



Original sponsors: Barnes, Hayes,  
Bussell, et al

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 575 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to permanent fund dividends; and  
7 providing for an effective date."

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

9 \* Section 1. AS 43.23.005 is amended by adding a new subsection to  
10 read:

11 (d) Notwithstanding the provisions of (a) - (c) of this section,  
12 an individual who has been convicted of a felony is not eligible for a  
13 permanent fund dividend for a year when, during all or part of the  
14 eligibility period for that year's dividend, as a result of the con-  
15 viction the individual is incarcerated for the felony. An individual  
16 incarcerated in accordance with this subsection is considered to be  
17 ineligible whether or not the individual has applied for the dividend.

18 \* Sec. 2. AS 43.23.025 is amended by adding a new subsection to read:

19 (b) for the purpose of calculating the amount of a permanent  
20 fund dividend under (a) of this section an individual who is ineli-  
21 gible to receive a dividend under the provisions of AS 43.23.005(d)  
22 shall be considered to be an eligible individual.

23 \* Sec. 3. AS 43.23.055 is amended to read:

24 Sec. 43.23.055. DUTIES OF THE DEPARTMENT. The department shall

25 (1) annually pay permanent fund dividends from the dividend  
26 fund;

27 (2) adopt regulations under the Administrative Procedure  
28 Act (AS 44.62) that establish procedures and time limits for claiming  
29 a permanent fund dividend; the department shall set the time limit for

1 applications for permanent fund dividends so that the number of eli-  
2 gible applicants is determined by December 1 of the year for which the  
3 dividend is declared and permanent fund dividends for a year are paid  
4 before April 30 of the year following that year;

5 (3) adopt regulations under the Administrative Procedure  
6 Act (AS 44.62) that establish procedures and time limits for an indi-  
7 vidual upon emancipation or upon reaching majority to apply for perma-  
8 nent fund dividends not received during minority because the parent,  
9 guardian, or other authorized representative did not apply on behalf  
10 of the individual;

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

15 (5) annually determine, in cooperation with the Department  
16 of Health and Social Services, the number and identity of individuals  
17 ineligible for a permanent fund dividend under AS 43.23.005(d);

18 (6) adopt other regulations that are necessary to implement  
19 the provisions of this chapter.

20 \* Sec. 4. This Act applies only to eligibility for permanent fund  
21 dividends for years after 1983.

22 \* Sec. 5. It is the intent of the legislature that an amount approxi-  
23 mately equal to the money that would otherwise be paid as permanent fund  
24 dividends to individuals ineligible under AS 43.23.005(d), enacted by sec.  
25 1 of this Act be appropriated annually from the dividend fund to the crime  
26 victim compensation fund (AS 18.67.162), to be used for the purposes stated  
27 in AS 18.67.

28 \* Sec. 6. This Act takes effect immediately in accordance with AS 01.-  
29 10.070(c).

**STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE**

Revision Date 03/07/84

**REQUEST**

**Bill/Resolution No:** CSHB 575 (Fin)  
**Title:** An Act relating to permanent fund dividends  
**Sponsor:** House Finance Committee  
**Requestor:** House Finance Committee  
**Date of Request:** March 6, 1984

**FISCAL DETAIL**

**Agency Affected:** Revenue  
**Program Category Affected:** General Government  
**BRU, Program or Subprogram(s) Affected:** Permanent Fund Dividend

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
<b>OPERATING</b>						
100 PERSONAL SERVICES	-	33.6	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	1.0	-	-	-	-
400 SUPPLIES	-	.2	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
<b>TOTAL OPERATING</b>	-	34.8	-	-	-	-
<b>CAPITAL</b>	-	-	-	-	-	-
<b>REVENUE</b>	-	-	-	-	-	-

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	34.8	-	-	-	-
<b>TOTAL</b>	-	34.8	-	-	-	-

**POSITIONS:**

FULL-TIME	-	1	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

**SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:**

Dividend fund established by AS 43.23.045.

**ANALYSIS:** Please see attached narrative for analysis.

Prepared By: Thomas C. Williams, Director  
 Division: Enforcement

Phone: 465-2366

Date: March 7, 1984

Approved by Commissioner: [Signature]  
 Agency: DOR

Date: 3/7/84

**Distribution (by Agency preparing fiscal note):**

Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

Department of Revenue  
Analysis of CSHB 575 (Finance)  
March 7, 1984

**A. Program Effects**

Section 1 further defines the eligibility requirements of AS 43.23.005 by adding a new subsection which declares convicted felons who are incarcerated ineligible to receive a permanent fund dividend if they were incarcerated for said felony during any part of the eligibility period for a particular year's dividend. For example, the six-month eligibility period for the 1984 dividend is October 1, 1983 through March 31, 1984. Under this bill, an individual who was incarcerated for a felony conviction during this period or was incarcerated during any part of this period, would be ineligible for a 1984 permanent fund dividend.

Section 1 also provides that the Department of Health & Social Services will provide a magnetic tape to the Department of Revenue, once a year within 60 days of the close of the PFD eligibility period, listing all convicted felons who were incarcerated during any part of the eligibility period. Modifications will need to be made to the PFD system to do a cross-match on at least all adult applications, so those which appear to be felons can be individually identified and reviewed. The Department of Revenue will, of course, have to be extremely careful that a "non-felon" is not accidentally denied on the grounds of felony conviction. The estimated resources necessary to accomplish this task are identified below under C. Program Summary.

Section 2, combined with the added subsections in Section 3, require the Department of Revenue to estimate the number of convicted felons under sentence for felony as described in Section 1.

Under Section 5, the dividends otherwise payable to the estimated number of individuals, whether or not they file, would then be presumably reappropriated the next legislative session to the Crime Victim Compensation Fund. Since the value of an individual dividend is not known until some time in the fall of a given dividend year, the Legislature would not be able to appropriate the amount described in Section 5 until the session following the dividend year. Since the funds were originally appropriated for the purpose of paying dividends, a reappropriation for the purpose described in AS 18.67 would seem appropriate.

**B. Assumptions**

1. The PFD program is retained and there are no other substantive changes to the program.
2. The Department of Health and Social Services can provide the Department of Revenue with a magnetic tape accurately identifying all convicted felons who were incarcerated during any part of the eligibility period.

Department of Revenue  
Analysis of CSRB 575 (Finance)  
March 7, 1984

C. Program Summary

This bill would require one full time PFD Investigator who would be assigned felons on a project basis. The primary functions of this position would be to conduct confirming investigations on a portion of applicants identified as felons, resolve instances where an individual was inappropriately identified as a felon, respond to related inquiries, process denials of felons under sentence who do apply, and hold informal conferences related to appeals from felons under sentence. In addition, there would be associated contractual services and supply costs.

Personal Services (100)

PFD Investigator II (R13)	12 months @ \$2,800/mo.	<u>\$33,600</u>
---------------------------	-------------------------	-----------------

Contractual Services (300)

Telephone, form letters, postage, etc.	<u>1,000</u>
--	--------------

Supplies (400)

General Office Supplies	<u>200</u>
-------------------------	------------

<u>Total</u>	<u>\$34,800</u>
--------------	-----------------

**FISCAL NOTE**

Revision Date 3/6/84

**REQUEST**

**BILL/Resolution No:** CSHB 575  
**Title:** An act relating to permanent fund dividends.  
**Sponsor:** Barnes  
**Requestor:** House Finance  
**Date of Request:** \_\_\_\_\_

**FISCAL DETAIL**

**Agency Affected:** Revenue  
**Program Category Affected:** \_\_\_\_\_  
**BRU, Program of Subprogram(s) Affected:** Permanent Fund Dividend

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
<b>OPERATING</b>						
100 PERSONAL SERVICES	-	33.6	-	-	-	-
200 TRAVEL	-	-0-	-	-	-	-
300 CONTRACTUAL	-	58.5	-	-	-	-
400 SUPPLIES	-	.2	-	-	-	-
500 EQUIPMENT	-	1.0	-	-	-	-
600 LANDS & STRUCTURES	-	-0-	-	-	-	-
700 GRANTS, CLAIMS	-	-0-	-	-	-	-
800 MISCELLANEOUS	-	-0-	-	-	-	-
<b>TOTAL OPERATING</b>	-	93.3	-	-	-	-
<b>CAPITAL</b>	-	-0-	-	-	-	-
<b>- REVENUE</b>	-	-0-	-	-	-	-

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	-	93.3	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
<b>TOTAL</b>	-	-0-	-	-	-	-

**POSITIONS:**

FULL-TIME	-	-1-	-	-	-	-
PART-TIME	-	-0-	-	-	-	-
TEMPORARY	-	-0-	-	-	-	-

**SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:**

**ANALYSIS:** See attached.

**Prepared By:** Ervin B. Jones  
**Division:** Administrative Services Division

**Phone:** 465-2313  
**Date:** 03/06/84

**Approved by Commissioner:** [Signature]  
**Agency:** Revenue

**Date:** 3/6/84

**Distribution (by Agency preparing fiscal note):**

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CS HB 575  
Analysis of Bill/Program Effects

Section 1 further defines the eligibility requirements of AS 43.23.005 by adding a new subsection which declares convicted felons under sentence ineligible to receive a permanent fund dividend if they were under sentence for said felony during any part of the eligibility period for a particular year's dividend. For example, the six-month eligibility period for the 1984 dividend is October 1, 1983 through March 31, 1984. Under this bill, an individual who was under sentence for a felony conviction during this period or during any part of this period, would be ineligible for a 1984 permanent fund dividend.

Individuals under sentence include those who are:

- 1) sentenced, but out of jail on appeal
- 2) sentenced, but on probation
- 3) under a suspended sentence
- 4) incarcerated, under sentence
- 5) sentenced, but on parole.

Under this section, the Department of Revenue would have to somehow build a list of those individuals who have been convicted of felonies and who during the eligibility period fell into categories 1-5, above. Initial research shows that only those individuals who are incarcerated are readily available, through the OPSIS system of the Division of Corrections.

The records of the individuals in the other four categories are scattered between the Division of Corrections, the Department of Law, and all four superior courts, plus the appellate courts, not to mention Lower 48 courts and military courts who have convicted and sentenced Alaska residents for felony charges committed outside Alaska.

If the Department of Revenue remains responsible for building this currently non-existent central data-base, it will require the services of a good management analyst and necessary travel and contractual funds to visit each court and review the existing record systems, with an intent to arrange for input to a central collection point. The input could be in magnetic tape in some cases and on paper format in other cases. The important thing would be consistency in reporting. Once this data was accumulated and encoded, modifications will need to be made to the PFD system to do a cross-match on at least all adult applications, so those which appear to be felons can be individually identified and reviewed.

The Department of Revenue will, of course, have to be extremely careful that a "non-felon" is not accidentally denied on the grounds of felony conviction. The estimated resources necessary to accomplish this task are identified on Schedule A, attached.

## Continuation of Bill/Program Effects

Section 2, combined with the added subsections in Section 3, require the Department of Revenue to estimate the number of convicted felons under sentence for felony as described in Section 1.

Under Section 5, the dividends otherwise payable to the estimated number of individuals, whether or not they file, would then be presumably reappropriated the next legislative session to the Crime Victim Compensation Fund. Since the value of an individual dividend is not known until some time in the fall of a given dividend year, the Legislature would not be able to appropriate the amount described in Section 5 until the session following the dividend year. Since the funds were originally appropriated for the purpose of paying dividends, a reappropriation for the purpose described in AS 18.67 would seem appropriate.

**Department of Revenue  
Schedule A  
Estimated Resources Needed  
CSHB 575**

**Administrative Services Division (See attached analysis)**

Personal Services	-0-
Travel	-0-
Contractual	56.0
Supplies	-0-
Equipment	<u>-0-</u>
Administrative Services Division Total	\$56.0

**Enforcement Division (See attached analysis)**

Personal Services	33.6
Travel	-0-
Contractual	2.5
Supplies	.2
Equipment	<u>1.0</u>
TOTAL Enforcement Division	37.3
TOTAL Department of Revenue	<u>93.3</u>

Department of Revenue  
Administrative Services Division  
Schedule A  
Estimated Resources Needed  
CSHB 575

FY 85

Personal Services

-0-

Travel

-0-

Contractual

1. Professional Services contract with reputable Alaskan management consultant firm to survey existing record systems for felons in Administrative and Judicial Branches, statewide, to include travel and per diem

\$50,000

2. Additional running time on mainframe computer for program design and production run

\$5,000

3. Form letters, postage, LD, telegram

1,000

TOTAL Contractual

\$56,000

Equipment

--0-

Commodities

-0-

Administrative Services Division Total

\$56,000

Enforcement Division Analysis of CSMS 575 (Ju)

March 6, 1984

A. Assumptions

1. The PFD program is retained and there are no other substantive changes to the program.
2. It would be possible and practical to obtain information on individuals convicted of a felony and under sentence.

B. Program Summary

This bill would require one full time PFD Investigator who would be assigned felons on a project basis. The primary functions of this position would be to conduct confirming investigations on a portion of applicants identified as felons, resolve instances where an individual was inappropriately identified as a felon, respond to related inquiries, process denials of felons under sentence who do apply, and hold informal conferences related to appeals from felons under sentence. In addition, there would be associated contractual services, supply costs, and equipment costs.

		<u>FY '85</u>
<u>Personal Services (100)</u>		
PFD Investigator II (RL3)	12 months @ \$2,800/mo.	<u>\$33,600</u>
<u>Contractual Services (300)</u>		
Telephone		
Telephone purchase	1 phone @ \$60	60
Installation	1 phone @ \$90	90
Local Centrex	12 months @ \$46/mo.	552
Long Distance	12 months @ \$150/mo.	<u>1,800</u>
<u>Total Contractual Services (300)</u>		<u>2,502</u>
<u>Supplies (400)</u>		
General Office Supplies		<u>200</u>
<u>Equipment (500)</u>		
Desk		575
Chair		175
File		<u>275</u>
<u>Total Equipment (500)</u>		<u>1,025</u>
<u>Total Enforcement</u>		<u>\$37,327</u>

Amendments proposed:

1. Amend Section 1 to read:

\*Section 1. AS 43.23.005 is amended by adding a new subsection to read:

(d) Notwithstanding the provisions of (a) - (c) of this section, an individual who has been convicted of a felony is not eligible for a permanent fund dividend for a year when, during all or part of the eligibility period for that year's dividend, as a result of the conviction the individual is [under sentence] incarcerated for the felony. An individual [under sentence] incarcerated in accordance with this subsection is considered to be ineligible whether or not the individual has applied for the dividend.

(e) For purposes of determining whether an applicant for a permanent fund dividend is ineligible under AS 43.23.005(d), the Department of Revenue will use a listing of such individuals to be certified by the Commissioner of Health and Social Services annually on or before the 60th day following the last day of that year's permanent fund dividend eligibility period.

The amended subsection (a) would largely eliminate the administrative difficulties of administering the proposed statute change, and would, as I understand the Attorney General's opinion, eliminate the likelihood of successful legal challenge.

This amendment adding subsection (e) is offered to place the responsibility for determining which individuals are under sentence for a felony, or, if amendment one as offered is accepted, which individuals are incarcerated for a felony in the department which knows the most about such things, the Department of Health and Social Services. The Department of Revenue has no expertise in criminal law nor do we have the communication channels already established with the Judiciary as does the Division of Corrections. If Revenue received a listing on magnetic tape each year of all individuals who met the test of Section 1, including particulars such as full legal name, date of birth, and social security number, we could stop such payments from being made with 97-99 percent accuracy. It would seem counterproductive and presumptuous for the Department of Revenue to attempt to produce a statewide data base of convicted felons.

**STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE**

Revision Date: \_\_\_\_\_

**REQUEST**

Bill/Resolution No.: CS HB 575 (Fin)  
 Title: Relating to permanent fund  
Dividends  
 Sponsor: Barnes  
 Requestor: House Finance Committee  
 Date of Request: 3/5/84

**FISCAL DETAIL**

Agency Affected: Revenue  
 Program Category Affected: general government  
 BRU, Program or Subprogram(s) Affected: Permanent Fund Dividend

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL</b>	0	0	0	0	0	0
<b>REVENUE</b>	0	0	0	0	0	0

**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:**

**ANALYSIS:** Attach a separate page for analysis - Please refer to memorandum from Legislative Finance to Rep. Adams dated 3/5/84.

Prepared By: Al Adams, Chair APA Phone: 465-3706  
 Division: House Finance Committee Date: 3/5/84

Approved by Commissioner: \_\_\_\_\_ Date: \_\_\_\_\_  
 Agency: \_\_\_\_\_

**Distribution (by Agency preparing fiscal note):**

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

**PRESS RELEASE  
FEBRUARY 1, 1984**

**Contact: Jim Wood  
465-3718**

**REPRESENTATIVE RAMONA BARNES (R. ANCHORAGE), THE HOUSE MAJORITY LEADER, TODAY INTRODUCED A BILL THAT WOULD STOP PERSONS SERVING A SENTENCE FOR COMMISSION OF A FELONY FROM RECEIVING A PERMANENT FUND DIVIDEND. THE FUNDS THAT WOULD HAVE BEEN RECEIVED WOULD INSTEAD BE PUT INTO THE FUND TO COMPENSATE VICTIMS OF CRIMES.**

**"I BELIEVE IT IS HIGH TIME THAT OUR SOCIETY SHOWED MORE CONCERN FOR THE VICTIMS OF CRIME," REPRESENTATIVE BARNES SAID. "I SEE NO REASON WHY A PERSON CONVICTED OF A MAJOR CRIME SHOULD BE REWARDED WITH A BONUS."**

**"WE ALL HAVE A BASIC AND FUNDAMENTAL RIGHT TO BE SAFE IN OUR HOMES AND ON OUR STREETS AND I HOPE THIS LEGISLATION WILL HELP TO CONVEY THE MESSAGE THAT WE WILL NEITHER TOLERATE NOR REWARD LAWLESSNESS."**

**Memo re: HB 575**

**From: Jim Wood, House Majority Leader's Office**

**On January 1, 1984 there were 1334 felons in the Alaska Corrections system, including those outside the state.**

**At the rate of the 1983 Permanent Fund dividend (i.e., \$386), they would have received dividends totaling about \$515,000.**

**No data are available on the number of convicted felons on probation, parole, or suspended imposition of sentence.**

**Assuming there are half as many out of the institutions, but still under sentence, the total amount diverted from felons and into the crime victims' compensation fund would have been approximately \$773,000.**

# MEMORANDUM

State of Alaska

TO: Bruce Botelho  
Deputy Commissioner  
Department of Revenue

DATE: February 15, 1984

FILE NO: 366-424-84

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch  
Attorney General

SUBJECT: Review of HB 575,  
relating to PFD pay-  
ments to prisoners

By: Diane T. Colvin  
Assistant Attorney General  
Commercial-Juneau

You asked us to review House Bill 575, relating to payment of permanent fund dividends to convicted felons, for possible legal problems. Based on our review, we conclude that the bill, if enacted, could be challenged on a number of grounds. The provisions most vulnerable to legal challenge are summarized below.

HB 575 makes a convicted felon ineligible for a permanent fund dividend. The prohibition is applied not only to a felon who is in prison, but also to one who is on probation, on parole, or under a suspended imposition of sentence (Sec. 1).

There are other state laws that impose similar disabilities on convicted felons. Art. V, § 2, Alaska Constitution, implemented by AS 15.05.030, suspends the right to vote of a person convicted of a felony of moral turpitude. The disability continues until the individual's civil rights are restored by unconditional discharge. Unconditional discharge covers conviction and sentence, including, by definition (AS 15.60.010(32)), probation and parole, and, according to an opinion of this office, suspended imposition of sentence. 1980 Inf. Op. Att'y. Gen. (Nov. 7).

Statutes imposing disabilities relating to suffrage have traditionally been upheld as necessary to preserve the purity of elections. The presumption is that one rendered infamous by conviction of a felony is not fit to exercise the privilege of voting. State ex rel. Barrett v. Sartorius, 351 Mo. 1237, 175 S.W.2d 787 (1943). See, also Annot., 36 A.L.R.2d 1238 (1954),

Other statutory provisions affect prisoners' civil rights. AS 33.30.310 provides as follows:

Bruce Botelho, Deputy Commissioner  
Department of Revenue  
Our file no.: 366-424-84

February 15, 1984  
Page 2

A judgment of imprisonment in the penitentiary for a term less than for life suspends the civil rights of the person sentenced, and forfeits all public offices and all private trusts, authority, or power during the term or duration of imprisonment.

AS 33.30.320 relates to the civil rights of a person sentenced for life.

AS 33.30.310 was found unconstitutional by the Alaska Supreme Court to the extent the statute denied a parolee the right to initiate a civil suit in court. Bush v. Reid, 516 P.2d 1215 (1973). The court held that the statute denied the parolee the right to due process and equal protection. In its equal protection analysis, the court recognized that the state may have a reasonable basis for denying convicts while imprisoned access to the civil courts. Id. 1221. But, the court found, the administration of a parole system differs substantially from the administration of a prison. The reasons that support imposition of disabilities on prisoners cannot logically support the same restrictions on parolees. Id. Thus, the court concluded that although the state has a legitimate interest in restricting some activities of parolees, prohibiting a parolee from initiating a civil action has no logical connection with that interest. Therefore, the court held parolees were denied the right to equal protection.

We believe the court would make a similar finding in regard to the right to a permanent fund dividend while on parole. There may be a legitimate state interest in precluding a person incarcerated from receiving a permanent fund dividend. 1/ It is difficult, however, to construct a logical basis for denying a dividend to a parolee. The purpose of parole, recognized by the court in Bush v. Reid, is the parolee's constructive development and restoration into normal society. Cutting a parolee off from receipt of a permanent fund dividend does not further that purpose, but rather restricts it. We believe the same argument would apply to persons given a suspended imposition of sentence and placed on probation. The broad objectives sought by

---

1/ HB 575 does not indicate what the legitimate state purpose is. It would be advisable for the legislature to make that determination, and to embody the purpose or purposes in a letter of intent to accompany the bill. — not necessary, at this point, according to D. Calvin

Bruce Botelho, Deputy Commissioner  
Department of Revenue  
Our file no.: 366-424-84

February 15, 1984  
Page 3

probation are education and rehabilitation. These objectives are not furthered by restricting the right to receive a permanent fund dividend. Therefore, we believe that revising the bill to restrict receipt of a dividend only to convicted felons who are incarcerated would make the bill much less vulnerable to attack on equal protection grounds.

Another point on which the bill is vulnerable is the period of time for determination of ineligibility. Section 1 of the bill now makes a convicted felon ineligible for a dividend for a particular year if, during all or part of that year, the person is incarcerated, on probation, etc. AS 43.23.005 requires only six months of residency to qualify for a permanent fund dividend. We believe in order to be legally supportable the period of incarceration must coincide with at least some portion of the period of eligibility. 2/

taken  
care  
of in  
JUDICIARY  
C.S.

Finally, section 1 of the bill provides that the money that would have been paid to persons made ineligible by the bill be transferred from the dividend fund to the crime victim compensation fund. This may raise problems under Art. IX, § 13, of the Alaska Constitution, relating to expenditures of state funds. A better approach would be for the bill to provide that the legislature may appropriate the amount that would have been paid to the crime victim's compensation fund. In order to effect the transfer, the amount that would otherwise have been paid must be set out in an appropriation bill to the crime victim's compensation fund.

taken  
care of  
in  
JUDICIARY  
C.S.

We hope this information is helpful to you. If you have further questions, please contact us.

NCG:DTC:eja

cc: The Honorable Charlie Bussell  
Alaska State House of Representatives

---

2/ 15 AAC 23.615(a) establishes for 1983 dividends an eligibility period from October 3, 1982 through March 31, 1983. This period will probably differ in 1984 and subsequent years because of changes in the statute.

# STATE OF ALASKA THE LEGISLATURE

POUCHY STATE CAPITAL  
JUNEAU ALASKA 99801  
907-465-3800

## LEGISLATIVE AFFAIRS AGENCY

### MEMORANDUM

January 18, 1984

SUBJECT: Work orders No. 13-1693  
and 13-1774

TO: Representative Ramona Barnes

FROM: *LH* Linn H. Asper  
Legislative Counsel

You have asked for two bills to restrict eligibility for permanent fund dividends. These bills raise two constitutional questions. The first concerns the constitutionality, under the equal protection clause, of making convicted felons and resident aliens ineligible for permanent fund dividends. Second, the proposal to divert money that would have been paid to convicted felons in order to compensate victims of crime raises a dedication of funds question under the state constitution.

By declaring any subgroup of otherwise eligible state residents ineligible for permanent fund dividends, equal protection questions are raised under the United States and state constitutions. Work Order No. 13-1693 makes convicted felons who are serving a prison sentence, on probation, on parole, or under a suspended imposition of sentence, ineligible for a permanent fund dividend even though they are state residents who meet the six month residency requirement of AS 43.23.005. Under current court interpretations of the 14th amendment to the United States Constitution, the state would have to establish a rational basis for the different treatment accorded convicted felons in order to overcome an equal protection challenge to the proposed legislation. Convicted felons have historically been singled out for civil penalties because of their criminal conduct. Under the state constitution convicted felons may not exercise the fundamental right to vote (Article V, Sec. 2). Convicted felons may not possess weapons capable of being concealed (AS 11.61.200), nor may they be licensed to engage in certain occupations, depending on the nature of their conviction. The rational basis for

Representative Ramona Barnes  
Page 2  
January 18, 1984

most of the state sanctions against convicted felons is said to be the protection of the public. In other cases, such as the loss of the right to vote, it appears that the rationale is further punishment of a convicted felon. In support of denying eligibility for permanent fund dividends the state could raise both the increased punishment rationale and the fact that the state incurs a large expense in dealing with a convicted felon, whether that person is incarcerated, on probation or parole, or under suspended imposition of sentence. In my opinion it would be permissible for the state to reduce the financial burden on itself and its citizens by retaining permanent fund dividends that would otherwise be paid to convicted felons, thus allowing that money to be used for other purposes, such as for compensation of victims of crime.

A more difficult question is presented in the request for a bill that would make resident aliens of the state ineligible for permanent fund dividends. Resident aliens are clearly entitled to the equal protection of the law, regardless of their legal status Plyler v. Doe, 72 L. Ed. 2d 786, (U.S. Supreme Court, 1982), and it should be noted at the outset that aliens who are lawfully present in the United States and who meet state residency requirements may not be excluded from programs such as the permanent fund dividend program. This result is dictated by Takahashi v. Fish & Game Commission, 92 L. Ed. 1478 (U.S. Supreme Court, 1948). I have therefore prepared the requested bill to limit the permanent fund dividend program exclusion to illegal aliens.

In my opinion, although this proposition is not entirely settled, illegal aliens may be excluded from eligibility for permanent fund dividends. In Plyler v. Doe, supra, a 5-4 decision of the United States Supreme Court held that a state may not refuse to extend its free public education benefits to children who have not been legally admitted to the country. A first reading of this case seems to indicate that a state may not deny state benefits such as permanent fund dividends to illegal aliens if the aliens meet applicable state residence requirements. In fact, the Plyler case seems to be limited almost to the precise facts of the case, that is, to a denial of free public education to person's whose illegal immigration status is involuntary. It seems clear that in almost any other factual situation the denial of state benefits to an illegal alien would have been upheld by the court, and even in Plyler a strongly worded dissent was filed by the four

Representative Ramona Barnes  
Page 3  
January 18, 1984

justices in the minority. Given the limited extent of the holding in Plyler, and the recognition by the court that a state does not normally have to extend state benefits to persons who are illegally present in the state, it is my opinion that a denial of permanent fund dividend benefits to illegal aliens would be upheld if enacted and subsequently challenged.

Part of your request in Work Order No.13-1693 was to include a provision that money that would have been distributed to now ineligible convicted felons as permanent fund dividends would be transferred into a fund to compensate victims of crime for injuries they may have suffered. I have drafted this provision so that the money would be transferred into the recently created crime compensation fund (AS 18.67.162). The new fund is part of the state program to compensate victims of violent crime. The transfer of money to a state fund by the operation of a statute other than an appropriation statute raises a dedication of funds question under the state constitution. (Article IX, Sec. 7). Under that section state revenue cannot be set aside for a particular purpose. It is clear that the transfer proposed in your bill is an attempt to dedicate funds State v. Alex, 646P.2d 203 (Alaska 1982). It may be, however, that your attempt will succeed because the money in question is income from the Alaska permanent fund. The permanent fund is a dedicated fund that is specifically permitted by the state constitution as an exception to the prohibition against dedicated funds. (Article IX, Sec. 15). The income from the permanent fund, according to section 15 "...shall be deposited in the general fund unless otherwise provided by law." It is my opinion that the quoted language, coupled with the fact that the permanent fund itself is a permitted exception to the dedication of funds provision, leads to the conclusion that permanent fund income can be dedicated by the legislature for whatever purpose the legislature determines. This has already been done with regard to 50 percent of the net income of the permanent fund that is available for distribution, now dedicated to permanent fund dividends (AS 43.23.045). On the other hand the attorney general has taken the position that permanent fund income may not be dedicated, or at least that the income may only be dedicated to "inflation-proof" the permanent fund or perhaps to permanent fund dividends. (Opinion of the Attorney General, January 3, 1983). The legislature has followed the practice of appropriating permanent fund income, thus avoiding the dedication question. Your requested bill would

Representative Ramona Barnes  
Page 4  
January 18, 1984

raise the issue again and could lead to a court resolution of the question unless the legislature makes annual appropriations of the money that is withheld from the convicted felons.

LHA:csh  
C2/129

.....  
POM 2/3/84...DAVE/ANC LIO....MSG 9910

TO: ALL LEGISLATORS.

FROM: ALLAN SKINNER, 818 1/2 BROWN ST, ANCHORAGE, AK 99501, H: 272-7691,  
W: 279-4123.

MESSAGE: VOTE YES ON HB 84 (RELATING TO PUBLIC SMOKING) WITHOUT DELETIONS.  
REGARDING HB 575, NO DIVIDEND CHECKS FOR CROOKS. /EOM  
.....

## The dividend program

**ANCHORAGE'S** Rep. Ramona Barnes has introduced a bill to deny permanent fund dividends to Alaskans who are convicted of felonies during the year for which the checks are issued.

This is one of those motherhood bills that would win support from all but the criminals themselves and perhaps some of the more ardent civil-liberties types.

However, it will further complicate the dividend scheme, which is already fraught with negatives and serves a doubtful purpose.

**THE DIVIDENDS** give Outsiders — especially national politicians — the impression that Alaska is loose with its money. They create the illusion that life offers something for nothing. They encourage dishonesty among the ineligible who try to get a share of the giveaway.

They have alienated members of the state's military community, to whom Alaska owes a great deal but most of whom don't qualify.

They lessen the amount of money the state could save for rainy days or could put into needed infrastructure like roads, dams and harbors.

The dividends have been a nightmare to administer, although the state Department of Revenue has worked out many of the bugs. The mechanics of establishing an eligibility list and writing the checks require constant monitoring.

**AND THE DIVIDENDS** continue to sap valuable legislative time. Lawmakers this session have been faced with the question of whether to reopen the 1983 filing period and with Rep. Barnes' proposition to deny dividends to prisoners.

Rather than ponder whether or not prisoners should get checks, legislators would do better to throw out the whole dividend program. In other words, pull the plug and let both the bathwater and the baby go down the drain.

Introduced: 2/6/84  
Referred: Judiciary and  
Finance

BY BARNES, HAYES, BUSSELL,  
LISKA, FURNACE AND CLOCKSIN

1 IN THE HOUSE

2 HOUSE BILL NO. 575

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to permanent fund dividends; and  
7 providing for an effective date."

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

9 \* Section 1. AS 43.23.005 is amended by adding new subsections to  
10 read:

11 (d) Notwithstanding the provisions of (a) - (c) of this section,  
12 an individual who has been convicted of a felony is not eligible for a  
13 permanent fund dividend for a year when, during all or part of that  
14 year as a result of the conviction the individual is incarcerated, on  
15 probation, on parole, or under a suspended imposition of sentence.

16 (e) An amount equal to the money that would otherwise be paid as  
17 a permanent fund dividend to individuals ineligible under the provi-  
18 sions of (d) of this section shall be transferred by the commissioner  
19 from the dividend fund to the crime victim compensation fund (AS 18.-  
20 67.162), to be used for the purposes stated in AS 18.67.

21 \* Sec. 2. AS 43.23.025 is amended by adding a new subsection to read:

22 (b) for the purpose of calculating the amount of a permanent  
23 fund dividend under (a) of this section an individual who is ineli-  
24 gible to receive a dividend under the provisions of AS 43.23.005(d)  
25 shall be considered to be an eligible individual.

26 \* Sec. 3. AS 43.23.055 is amended to read:

27 Sec. 43.23.055. DUTIES OF THE DEPARTMENT. The department shall

28 (1) annually pay permanent fund dividends from the dividend  
29 fund;

1           (2) adopt regulations under the Administrative Procedure  
2 Act (AS 44.62) that establish procedures and time limits for claiming  
3 a permanent fund dividend; the department shall set the time limit for  
4 applications for permanent fund dividends so that the number of eli-  
5 gible applicants is determined by December 1 of the year for which the  
6 dividend is declared and permanent fund dividends for a year are paid  
7 before April 30 of the year following that year;

8           (3) adopt regulations under the Administrative Procedure  
9 Act (AS 44.62) that establish procedures and time limits for an indi-  
10 vidual upon emancipation or upon reaching majority to apply for perma-  
11 nent fund dividends not received during minority because the parent,  
12 guardian, or other authorized representative did not apply on behalf  
13 of the individual;

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

18           (5) adopt other regulations that are necessary to implement  
19 the provisions of this chapter.

20       \* Sec. 4. This Act applies only to eligibility for permanent fund  
21 dividends for years after 1983.

22       \* Sec. 5. This Act takes effect immediately in accordance with AS 01.-  
23 10.070(c).