

**ALASKA STATE LEGISLATURE**  
**SENATE STATE AFFAIRS STANDING COMMITTEE**

March 19, 2013

9:02 a.m.

**MEMBERS PRESENT**

Senator Fred Dyson, Chair  
Senator John Coghill  
Senator Bill Wielechowski

**MEMBERS ABSENT**

Senator Cathy Giessel, Vice Chair  
Senator Bert Stedman

**COMMITTEE CALENDAR**

HOUSE CONCURRENT RESOLUTION NO. 5

Relating to awarding the Alaska Decoration of Honor to certain members of the military.

- MOVED HCR 5 OUT OF COMMITTEE

HOUSE CONCURRENT RESOLUTION NO. 2

Proclaiming the state as a Purple Heart State to honor the service and sacrifice of our nation's men and women in uniform wounded or killed by the enemy while serving to protect the freedom enjoyed by all Americans.

- MOVED HCR 2 OUT OF COMMITTEE

HOUSE BILL NO. 52 AM

"An Act relating to allowable absences from the state for purposes of eligibility for permanent fund dividends; and providing for an effective date."

- MOVED HB 52 AM OUT OF COMMITTEE

CONFIRMATION HEARING

- POSTPONED to 3/21/13

**PREVIOUS COMMITTEE ACTION**

BILL: HCR 2

SHORT TITLE: PURPLE HEART STATE  
SPONSOR(s): REPRESENTATIVE(s) HUGHES

02/04/13 (H) READ THE FIRST TIME - REFERRALS  
02/04/13 (H) MLV  
02/28/13 (H) MLV AT 1:00 PM CAPITOL 120  
02/28/13 (H) Moved Out of Committee  
02/28/13 (H) MINUTE (MLV)  
03/04/13 (H) MLV RPT 6DP  
03/04/13 (H) DP: SADDLER, GRUENBERG, HIGGINS,  
HUGHES, REINBOLD, LEDOUX  
03/11/13 (H) BEFORE HOUSE IN SECOND READING  
03/11/13 (H) TRANSMITTED TO (S)  
03/11/13 (H) VERSION: HCR 2  
03/13/13 (S) READ THE FIRST TIME - REFERRALS  
03/13/13 (S) STA  
03/19/13 (S) STA AT 9:00 AM BUTROVICH 205

BILL: HCR 5

SHORT TITLE: DECORATION OF HONOR  
SPONSOR(s): REPRESENTATIVE(s) SADDLER

02/27/13 (H) READ THE FIRST TIME - REFERRALS  
02/27/13 (H) MLV  
03/05/13 (H) MLV AT 1:00 PM CAPITOL 120  
03/05/13 (H) Moved Out of Committee  
03/05/13 (H) MINUTE (MLV)  
03/07/13 (H) MLV RPT 4DP  
03/07/13 (H) DP: REINBOLD, GRUENBERG, HIGGINS,  
FOSTER  
03/11/13 (H) TRANSMITTED TO (S)  
03/11/13 (H) VERSION: HCR 5  
03/13/13 (S) READ THE FIRST TIME - REFERRALS  
03/13/13 (S) STA  
03/19/13 (S) STA AT 9:00 AM BUTROVICH 205

BILL: HB 52

SHORT TITLE: PFD ALLOWABLE ABSENCE  
SPONSOR(s): REPRESENTATIVE(s) FEIGE

01/16/13 (H) PREFILE RELEASED 1/11/13  
01/16/13 (H) READ THE FIRST TIME - REFERRALS  
01/16/13 (H) STA  
01/29/13 (H) STA AT 8:00 AM CAPITOL 106  
01/29/13 (H) Moved Out of Committee  
01/29/13 (H) MINUTE (STA)

01/30/13 (H) STA RPT 5DP 2NR  
01/30/13 (H) DP: MILLETT, ISAACSON, GATTIS, KREISS-  
TOMKINS, LYNN  
01/30/13 (H) NR: HUGHES, KELLER  
02/01/13 (H) RETURNED TO RLS COMMITTEE  
02/20/13 (H) BEFORE HOUSE IN THIRD READING  
02/25/13 (H) BEFORE HOUSE IN THIRD READING  
02/25/13 (H) TRANSMITTED TO (S)  
02/25/13 (H) VERSION: HB 52 AM  
02/27/13 (S) READ THE FIRST TIME - REFERRALS  
02/27/13 (S) STA, FIN  
03/19/13 (S) STA AT 9:00 AM BUTROVICH 205

**WITNESS REGISTER**

REPRESENTATIVE DAN SADDLER  
Alaska State Legislature  
Juneau, Alaska  
**POSITION STATEMENT:** Sponsor of HCR 5.

REPRESENTATIVE SHELLEY HUGHES  
Alaska State Legislature  
Juneau, Alaska  
**POSITION STATEMENT:** Sponsor of HCR 2.

VIRGINIA SMILEY, staff  
Representative Shelley Hughes  
Alaska State Legislature  
Juneau, Alaska  
**POSITION STATEMENT:** Related a personal story about her father, a recipient of a Purple Heart.

TIM ARMSTRONG, Member  
Military Order of the Purple Heart - Alaska  
Juneau, Alaska  
**POSITION STATEMENT:** Testified in favor of HCR 2.

HENRY HUNTER, SR., Member  
Military Order of the Purple Heart - Alaska  
Bethel, Alaska  
**POSITION STATEMENT:** Testified in favor of HCR 2.

KENNETH ROSS, Member  
Military Order of the Purple Heart - Alaska  
Wasilla, Alaska  
**POSITION STATEMENT:** Testified in favor of HCR 2.

MICHAEL PASCHALL, staff  
Representative Eric Feige  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Provided information related to HB 52.

DAN DEBARTOLO, Director  
Permanent Fund Dividend Division  
Department of Revenue  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions related to HB 52.

#### **ACTION NARRATIVE**

[9:02:14 AM](#)

**CHAIR FRED DYSON** called the Senate State Affairs Standing Committee meeting to order at 9:02 a.m. Present at the call to order were Senators Wielechowski and Coghill and Chair Dyson.

#### **HCR 5-DECORATION OF HONOR**

[9:03:16 AM](#)

CHAIR DYSON announced that the first order of business would be HCR 5.

REPRESENTATIVE DAN SADDLER, sponsor of HCR 5, introduced the bill. He requested support for HCR 5, which awards the Alaska Decoration of Honor to nine individuals who were killed in the line of duty between January 1, 2012, and December 31, 2012. The Alaska Legislature created the Alaska Decoration of Honor in 2007 in HB 244. It is a medal awarded posthumously to service members from Alaska or who were deployed while stationed in Alaska and were killed in action or in supportive combat operations. The medal is presented to the families of these service members.

He stated that the legislature must authorize the award by resolution and has done so each year since 2008. Today, a total of 232 men and women have been awarded the Alaska Decoration of Honor dating back to statehood. He said that HCR 5 will award another nine service members and authorize their families to receive the award. The recipients who made the ultimate sacrifice in 2012 are: Dustin P. Napier, Jeffery L. White, Jr., Thomas K. Fogarty, Brian L. Walker, Richard L. McNulty, Vincent J. Ellis, Nathan T. Davis, Carl E. Hammer, and Ethan J. Martin.

REPRESENTATIVE SADDLER said he had hoped he would not have to award this medal again. He noted that freedom is not free and the cost is borne by men and women such as these who risk and sometimes lose their lives in the service of our country. It is our duty to remember and honor their sacrifice and HCR 5 is one way to do so.

CHAIR DYSON asked if these recipients were Alaska residents or stationed in Alaska.

REPRESENTATIVE SADDLER said they were both.

SENATOR COGHILL moved to report HCR 5 from committee with individual recommendations and attached zero fiscal note. There being no objection, HCR 5 was reported from the Senate State Affairs Standing Committee.

[9:06:15 AM](#)

At ease

**HCR 2-PURPLE HEART STATE**

[9:06:58 AM](#)

CHAIR DYSON reconvened the meeting and announced that HCR 2 was before the committee.

[9:07:05 AM](#)

SHELLY HUGHES, sponsor of HCR 2, introduced the bill. She explained that HCR 2 proclaims Alaska as a Purple Heart State, honoring the service and sacrifices of our nation's men and women in uniform wounded or killed by the enemy while serving to protect the freedoms enjoyed by all Americans. She noted that Purple Heart recipients don't clamor for attention or recognition. She requested that the committee grant them the honor and distinction they truly deserve.

She provided the history of the Purple Heart, the oldest military decoration in the world that is still in use. It was established by George Washington during the Revolutionary War and discontinued afterwards. On George Washington's 200th birthday, it was promoted by General Douglas MacArthur for the army to use. In 1942, President Roosevelt extended it to all branches of the military. In 1958, Congress chartered the Military Order of the Purple Heart. In 1962, President Kennedy authorized a posthumous award and in 1984, President Reagan authorized awards as a result of terrorist attacks.

She related that because paper records were often lost in fires and battles, it is unknown how many Purple Hearts recipients there have been. The best guess is about 1.7 million. In Alaska the Military Order of the Purple Heart has 300 members. The Department of Motor Vehicles has issued 716 Purple Heart license plates. She pointed out that Alaska has the highest per capita rate of veterans. She assumed that many unidentified Purple Heart recipients are living quiet lives in Alaska.

She noted by proclaiming Alaska as a purple Heart State, it will be joining four other states and 48 cities across the nation, four of those in Alaska. She spoke of the honor of recognizing recipients, as well as providing information about services and benefits. She concluded that it is fitting to declare Alaska a Purple Heart state.

[9:11:48 AM](#)

VIRGINIA SMILEY, staff, Representative Shelley Hughes, related a personal story about her father, a recipient of a Purple Heart. She said it is to the memory and courage of her father and others that recognition is requested when Alaska becomes the biggest Purple Heart state.

[9:13:30 AM](#)

CHAIR DYSON asked if state recipients have to qualify for the federal Purple Heart.

REPRESENTATIVE HUGHES clarified that HCR 2 would recognize Alaska as a Purple Heart state as a sign of support to those recipients who have received federal recognition.

CHAIR DYSON asked why recipients would want this resolution passed.

REPRESENTATIVE HUGHES replied that constituent veterans requested this resolution because they felt it was important to recognize Purple Heart recipients and to provide information about services available to them.

SENATOR WIELECHOWSKI said he supports HCR 2. He asked if there is a fiscal impact.

REPRESENTATIVE HUGHES said no.

[9:15:33 AM](#)

TIM ARMSTRONG, Member, Military Order of the Purple Heart - Alaska, testified in favor of HCR 2. He explained that the Military Order of the Purple Heart is a congressionally chartered veterans' organization differing slightly from others, as it is comprised 100 percent of combat veterans who have sustained injuries directly resulting from hostile action in the theater of war.

He related that the Military Order of the Purple Heart provides assistance and support to veterans across the nation. Alaska has the highest ratio of veterans and has always recognized the contributions of veterans. He spoke of the awarding of high school diplomas to veterans who interrupted their education. He described the Purple Heart Highway and Purple Heart Day. Along with other state symbols, he opined that there would be overwhelming support for Alaska to be a Purple Heart State.

CHAIR DYSON said Mr. Armstrong was wounded in Vietnam.

MR. ARMSTRONG shared his personal story as an infantryman. He recalled how the governor of California, Ronald Reagan, awarded him his Purple Heart. He maintained that he is one of the lucky ones. He spoke in favor of the Purple Heart Highway sign which bears the photo of his own Purple Heart. He said he also possesses a Purple Heart Highway sign.

CHAIR DYSON thanked him for his services.

[9:21:17 AM](#)

HENRY HUNTER, SR., Member, Military Order of the Purple Heart - Alaska, said he is also a member of the American Legion and the VFW. He testified in support of HCR 2. He shared his families' military history and his personal story regarding his service in Vietnam in 1968. He said he believes that if Alaska becomes a Purple Heart State, it will help all Alaska veterans receive all of their benefits. He said he was speaking for all veterans in the Yukon-Kuskokwim Delta. He read from an article that describes which holidays mean the most to veterans; Memorial Day and the 4th of July.

[9:26:47 AM](#)

CHAIR DYSON thanked Mr. Hunter for his service.

KENNETH ROSS, Member, Military Order of the Purple Heart - Alaska, explained that his job as Service Officer for Vietnam Veterans of America - Alaska, is to find all the veterans who

live in rural Alaska. He said he is a recipient of the Purple Heart. He related that he helps veterans receive benefits that are their due. He shared his family history. He testified in support of HCR 2.

CHAIR DYSON thanked Mr. Ross for his service and for his current job. He asked how successfully TriCare is working.

MR. ROSS said people are reluctant to sign up for TriCare. He thought it would work if they would apply for it.

CHAIR DYSON said he has heard that veterans are not satisfied and they are not getting the attention they need. He thought there was a new VA director, so things might change.

He thanked Mr. Ross for his service and his work on the behalf of veterans.

[9:31:03 AM](#)

SENATOR COGHILL moved to report HCR 2 from committee with individual recommendations and attached zero fiscal note. There being no objection, HCR 2 was reported from the Senate State Affairs Standing Committee.

[9:31:38 AM](#)

At ease

#### **HB 52-PFD ALLOWABLE ABSENCE**

[9:32:13 AM](#)

CHAIR DYSON resumed the meeting and announced the consideration of HB 52. [HB 52 AM was before the committee.]

[9:32:21 AM](#)

REPRESENTATIVE ERIC FEIGE, sponsor, introduced HB 52. He said the bill deals with how to address allowable absences relating to the Permanent Fund Dividend (PFD). It provides that after a person has been gone from the state for more than five years, it sets up a presumption that they do not intend to return to the state. It is the applicant's responsibility to prove to the state that they do intend to return. Everyone is treated equally. He stated that it is a great improvement to take principles that have been in regulations and put them into statute. This strengthens the Permanent Fund Division's ability to adjudicate appeals.

[9:33:56 AM](#)

CHAIR DYSON asked, under the present law if someone does not return after five years, how they establish that they are going to return.

REPRESENTATIVE FEIGE said there were a number of criteria established in HB 52 that were already in regulation, such as proof of voting, owning property, repeated trips back to Alaska, returning for a cumulative total of 30 days over the previous five years, and other metrics.

CHAIR DYSON asked if the process is clumsy or not.

REPRESENTATIVE FEIGE said the process is the same as the existing process to apply for a PFD. The person must satisfy PFD eligibility requirements and it is incumbent upon the applicant to appeal if they are denied.

CHAIR DYSON asked if HB 52 takes out the five-year limit and makes it indefinite.

REPRESENTATIVE FEIGE clarified that the bill does not remove the five-year limit, but instead it makes a presumption that up until five years, a person does intend to return to the state. In the sixth year, the state presumes the person does not intend to return.

[9:36:29 AM](#)

CHAIR DYSON asked if the bill takes existing PFD regulations and puts them in statute.

REPRESENTATIVE FEIGE said not all of the regulations, but some of them.

[9:36:53 AM](#)

MICHAEL PASCHALL, staff, Representative Eric Feige, explained the bill. He shared the history of the changes in the statute. He explained the definition of a state resident in 1982, for the purposes of obtaining a PFD. Four additional allowable absences were included in 1997, as was a generic definition of "state resident." He discussed the allowable absences as found in 1998. He noted that a person must be a resident for 60 days before they can leave the state for an allowable absence. He explained a provision for Congress family members and staff.

MR. PASCHALL related minor changes since 2012 for military members, and those serving on a foreign vessel. There are currently 16 different reasons for allowable absences from the state. The bill adds definitions as to what a "family member" is.

[9:41:45 AM](#)

MR. PASCHALL addressed allowable absences after HB 52 is in place. Most of the current provisions are left in place, as is the section that deals with absences for multiple purposes and the definition. A new subsection is added that creates a presumption that someone who has been on allowable absence for five consecutive years, does not intend to return to the state. The presumption has been in regulation, but has been challenged. Putting the provision in statute would make it easier for the division to deny applications that might not be valid and have that decision upheld through the administrative appeals process.

CHAIR DYSON asked if the department can recapture funds from someone who has been "gaming the system."

MR. PASCHALL deferred to the department to answer.

He continued to explain that a provision was added in the bill that a person must be physically present in the state for at least 30 cumulative days during the past five years and be a state resident as defined in AS 43.23.095(7). He explained what is used to determine if a person intends to return, such as the length of time a person is absent from the state, compared to the length of time the individual was physically present in the state. The division can now develop an objective scoring scale to determine eligibility. He said ties the individual has established with the state is another relevant factor, as is employment assignments, such as military careers.

[9:47:06 AM](#)

He noted that HB 52 takes out the ten-year rule, except for members of Congress. This provision would have an impact on military members. He concluded that the bill is getting rid of a class and treating everyone equally.

He highlighted a graph that shows groups of individuals eligible to receive the PFD after 10 years of absences; a very small group is being excluded by the existing rule. He said the last

slide shows data from the division regarding absences since 1999. The number drops in recent years.

[9:48:58 AM](#)

DAN DEBARTOLO, Director, Permanent Fund Dividend Division, Department of Revenue, explained that the bill eliminates the ten-year rule, reducing the workload for the division. The people who were denied dividends due to the ten-year rule never exceeded 107 individuals. There will not be a large impact if the rule goes away. The number of people reaching 10 years of 180-day absences is declining.

He explained that the bill also moves language regarding five-year absences from regulation into statute and clears up "soft" language. Now the rule says if a person does not return to the state, cumulatively, for 30 days over a five-year period, that person will have to go through the process to show strong ties to the state. He added that the zero fiscal note means there is not an increase in work for the division. The impact on the PFD Fund is indeterminate. He predicted there should be a change in the number of dividends paid out.

[9:52:50 AM](#)

SENATOR WIELECHOWSKI moved to adopt Amendment 1:

#### AMENDMENT 1

Page 3, following line 12:

Insert a new bill section to read:

"\* **Sec. 2.** AS 43.23.008(c) is amended to read:

(c) An otherwise eligible individual who has been eligible for the immediately preceding 10 dividends despite being absent from the state for more than 180 days in each of the related 10 qualifying years is only eligible for the current year dividend if the individual was absent 180 days or less during the qualifying year. This subsection does not apply to an absence under (a)(9) or (10) of this section or to an absence under (a)(13) of this section if the absence is to accompany an individual who is absent under (a)(9) or (10) of this section. **This subsection does not apply to an absence under (a)(3) of this section.**"

Renumber the following bill sections accordingly.

Page 4, line 10:

Delete all material.

Renumber the following bill sections accordingly.

Page 4, lines 15 - 16:

Delete "former AS 43.23.008(c), repealed by sec. 3 of this Act,"

Insert "AS 43.23.008(c), as it read on the day before the effective date of this Act,"

Page 4, lines 19 - 20:

Delete "The repeal of AS 43.23.008(c) by sec. 3 of this Act and the enactment of AS 43.23.008(e) by sec. 2 of this Act"

Insert "AS 43.23.008(e), enacted by sec. 3 of this Act,"

CHAIR DYSON objected for discussion.

SENATOR WIELECHOWSKI stated that he supports HB 52 and has sponsored it in the past. He added that he has also worked with the sponsor on the bill. He explained that HB 52 applies a statutory criteria after a person has been absent for five years, and he said he supports that provision.

He stated that Amendment 1 would keep the 10-year rule intact. If a person has been gone for 10 years, they should not receive a PFD, except for members of Congress and their families and staffers. Amendment 1 would also allow active duty overseas members to receive a PFD, even if they've been gone for ten years.

[9:56:15 AM](#)

SENATOR COGHILL asked what the sponsor says.

MR. PASCHALL related that the sponsor has looked at a variety of options over the past three years when working on the bill. He said, in the process, he learned about Equal Protection Clause requirements, and in working with the division and legislative legal, the bill contains the least amount of possible equal protection qualifications. Last fall, changes were made to the bill to incorporate suggestions about equal protection as it applies to the PFD. He said the sponsor does not want to raise the possible question regarding equal protection. He recalled the Zobel v. Williams decision where the Alaska Supreme Court

ruled in favor of the state and the U.S. Supreme Court overturned that decision. The way the bill is written currently does not raise such risks.

SENATOR WIELECHOWSKI agreed it was a concern a year ago, but noted that since then there has been a U.S. Supreme Court decision based on the Ross v. Alaska case. He read a legal opinion that stated, "Based on the Ross case, it seems likely that a court would uphold an exception to the 10-year rule for active duty military members against an equal protection challenge." He agreed with that analysis and explained that a court would look to see if there is a rational basis for treating military as an exception. He maintained the basis is that military members can be residents of this state and can be assigned to go overseas; therefore there is a rational basis for treating them differently. He gave examples of military members in that situation. He concluded that Amendment 1 "balances Alaskan's desire to protect our permanent fund against our desire to provide benefits for active duty military."

[9:59:54 AM](#)

MR. BARTOLO explained, from an administrative perspective, the provisions in Amendment 1 would be achievable. The division would leave the ten-year rule in place and create a new mechanism for exempting military. It would require programmatic changes and an amended fiscal note.

CHAIR DYSON maintained his objection to adopting Amendment 1.

[10:00:37 AM](#)

A roll call vote was taken. Senator Wielechowski voted in favor of Amendment 1 and Senator Coghill and Chair Dyson voted against it. Therefore, Amendment 1 failed by a 1:2 vote.

[10:01:25 AM](#)

SENATOR COGHILL moved to report HB 52 [AM] out of committee with individual recommendations and attached zero fiscal note. There being no objection, HB 52 AM was reported from the Senate State Affairs Standing Committee.

[10:01:47 AM](#)

There being no further business to come before the committee, Chair Dyson adjourned the Senate State Affairs Standing Committee at 10:01.