, so it's --

15 COMMISSIONER O'TIERNEY: Okay. Is the organizing  
16 project a -- you know, a trade organization --

17 MS. TURNER: No, no, no.

18 COMMISSIONER O'TIERNEY: -- as such?

19 MS. TURNER: No, no, no. It's a non-profit consumer  
20 organizing effort. We work on organizing citizen projects  
21 and impacting on governmental issues such as how the  
22 government uses purchasing mechanisms and how we can convince  
23 the government to have more environmentally protected -- or  
24 environmentally oriented, I should say, purchasing. As I  
25 said, my project is to work on developing a -- this -- the

1 citizen participation model to help citizens be more  
2 effective in addressing issues of utilities as well as health  
3 care and other issues.

4 COMMISSIONER O'TIERNEY: Right.

5 MS. TURNER: There's people working on mining  
6 inquiries, and there's a whole variety of things.

7 COMMISSIONER O'TIERNEY: Okay. Let me --

8 MS. TURNER: We're not -- you know, not -- as I said,  
9 no -- we do not work for any utility company or any  
10 government. No money is taken from any industries, no money  
11 is taken from any governmental funds.

12 COMMISSIONER O'TIERNEY: Right. No, understand that.  
13 I was thinking of it more along the lines, sort of by  
14 analogy, you know; trade association of citizen utility  
15 boards --

16 MS. TURNER: Oh. Well, there's only five in the  
17 country. And they -- they've networked pretty well, just  
18 communicating with each other on issues, you know, to give  
19 ideas. And so I'm sort of a clearinghouse, but it's more an  
20 effort -- more of an effort to try to spread this model,  
21 because we believe that seriously, in this time of decreasing  
22 budgets and need for citizens to take more responsibility and  
23 participate themselves directly in the regulatory and  
24 electoral --

25 COMMISSIONER O'TIERNEY: Yeah.

1 MS. TURNER: -- process, that if there's a mechanism  
2 that can help them do that, CUB certainly is one of the best  
3 models, the idea of the insert provision.

4 COMMISSIONER O'TIERNEY: Yeah. Ms. Turner, I may have  
5 confused things. You indicated there were only five of them;  
6 five of what?

7 MS. TURNER: Five CUBs.

8 COMMISSIONER O'TIERNEY: There's only five CUBs where?  
9 In the United States?

10 MS. TURNER: Right.

11 COMMISSIONER O'TIERNEY: Oh. And the -- those five  
12 would be -- can you rattle them off?

13 MS. TURNER: Sure. There's YUCAN in San Diego, which  
14 is the only regional one.

15 COMMISSIONER O'TIERNEY: Wisconsin?

16 MS. TURNER: No, I'm sorry. In the San Diego region.

17 COMMISSIONER O'TIERNEY: Right. I just -- just --

18 MS. TURNER: And then there's also --

19 COMMISSIONER O'TIERNEY: -- rattle them off. I --

20 MS. TURNER: Yes. Wisconsin, Illinois, Oregon, and New  
21 York, which just became official last year, so they have --

22 COMMISSIONER O'TIERNEY: Okay.

23 MS. TURNER: -- their inserts just started up this past  
24 week, so they're just in the process of organizing their --

25 COMMISSIONER O'TIERNEY: Right.

1 MS. TURNER: -- membership. And have not done any  
2 interventions yet, so they don't have a track record to show.

3 COMMISSIONER O'TIERNEY: So -- and that's it for the --  
4 these United States?

5 MS. TURNER: The City of Duluth also recently enacted  
6 a CUB statute.

7 COMMISSIONER O'TIERNEY: So --

8 MS. TURNER: And they cover waste management and health  
9 care, oddly enough.

10 COMMISSIONER O'TIERNEY: Right. Okay. Just a follow-  
11 up on my question -- or by analogy about, you know,  
12 characteristics of a trade organization. Do you on behalf of  
13 the project or -- and/or does the project engage in any  
14 version of lobbying? Do you present testimony on the Hill  
15 before congressional committees?

16 MS. TURNER: I have -- unfortunately, I have yet to  
17 have the opportunity, only being here about 18 or 19 months,  
18 to actually testify. But given the opportunity, yes, I  
19 would, but that's a very small part of -- just as this -- you  
20 know, appearing before you and the legislative committee the  
21 other day. It's a small part of what I do. Most of my job  
22 is involved in providing information and drafting model  
23 statutes to apply the CUB model to these various other  
24 issues, to write articles, you know, to help try to advocate  
25 this -- the CUB model around the country. But it's mostly

1 with the citizen groups and they -- you know, do their own  
2 lobbying.

3 COMMISSIONER O'TIERNEY: Right. But in any event, to  
4 whatever extent, I mean, you do engage in a -- you know, a  
5 version of lobbying wherever appropriate --

6 MS. TURNER: Yes, but it's --

7 COMMISSIONER O'TIERNEY: -- and to whatever extent  
8 appropriate?

9 MS. TURNER: Right, it's probably been --

10 COMMISSIONER O'TIERNEY: Okay.

11 MS. TURNER: -- maybe five percent at the most of my  
12 time.

13 COMMISSIONER O'TIERNEY: Yeah. Thank you, Ms. Turner.

14 MS. TURNER: Sure. I did want to mention that, you  
15 know, as there are only -- even though there are only five  
16 CUBs operating, the crucial issue for Alaska is that even in  
17 all but Oregon, in those other four states, there are  
18 governmentally funded advocates as well, and they work  
19 together with the CUBs and tend to delegate out, like the  
20 Commonwealth Edison case, they would split up the issues. So  
21 the CUB would take a couple of legal issues, the consumer  
22 advocate from the Attorney General's office would take a  
23 couple issues or their experts would work a tandem.

24 Why it is so important for Alaska is that Alaska does  
25 not currently have even a governmentally funded advocate.

1 Where normally we're having to argue about why this isn't a  
2 duplication of services, in this case it's so important for  
3 Alaska to have a CUB, because at this point Alaska isn't able  
4 to provide through a taxpayer mechanism the service that most  
5 other states have in one form or another --

6 CHAIRMAN SCHRÖER: Thank you, Ms. --

7 MS. TURNER: -- through a governmental advocate.  
8 Forty-three states have members of NASUCA, the national  
9 association.

10 CHAIRMAN SCHRÖER: Ms. Turner, you've made your  
11 testimony. Commissioner Ornquist, do you have any questions?

12 COMMISSIONER ORNQUIST: Yes, I have a couple. Ms.  
13 Turner.

14 MS. TURNER: Yes.

15 COMMISSIONER ORNQUIST: I -- I've noticed two words  
16 that come up under the funding. One is memberships, getting  
17 money from memberships. The other that I've noticed is  
18 intervenor compensation. Can you tell me, is that like a  
19 reimbursement of attorney fees and a prevailing party?

20 MS. TURNER: Yes, but there's about -- I think -- what  
21 is it up to now -- seven or eight states that provide  
22 intervenor compensation. And they fund it in various ways.  
23 This is not to say that a CUB under HR 295 would be entitled  
24 to attorney's fees automatically. You would have to -- or  
25 the Legislature would have to establish that, or establish an

1 intervenor compensation fund, which some of the states have  
2 as a model. The model is that the Commission would decide if  
3 the CUB was able to advance any issues, if they should be  
4 entitled to any intervenor compensation, sort of typically  
5 the same way attorney's fees would be awarded, kind of  
6 standards for awarding attorney's fees in other proceedings.  
7 But if the state had intervenor compensation fund, either the  
8 CUB can get money -- or any intervenor would be able to apply  
9 to receive reimbursement for the legal expenses and the  
10 witness fees and costs of their case, usually after the fact,  
11 although some states have considered, and I think that the  
12 Insurance Commission in California, its intervenor  
13 compensation provisions provide for applying for monies  
14 beforehand so that the intervenor representing consumer group  
15 has an opportunity to have some funding to be able to retain  
16 the attorneys and experts that they would need. And of  
17 course, this is only available to non-profit consumer groups,  
18 not to the utilities or the associations for the large  
19 electrical industrial users.

20 Does that answer the question?

21 COMMISSIONER ORNQUIST: That -- I think it answers the  
22 question. Let's try to limit it just to the CUBs situations,  
23 if we can. I don't know if the Insurance Commission down in  
24 California or their intervenor status -- intervenor  
25 compensation has anything to do with the CUBs. But let's

1 just try to limit it to that, okay?

2 MS. TURNER: Well, I meant it as an example of the  
3 kinds of ways different intervenor compensation funds work  
4 around the country. Generally, it's to give something after  
5 the fact. But it is a separate fund that the state  
6 establishes, and usually it's an assessment on the utilities.

7 COMMISSIONER ORNQUIST: Understood. The other question  
8 I have then is -- it -- what it sounds to me like you're  
9 saying is, if an intervenor is the prevailing party in a  
10 case, then they are in this case allowed to get intervenor  
11 compensation, get the funds back, based on their attorney  
12 expenses; is that it?

13 MS. TURNER: If there -- if the state has provided  
14 for --

15 COMMISSIONER ORNQUIST: Okay.

16 MS. TURNER: -- intervenor compensation fund --

17 COMMISSIONER ORNQUIST: Exactly. Exactly.

18 MS. TURNER: -- a fund.

19 COMMISSIONER ORNQUIST: I understand. I understand  
20 it's only if the state allows it.

21 MS. TURNER: Right. So this bill --

22 COMMISSIONER ORNQUIST: The --

23 MS. TURNER: -- does not provide for that.

24 COMMISSIONER ORNQUIST: I understand that too.

25 MS. TURNER: Okay.

1           **COMMISSIONER ORNQUIST:**    The question -- the other  
2 question I had is then, do those states also require that the  
3 intervenor pay for the other attorney fees if they turn out  
4 not to be the prevailing party?

5           **MS. TURNER:**    I believe not.    But basically, since the  
6 utilities, being the main other party, get their funds from  
7 the rate payers to handle their cases, and the consumer  
8 organization is representing the rate payers as well, it  
9 would not exactly make sense.

10           **COMMISSIONER ORNQUIST:**    So what you're saying is  
11 there's --

12           **MS. TURNER:**    The utility's already getting the money  
13 from the rate payer.

14           **COMMISSIONER ORNQUIST:**    So what it sounds like you're  
15 saying is, there's no liability but there could be benefit?

16           **MS. TURNER:**    Depending on how the state establishes --  
17 you know, depending on the legislative mechanism that the  
18 state establishes.    Obviously, they could choose to do that  
19 as well.    But as I'm saying, the underlying financial reality  
20 is that the utilities are already using the rate payers'  
21 money.    So for the rate payers' organization to then have to  
22 pay the utility back, it's going in a circle.

23           **COMMISSIONER ORNQUIST:**    Well, I think we could probably  
24 get into a big, long debate on whether or not the rate payer  
25 of any one utility -- the rate payers in one utility are the

1 rate payers from the entire state.

2 MS. TURNER: Oh, I understand.

3 COMMISSIONER ORNQUIST: Yeah.

4 MS. TURNER: That --

5 COMMISSIONER ORNQUIST: So -- yeah, I understand what  
6 you're saying is yes.

7 MS. TURNER: It would depend on what the state chooses  
8 to do.

9 COMMISSIONER ORNQUIST: Yeah.

10 MS. TURNER: Yeah. It --

11 COMMISSIONER ORNQUIST: I have another question. The  
12 thing that seems to surface here is, all these CUBs are what,  
13 non-profits?

14 MS. TURNER: Yes.

15 COMMISSIONER ORNQUIST: And it seems as though they  
16 could go ahead -- anybody can form a non-profit organization  
17 and intervene in cases where they have an interest. So why  
18 do we need legislation for this? Why can't we just --  
19 whoever wants to form the non-profit organization will form  
20 it, and intervene in cases they want to intervene in, and  
21 collect membership dues from whoever they want to collect,  
22 based on the charter that they build in the forming of the  
23 non-profit.

24 MS. TURNER: They could do that, they've done it, and  
25 it's rarely been very effective, because they don't have a

1 mechanism to get to a broad base of consumers to be able to  
2 provide a broad base of funding. Obviously, any non-profit  
3 can be organized and nobody needs legislation. The reason  
4 for the legislation is to create a quasi-governmental entity  
5 that has certain responsibilities to the state and in  
6 exchange for those responsibilities, in essence, they're  
7 given access to governmental mailings, which enables them to  
8 have a chance to collect -- connect with the vast majority of  
9 people, and a chance therefore to accumulate enough resources  
10 to be able to be ongoing and have effective representation.  
11 The reality is that the non-profits around the country that  
12 have attempted to do utility intervention are usually only  
13 able to maybe garner some community -- people showing up at  
14 the hearings, maybe they're able to get an expert or to be  
15 able to take one aspect of the case. There is no effective  
16 mechanism other than -- that I can think of other than the  
17 CUB insert to enable an organization to have that kind of  
18 broad-based support and to have the funding that can  
19 establish an organization that will be able to continue on  
20 and effectively -- that's the key word, effectively, not just  
21 occasionally, not just sort of with a uneducated voice, but  
22 effectively, with the expertise to advocate for the  
23 residential rate payers and to provide the Commission with  
24 information that will be helpful to them rather than just  
25 complaints.