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Original sponsors: Ray, Halford,
Bennett, et al

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2

CS FOR SENATE BILL NO. 56 (Judiciary)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act amending the longevity bonus program and the
7 permanent fund dividend program, establishing an
8 annuity program; and providing for an effective
9 date."

10

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

11

* Section 1. FINDINGS AND PURPOSE. The legislature finds and declares
12 that

13

(1) it is in the public interest to continue the longevity bonus
14 program; however, as oil reserves decline over the years, it will become
15 increasingly difficult to provide the benefits of the longevity bonus
16 program through the general fund; as a result, that program must be phased
17 out over the years;

18

(2) it is appropriate that individuals save for their own re-
19 tirement, and it is also appropriate that the state establish both means
20 and incentives for Alaska residents to set aside retirement funds; accord-
21 ingly, it is a purpose of this legislation to create an annuity program;

22

(3) many retired Alaskans have made their retirement plans in
23 reliance on the availability of both the existing longevity bonus and the
24 permanent fund dividend; accordingly, the legislature finds that it is
25 appropriate to continue both those programs for these individuals;

26

(4) the most suitable source of funds for the annuity program
27 created by this Act are those permanent fund earnings currently distributed
28 as dividends; therefore this Act applies the annual permanent fund dividend
29 of younger Alaskans to annuity accounts unless the individual alternatively

1 elects to receive cash; in so doing, this Act will promote wise stewardship
2 of the permanent fund by giving each participant a direct financial stake
3 in its long-term profitability; and

4 (5) neither the longevity bonus program, nor the annuity pro-
5 gram, should be viewed as a form of welfare; other state and federal pro-
6 grams are available to meet the basic necessities of life, and amounts
7 received by an individual under this Act are not calculated on the basis of
8 need.

9 * Sec. 2. AS 43.23.005(c) is amended to read:

10 (c) A parent, guardian, or other authorized representative may
11 claim a permanent fund dividend on behalf of an unemancipated minor or
12 on behalf of an incompetent individual who is eligible to receive a
13 dividend [PAYMENT] under this section and may elect to take the divi-
14 dend as an annuity share for the future benefit of the minor.

15 * Sec. 3. AS 43.23.005 is amended by adding a new subsection to read:

16 (d) A person who is eligible to receive a permanent fund divi-
17 dend under this section, or who is authorized to claim a dividend on
18 behalf of another under (c) of this section, may elect to receive cash
19 in lieu of an annuity share. Alternatively, a person may elect to
20 receive 25 percent, 50 percent, or 75 percent of the dividend in cash
21 and the remainder as an annuity share. A person who is 65 years of
22 age before January 1, 1986, may only receive cash and may not elect to
23 receive an annuity share.

24 * Sec. 4. AS 43.23.015(a) is amended to read:

25 (a) The commissioner shall adopt regulations under the Adminis-
26 trative Procedure Act (AS 44.62) establishing the process for de-
27 termining the eligibility of individuals for permanent fund dividends.
28 The commissioner may require an individual to provide proof of eli-
29 gibility, and the commissioner may use other information available

1 from other state departments or agencies to determine the eligibility
2 of an individual.

3 * Sec. 5. AS 43.23.015(b) is amended to read:

4 (b) The department shall prescribe and furnish an application
5 form for claiming a permanent fund dividend. The application must
6 contain a statement of eligibility and a certification of residency in
7 substantially the following form:

8 I certify that

9 () I am a state resident on the date of this application
10 and I have been a state resident for at least six months immediately
11 preceding the date of this application; or

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

15 I understand that a false claim of residency to obtain a perma-
16 nent fund dividend for myself or for another is a criminal offense and
17 that if convicted I will forfeit future permanent fund dividends and
18 that I will lose or must repay all permanent fund dividends that have
19 been credited or paid to me, appropriations allocated to my annuity
20 account in accordance with AS 43.23.110(b), and any accrued interest
21 in my annuity account. I understand that this penalty is in addition
22 to any criminal penalties imposed.

23 _____
24 (signature of individual, parent,
25 guardian, or other authorized
26 representative)

27 * Sec. 6. AS 43.23.015(e) is amended to read:

28 (e) If a public agency claims a [PERMANENT FUND] dividend on
29 behalf of an individual under this section, the public agency shall

1 elect 100 percent cash under AS 43.23.005(d) and hold the dividend in
2 trust for the individual. Money held in trust under this subsection
3 shall be invested by the commissioner in accordance with AS 37.10.070.

4 * Sec. 7. AS 43.23.015(f) is amended to read:

5 (f) A minor or an incompetent individual may not maintain a
6 claim against the state or an officer or employee of the state based
7 either on the manner in which the parent, guardian, or authorized
8 representative other than a public agency of the state managed or
9 disposed of permanent fund dividends received on behalf of the minor
10 or incompetent, or an election made or not made on that individual's
11 behalf under AS 43.23.005(d) [INDIVIDUAL].

12 * Sec. 8. AS 43.23.015 is amended by adding a new subsection to read:

13 (i) The permanent fund dividend application form shall be pre-
14 pared to allow an applicant, other than a person who is exempt under
15 AS 47.45.015(b), to elect to receive cash in lieu of a permanent fund
16 dividend.

17 * Sec. 9. AS 43.23.035 is amended to read:

18 Sec. 43.23.035. PENALTIES AND ENFORCEMENT. (a) In addition to
19 any criminal penalties imposed by state law, if an individual is
20 convicted of a crime in connection with a false statement made in a
21 certification required under AS 43.23.015, and the conviction is not
22 reversed, that individual forfeits all permanent fund dividends cred-
23 ited or paid, together with any additional credits to that individu-
24 al's annuity account and is not eligible for a future permanent fund
25 dividend.

26 (b) If the commissioner determines that a cash [PERMANENT FUND]
27 dividend should not have been claimed by or paid to an individual, the
28 commissioner may use all collection procedures or remedies available
29 for collection of taxes under this title to recover the payment of a

1 permanent fund dividend that was improperly made. A notice of an
2 improperly paid dividend must be sent to the individual within 10
3 years after the improper payment. If notice is not sent within the
4 10-year period, proceedings may not be commenced in court for recovery
5 of the improper payment.

6 * Sec. 10. AS 43.23.035 is amended by adding a new subsection to read:

7 (c) If the commissioner determines that a permanent fund divi-
8 dend should not have been credited to an individual's annuity account,
9 the commissioner may, after notice and opportunity for hearing, direct
10 the commissioner of administration to debit the individual's annuity
11 account for the amount wrongly credited. If the credit is the fault
12 of the individual, the debit must be made within 10 years. If the
13 credit is the fault of the state, the debit must be made within three
14 years.

15 * Sec. 11. AS 43.23.055 is amended to read:

16 Sec. 43.23.055. DUTIES OF THE DEPARTMENT. The department shall
17 (1) annually make payments to individuals who are 65 years
18 of age before January 1, 1986, and to individuals who elect to receive
19 cash under AS 43.23.005(d) [PAY PERMANENT FUND DIVIDENDS FROM THE
20 DIVIDEND FUND];

21 (2) adopt regulations under the Administrative Procedure
22 Act (AS 44.62) that establish procedures and time limits for claiming
23 a permanent fund dividend or for electing an annuity share; the de-
24 partment shall set the time limit for applications for permanent fund
25 dividends so that the number of eligible applicants is determined by
26 October 1 of the year for which the dividend is declared and permanent
27 fund dividends for a year are paid before April 30 of the year follow-
28 ing that year;

29 (3) adopt regulations under the Administrative Procedure

1 Act (AS 44.62) that establish procedures and time limits for an indi-
2 vidual upon emancipation or upon reaching majority to apply for perma-
3 nent fund dividends not credited or received during minority because
4 the parent, guardian, or other authorized representative did not apply
5 on behalf of the individual; [AND]

6 (4) assist residents of the state, particularly in rural
7 areas, who because of language, disability, or inaccessibility to
8 public transportation need assistance to establish eligibility and to
9 apply for permanent fund dividends; and

10 (5) provide the commissioner of administration with infor-
11 mation necessary to maintain individual annuity account records and
12 administer the annuity program.

13 * Sec. 12. AS 43.23.065 is amended to read:

14 Sec. 43.23.065. EXEMPTION OF PERMANENT FUND DIVIDENDS. Fifty
15 percent of a cash [THE ANNUAL] permanent fund dividend payment [PAY-
16 ABLE TO AN INDIVIDUAL] is exempt from levy, execution, garnishment,
17 attachment, or any other remedy for the collection of debt. This
18 exemption applies to an eligible individual's permanent fund dividend
19 both before and after payment is made to the individual. An exemption
20 is not available under this section for cash permanent fund dividend
21 payments [DIVIDENDS] taken to satisfy (1) child support obligations
22 required by court order or decision of the child support enforcement
23 agency under AS 47.23.140 - 47.23.220; (2) a debt owed by an eligible
24 individual to an agency of the state, unless the debt is contested and
25 an appeal is pending, or the time limit for filing an appeal has not
26 expired; or (3) court ordered restitution under AS 12.55.045 - 12.55.-
27 051 or 12.55.100. A child support obligation under (1) of this sec-
28 tion has priority over a debt owed to an agency of the state, and a
29 permanent fund dividend may not be taken to satisfy a debt under (2)

1 of this section until any portion of the dividend necessary to satisfy
2 a child support obligation has been taken.

3 * Sec. 13. AS 43.23.065 is amended by adding new subsections to read:

4 (b) The department shall require an individual to take 100
5 percent of the permanent fund dividend in cash if the department
6 receives a levy, execution, garnishment, attachment or other legal
7 remedy for the collection of a past due debt described in (a)(1) or
8 (2) of this section.

9 (c) The courts of this state may, as a condition of any civil
10 judgment or restitution order under AS 12.55.045 - 12.55.051 or 12.-
11 55.100, require the defendant to take the defendant's permanent fund
12 dividend in cash.

13 * Sec. 14. AS 43.23.075 is amended to read:

14 Sec. 43.23.075. ELIGIBILITY FOR PUBLIC ASSISTANCE. (a) In
15 determining the eligibility of an individual under a public assistance
16 program administered by the Department of Health and Social Services
17 in which eligibility for assistance is based on financial need, the
18 Department of Health and Social Services may not consider a permanent
19 fund dividend as income or resources received by the recipient of
20 public assistance or by a member of the recipient's household unless
21 required to do so by federal law or regulation. The Department of
22 Health and Social Services shall notify all recipients of public
23 assistance of the effects of [RECEIVING] a permanent fund dividend
24 credit or cash payment.

25 (b) An individual who is denied medical assistance under 42
26 U.S.C. 1396 - 1396p (Social Security Act, Title XIX) solely because of
27 the credit or receipt of a permanent fund dividend by the individual
28 or by a member of the individual's household is eligible for state-
29 funded medical assistance under the general relief assistance program

1 (AS 47.25.120 - 47.25.300). The individual is entitled to receive,
2 for a period not to exceed four months, the same level of medical
3 assistance as the individual would have received under 42 U.S.C.
4 1396 - 1396p (Social Security Act, Title XIX) had there been no perma-
5 nent fund dividend program.

6 (c) An individual who is denied assistance solely because perma-
7 nent fund dividends credited to or received by the individual or by a
8 member of the individual's household are counted as income or re-
9 sources under federal law or regulation is eligible for cash assis-
10 tance under the general relief assistance program (AS 47.25.120 -
11 47.25.300). Notwithstanding the limit in AS 47.25.130, the individual
12 is entitled to receive, for a period not to exceed four months, the
13 same amount as the individual would have received under other public
14 assistance programs had there been no permanent fund dividend program.

15 * Sec. 15. AS 43.23.095(6) is repealed and reenacted to read:

16 (6) "permanent fund dividend" means a credit to an annuity
17 account under this chapter except that, as applied to an individual
18 who may receive only cash under AS 43.23.005(d) or 43.23.065, it means
19 a cash payment under this chapter;

20 * Sec. 16. AS 43.23 is amended by adding new sections to read:

21 ARTICLE 2. ANNUITY PROGRAM.

22 Sec. 43.23.110. ANNUITY INVESTMENT FUND. (a) The annuity
23 investment fund is established as a separate fund in the state trea-
24 sury. The annuity investment fund consists of money transferred from
25 the dividend fund, money appropriated to the annuity investment fund,
26 and income earned by the annuity investment fund. Notwithstanding
27 AS 37.13.145, an amount equal to the permanent fund dividends taken as
28 annuity credits under this chapter shall be annually transferred from
29 the dividend fund to the annuity investment fund.

1 (b) The legislature may appropriate either general funds, or
2 earnings of the undistributed income account in the Alaska permanent
3 fund, to the annuity investment fund. Funds appropriated under this
4 subsection shall be allocated to the individual annuity accounts of
5 those who are eligible to receive a dividend for that year and do not
6 elect cash under AS 43.23.005(d). The allocation shall be made in the
7 following manner:

8 (1) a credit will be made to the account of each individual
9 who is at least 18 years old;

10 (2) the credit for each person from the age of 18 through
11 age 35 is the base amount; the size of the base amount is determined
12 according to the amount of the appropriation;

13 (3) the credit for persons over the age of 35 is the base
14 amount, increased for each year of age over 35 up to and including the
15 age of 65; the incremental increase for each year of age is a percent-
16 age over the credit for the prior year of age; that percentage shall
17 be established with due regard for historical and projected permanent
18 fund returns on investment;

19 (4) if a person elects to receive a portion of the dividend
20 in cash under AS 43.23.005(d), the allocation to which that person is
21 otherwise entitled will be reduced proportionately.

22 (c) Money in the annuity investment fund shall be invested by
23 the commissioner of revenue in investments authorized under AS 39.-
24 35.110. The commissioner of administration shall credit the net
25 income of the annuity investment fund to the individual annuity ac-
26 counts.

27 (d) The legislature may annually appropriate to the Department
28 of Administration an amount sufficient to pay monthly annuity payments
29 for the subsequent fiscal year under AS 43.23.130 from the annuity

1 investment fund. Funds appropriated under this subsection shall be
2 transferred from the annuity investment fund to the Department of
3 Administration in order to meet the current demands of the annuity
4 program.

5 (e) The legislature may annually appropriate from the annuity
6 investment fund an amount sufficient to administer the annuity pro-
7 gram. Any costs of administration funded under this subsection shall
8 be allocated equitably among all individual annuity accounts.

9 (f) Notwithstanding AS 39.35.110 or (c) of this section, the
10 commissioner of revenue may invest all or part of the annuity invest-
11 ment fund in commercial insurance contracts purchased from insurance
12 companies that have a Best's policyholders' rating of A or better and
13 belong to Best's financial size Group XV at the time of purchase.

14 Sec. 43.23.120. ANNUITY PROGRAM. (a) The annuity program is
15 administered by the commissioner of administration. The commissioner
16 of administration shall adopt regulations necessary to implement the
17 annuity program.

18 (b) The commissioner of administration shall maintain records of
19 individual annuity accounts and make annuity payments under AS 43.23.-
20 130.

21 Sec. 43.23.130. PAYMENT OF ANNUITIES. (a) An individual with
22 one or more annuity credits may receive an annuity upon reaching the
23 age of 65.

24 (b) An annuity under this section is a monthly payment based
25 upon the principal and accrued interest in the person's annuity ac-
26 count. An annuity shall be paid as a straight life annuity or other
27 payment plan authorized by the commissioner of the Department of
28 Administration. The size of the annuity may not vary on account of
29 the individual's sex.

1 (c) An individual need not be a resident of the state to be
2 eligible to received an annuity payment from the individual's account.

3 (d) Except as provided in (b) and (e) of this section, an annu-
4 ity account may not be assigned, sold, or otherwise transferred from
5 one individual to another.

6 (e) If a person dies before age 65, a lump sum payment shall,
7 subject to appropriation, be paid to the surviving spouse by right of
8 survivorship unless a different beneficiary was designated. When no
9 spouse survives and no beneficiary was designated, the lump sum shall
10 be paid to the decedent's estate. The lump sum payment shall include
11 all permanent fund dividend contributions made by the individual,
12 together with interest, but shall not include any credits to the
13 individual's account made pursuant to AS 43.23.110(b), or interest on
14 those credits.

15 (f) An individual does not receive a vested property right in an
16 annuity payment until that payment is made. Notwithstanding this
17 section, the state is not obligated to provide annuity payments for
18 annuity credits granted under AS 43.23.005.

19 * Sec. 17. AS 47.45.010(a) is amended to read:

20 (a) A person who is 65 years of age or over, who resides in the
21 state for at least one year immediately preceding application for a
22 longevity bonus under this chapter may apply to the commissioner of
23 administration for qualification to receive a monthly bonus [OF \$250].

24 * Sec. 18. AS 47.45 is amended by adding a new section to read:

25 Sec. 47.45.015. AMOUNT OF BONUS. (a) Except as provided in (b)
26 of this section, the monthly longevity bonus is equal to \$250, in-
27 creased by three percent each year beginning in fiscal year 1987,
28 minus the maximum possible straight life annuity for a person 65 years
29 of age under the annuity program (AS 43.23.110 - 43.23.130), as

1 determined by the commissioner of administration.

2 (b) A person who is 65 years of age before January 1, 1986, is
3 entitled to the full longevity bonus payment without reduction for the
4 annuity program.

5 * Sec. 19. AS 47.45.070 is amended to read:

6 Sec. 47.45.070. UNQUALIFIED PERSONS. An unqualified person is
7 one who

8 (1) does not meet the age or residence requirements as
9 provided for under this chapter;

10 (2) meets the age and residence requirements of this chap-
11 ter but either is confined in a state or federal mental health insti-
12 tution or facility and is certified by the state as unable to manage
13 personal affairs, or resides in a nursing home as that term is defined
14 in AS 08.70.180; however, if that person, at the time of commitment or
15 commencement of residence, provided the principal support of a spouse,
16 the commissioner of administration may determine to pay the confined
17 person's bonus to the person's spouse until the spouse is qualified
18 for a bonus;

19 (3) is otherwise qualified but confined in a penal or
20 correctional institution or facility; upon completion of sentence or
21 upon the conferral of a pardon, parole or probation, the person may
22 make application; confinement outside the state shall be considered as
23 residence in the state if a person was convicted and sentenced from a
24 court in Alaska; revocation of parole or probation shall be cause for
25 immediate disqualification until release from confinement is again
26 effected;

27 (4) voluntarily leaves the state and remains absent from
28 the state for a continuous period of more than 180 days.

29 * Sec. 20. Section 11, ch. 38, SLA 1984 is amended to read:

1 Sec. 11. Sections 7 and 9 of this [THIS] Act [AND AS 47.45] are
2 repealed June 30, 1985.
3 * Sec. 21. AS 43.23.045(c) is repealed.
4 * Sec. 22. This Act applies only to permanent fund dividends for years
5 beginning after December 31, 1985. Notwithstanding the amendments to
6 AS 43.23 made by this Act, permanent fund dividends for 1985 and prior
7 years shall be made under the law as it existed before the effective date
8 of this Act.
9 * Sec. 23. This Act takes effect immediately in accordance with AS 01.-
10 10.070(c).