

SENATE CS FOR CS FOR HOUSE BILL NO. 166(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 4/8/08

Referred: Rules

Sponsor(s): REPRESENTATIVES THOMAS, Gara, Crawford, Foster, LeDoux

SENATORS Thomas, McGuire, Elton, Ellis, French

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to contributions from permanent fund dividends to community**
2 **foundations, to certain educational organizations, and to certain other charitable**
3 **organizations; relating to the execution upon permanent fund dividends; amending Rule**
4 **89, Alaska Rules of Civil Procedure; and providing for an effective date."**

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

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

7 **Sec. 43.23.062. Contributions from dividends.** (a) Notwithstanding
8 AS 43.23.069, the Department of Revenue shall prepare the electronic Alaska
9 permanent fund dividend application to allow an applicant who files electronically to
10 direct that money be subtracted from the dividend payment and contributed to one or
11 more of the educational organizations, community foundations, or charitable
12 organizations that appear on the contribution list contained in the application. A
13 contribution to an organization may be \$25, \$50, \$75, \$100, or more, in increments of
14 \$50, up to the total amount of the permanent fund dividend that the applicant is
15 entitled to receive. If the total amount of contributions elected by an applicant exceeds

1 the amount of the permanent fund dividend that the applicant is entitled to receive,
2 contributions shall be deducted from the dividend in the order of priority elected by
3 the applicant on the application until the entire amount of the dividend that the
4 applicant is entitled to receive is allocated for contribution. The electronic dividend
5 application form must include notice that

6 (1) contribution changes may not be made after the applicant files the
7 electronic permanent fund dividend application; and

8 (2) no money contributed will be used for administrative costs incurred
9 in implementing this section and money from the dividend fund will not be used for
10 that purpose.

11 (b) The department shall list each campus of the University of Alaska and
12 shall list each other educational organization, community foundation, or charitable
13 organization eligible under (c) and (d) of this section on the contribution list by
14 geographic region in random order, and the order shall be changed each year. On the
15 contribution list, organizations shall also be grouped by type within each geographic
16 region. The department shall provide a statement of the contributions made by an
17 individual that is suitable for federal income tax purposes to each individual who
18 elects to contribute under (a) of this section.

19 (c) Other than a community foundation, the department may not include a
20 charitable organization on the contribution list for a dividend year unless the purpose
21 of the charitable organization is to provide programs for youth development,
22 workforce development, arts and culture, aid and services to the elderly, low-income
23 individuals, individuals in emergency situations, disabled individuals, individuals with
24 mental illness, primary, vocational and higher education, health and dental care,
25 recreational facilities, child abuse and neglect, economic development, food
26 assistance, libraries, public broadcasting, recycling of waste, animal rescue, and zoos.
27 The department may not include on the contribution list an educational organization,
28 community foundation, or charitable organization that is the affiliate of a group. For
29 purposes of this subsection,

30 (1) "affiliate" means an organization or foundation that directly or
31 indirectly through one or more intermediaries controls, is controlled by, or is under

1 common control with, a group;

2 (2) "group" has the meaning given in AS 15.13.400(8)(B).

3 (d) Except for each campus of the University of Alaska, the department may
4 include an educational organization, community foundation, or charitable organization
5 on the contribution list for a current dividend year only if the organization

6 (1) files an application for inclusion on the list for that dividend year
7 on the form required by the department before June 15 of the qualifying year;

8 (2) is exempt from taxation under 26 U.S.C. 501(c)(3) (Internal
9 Revenue Code) as an educational or a charitable organization on the date of
10 application;

11 (3) was qualified for tax exempt status under 26 U.S.C. 501(c)(3)
12 (Internal Revenue Code) as an educational or a charitable organization during the two
13 calendar years that immediately precede the year the application is filed;

14 (4) has a current Internal Revenue Service Form 990 on file with the
15 United States Department of the Treasury, Internal Revenue Service, or, if the Internal
16 Revenue Service has granted a filing extension for the current year, has on file that
17 form for the immediately previous year;

18 (5) is directed by a voluntary board of directors or local advisory board
19 whose members are residents of the state;

20 (6) provided in the state aid or services during the two calendar years
21 that immediately precede the year the application is filed;

22 (7) receives at least \$100,000 or five percent of its total annual
23 receipts, whichever is less, from contributions;

24 (8) has completed and provided to the department a financial audit
25 with an unqualified opinion, conducted by an independent certified public accountant
26 for the fiscal year to which the Internal Revenue Service Form 990 required under (4)
27 of this subsection applies; this paragraph applies only to an organization with a total
28 annual budget that exceeds \$250,000 during the fiscal year to which the Internal
29 Revenue Service Form 990 required under (4) of this subsection applies; and

30 (9) does not make grants or contributions to an organization that is
31 exempt from taxation under 26 U.S.C. 501(c)(4) or (6).

1 (e) Unless an appropriation specifically directs that the money be used for
2 costs incurred in implementing this section, the department may not use money from
3 the dividend fund for administrative costs incurred in implementing this section even
4 if it has been appropriated for costs of administering the dividend program. The
5 department may not use money contributed under (a) of this section for administrative
6 costs incurred in implementing this section. Contributions shall be distributed to each
7 organization as soon as practicable.

8 (f) The department may establish an application fee not to exceed \$50 for each
9 educational organization, community foundation, or charitable organization that files
10 an application under (d) of this section. The application fees shall be separately
11 accounted for under AS 37.05.142. The annual estimated balance in the account
12 maintained under AS 37.05.142 for application fees collected under this subsection
13 may be appropriated for costs of administering this section.

14 (g) The department may use an agent or enter into a contract for the
15 implementation and operation of the contribution program under this section. Before
16 executing a contract with a corporation or other organization, the organization must
17 provide a copy of its policies and procedures to the department. A contract entered
18 into under this subsection is exempt from AS 36.30 (State Procurement Code).

19 (h) A public agency that claims a dividend on behalf of an individual under
20 AS 43.23.015(e) may not elect to make contributions from the dividend under (a) of
21 this section.

22 (i) The department may adopt regulations under AS 44.62 (Administrative
23 Procedure Act) to carry out the provisions of this section. If an organization disagrees
24 with an action of the department under this section and requests an administrative
25 hearing, the hearing shall be conducted by the office of administrative hearings
26 (AS 44.64.010).

27 (j) By January 20 of each year, the department shall prepare a report
28 identifying the organizations on the contribution list for the immediately preceding
29 year, together with the amount of contributions made to each of the organizations, and
30 shall notify the legislature that the report is available.

31 (k) In this section, "community foundation" means a nonprofit, autonomous,

1 philanthropic institution that is organized and operated primarily as a permanent
 2 collection of endowed funds for the long-term benefit of a defined geographic area
 3 within one or more municipalities, that has a long-term goal of increasing its
 4 permanent unrestricted charitable endowment to benefit the area served, that primarily
 5 provides benefits by making grants and may also provide other forms of charitable
 6 services, that makes grants that are not limited to providing one type of benefit or to
 7 serving one population segment, and that makes grants to multiple grantees.

8 * **Sec. 2.** AS 43.23.065(a) is amended to read:

9 (a) Except as provided in (b) of this section, 20 percent of the annual
 10 permanent fund dividend payable to an individual is exempt from levy, execution,
 11 garnishment, attachment, or any other remedy for the collection of debt. No other
 12 exemption applies to a dividend. Notwithstanding other laws, a writ of execution upon
 13 a dividend that has not been delivered to the debtor may be served on the
 14 commissioner by

15 **(1) certified mail, return receipt requested; or**

16 **(2) a civilian process server, licensed by the commissioner of public**
 17 **safety under AS 22.20.120, using electronic execution procedures as provided**
 18 **under regulations adopted by the department** [. UPON RECEIPT OF A WRIT BY
 19 CERTIFIED MAIL, RETURN RECEIPT REQUESTED, THE COMMISSIONER
 20 SHALL DELIVER THAT PORTION OF THE DIVIDEND EXECUTED UPON TO
 21 THE COURT ALONG WITH THE CASE NAME AND NUMBER].

22 * **Sec. 3.** AS 43.23.065(d) is amended to read:

23 (d) An assignment of or levy, execution, garnishment, attachment, or other
 24 remedy for the collection of debt applied to a dividend for a year may not be accepted
 25 by the department before April 1 of that same year. AS 09.38.080(c) and 09.38.085 do
 26 not apply to a levy on a permanent fund dividend. **Upon receipt of a writ of**
 27 **execution in accordance with (a) of this section, or other court order, the**
 28 **commissioner shall deliver that portion of the dividend executed upon to the**
 29 **court along with the case name and number** [THE DEPARTMENT SHALL
 30 INCLUDE THE CASE NUMBER WITH A DIVIDEND OR PORTION OF A
 31 DIVIDEND TRANSMITTED TO THE COURT IN RESPONSE TO A WRIT OF

1 EXECUTION OR OTHER COURT ORDER]. At the time payment is made to the
 2 court, the department shall send to the individual at the address provided in the
 3 individual's dividend application and to the court that issued the writ or order a notice
 4 that contains

5 (1) notification that all or part of the individual's dividend has been
 6 seized under a writ of execution or court order;

7 (2) the name and address of the court that issued the writ or order;

8 (3) the case number for which the writ or order was issued;

9 (4) the amount seized under the writ or order; and

10 (5) notification that the individual has 30 days from the date the notice
 11 is mailed in which to file with the court an objection to the seizure if a mistake has
 12 been made.

13 * **Sec. 4.** AS 43.23.062 is repealed on December 31, 2011.

14 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
 15 read:

16 INDIRECT COURT RULE AMENDMENT. The changes made by secs. 2 and 3 of
 17 this Act have the effect of changing Rule 89, Alaska Rules of Civil Procedure, by allowing a
 18 civilian process server licensed by the commissioner of public safety to execute upon a
 19 permanent fund dividend issued under AS 43.23 by electronic means in accordance with
 20 regulations adopted by the Department of Revenue and by establishing how the commissioner
 21 of revenue shall deliver the portion of the dividend executed upon to the court.

22 * **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
 23 read:

24 APPLICABILITY. AS 43.23.062, enacted by sec. 1 of this Act, applies to the Alaska
 25 permanent fund dividends for 2009, 2010, and 2011.

26 * **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to
 27 read:

28 CONDITIONAL EFFECT. Sections 2, 3, and 5 of this Act take effect only if sec. 5 of
 29 this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,
 30 Constitution of the State of Alaska.

31 * **Sec. 8.** This Act takes effect immediately under AS 01.10.070(c).