

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

January 29, 2016

SUBJECT: Permanent fund dividends for persons whose convictions are overturned (CSHB 243() ; Work Order No. 29-LS1279\G)

TO: Representative Bob Lynn
Chair of the House State Affairs Committee
Attn: Deneen Tuck

FROM: Hilary V. Martin 
Legislative Counsel

You have asked me to respond to four questions that were raised regarding CSHB 243() in the House State Affairs committee hearing on January 26, 2016. You additionally asked if this bill would impact the budget of the Department of Corrections (DOC) because they receive a large portion of their funding from the dividends that would have gone to incarcerated individuals.

1) Are prisoners who are incarcerated and then sent to an out-of-state prison no longer residents and therefore unable to take advantage of this bill?

The bill allows persons who were ineligible for a permanent fund dividend (dividend) because of conviction or incarceration under AS 43.23.005(d) to receive a dividend if that conviction was vacated or reversed and the charges are later dismissed or the person is re-tried and found not guilty. It is the fact of the person's conviction that made the person ineligible, not the lack of residency.

AS 43.23.008, which lists allowable absences, applies only to "otherwise eligible individuals." This would not include persons who are ineligible due to a felony conviction or incarceration. If a person becomes eligible under this bill, the incarceration location would not be a factor in the person's eligibility. As Department of Revenue (DOR) Deputy Commissioner Burnett stated at the January 26 hearing, any person eligible for a dividend under this bill and who was housed out of state for some or all of their incarceration would be treated as any other person who is in the custody of the state and taken out of state for reasons beyond the person's control. Therefore, I believe a state resident who was incarcerated at an out of state prison would still be able to take advantage of the provisions of this bill.

2) Do changes need to be made to allow an estate to apply for a dividend under this bill?

An estate would be able to apply for the dividend under this bill without further amendment. AS 43.23.005(h) contains a procedure for individuals who die after applying for the dividend but before it is paid, and for persons who would have been eligible but died before the application period. These provisions would also apply to the new language in the bill. However, the estate would still have to comply with the 120-day application deadline contained in AS 43.23.005(j) to receive the back dividends. If a person dies after the time limit has already passed, the estate would not be able to apply for the dividends.

3) What if a person has convictions for multiple crimes and only one conviction is dismissed? What if a person commits a felony that is vacated, overturned, or dismissed and then jailed on a misdemeanor and that previous felony causes a person to be ineligible for a dividend?

If a person has multiple felony convictions and only one felony is vacated, reversed, or dismissed, then the person would only be eligible for a dividend under this bill for the periods of time that the person was ineligible because of that vacated, reversed, or dismissed conviction. For example, if a person received 10 years for felony A, and five years for felony B, and the sentences run concurrently, the person would only be eligible in the five years that were solely for felony A and not for felony B. This is because the time spent incarcerated due to felony B makes the individual ineligible for a dividend independent of felony A. If the sentences were the same, ran concurrently, and only one was vacated or dismissed, the other felony bars the eligibility for the period of incarceration.

If a person is incarcerated for a misdemeanor, the prior overturned felony could not be used to make the person ineligible under AS 43.23.005(d), which provides that a person incarcerated for a misdemeanor is ineligible for a dividend if the person has a prior felony or two or more prior misdemeanors. If the felony would be overturned, vacated, or dismissed, and the person has no other felony conviction, the person no longer has a conviction for a felony and should not be ineligible for a dividend.

4) What if a person's dividend is garnished for child support? Would they be getting back the total amount of the dividend including the amounts garnished for child support?

I do not believe that a person who was ineligible for a dividend due to a felony conviction or incarceration would have a dividend to be garnished for child support. If a person does not receive a dividend due to conviction of a felony or incarceration, then there is no dividend available to be garnished because the person is ineligible under AS 43.23.005(d). If a person receives a dividend after being released, that dividend is subject to garnishment.

5) What is the impact on DOC's budget?

You asked if this bill would impact DOC, due to the back dividends being paid. This bill should not affect the budget of DOC.

Currently, the commissioner of revenue has to provide notice under AS 43.23.028 of a number of factors related to the dividend. However, under AS 43.23.030(b), the commissioner does not have to provide notice so long as the amount appropriated from the dividend fund does not exceed the total amount that would have been paid to individuals who are ineligible under AS 43.23.005(d) or AS 43.23.021(b), and if the appropriations go to the crime victims compensation fund, the Council on Domestic Violence and Sexual Assault, DOC, the Office of Victims' Rights, nonprofit victims' rights organizations, or to DOR for grants to minor children of incarcerated individuals.

DOC is not actually receiving the dividends for those individuals who are incarcerated and not eligible. Instead, an amount equal to the amount that would have been paid to individuals who are ineligible if they were eligible can be appropriated from the dividend fund to the (1) crime victims compensation fund; (2) Council on Domestic Violence and Sexual Assault; (3) DOC; (4) Office of Victim's Rights; (5) nonprofit victims' rights organizations; and (6) DOR for grants to minor children of those incarcerated. The amount is dependent on the number of individuals who are ineligible for that year.

The dividends that are paid out to individuals under this bill would come from the dividend fund, subject to appropriation. The legislature determines the amount appropriated to DOC every year, so it is not possible to speculate about future appropriations.

If I may be of further assistance, please advise.

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