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Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

HB 575
TABLE OF CONTENTS

- A. Proposed Committee Substitute for House Bill No. 575
- B. House Bill No. 575
"An act relating to permanent fund dividends; and providing for an effective date."
- C. Fiscal Note/Analysis
Ervin B. Jones, Director, Administrative Services, Department of Revenue.
- D. Analysis
Tom Williams, Director, Enforcement Division, Department of Revenue.
- E. Letter of Opinion
Diane T. Colvin, Assistant Attorney General, Department of Law.
- F. Pertinent News Clipping

MEMBERS:
REP. JOHN LISKA, VICE CHAIRMAN; REP. RAMONA BARNES, EMERITUS;
REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLACKSIN; REP. RON WENDE

FISCAL NOTE

Revision Date _____

REQUEST

Bill/Resolution No: HB 575
 Title: An act relating to permanent fund dividends.
 Sponsor: Barnes
 Requestor: Judiciary
 Date of Request: 02/06/84

FISCAL DETAIL

Agency Affected: Revenue
 Program Category Affected: General Government
 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
OPERATING						
100 PERSONAL SERVICES	-	33,600	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	4,502	-	-	-	-
400 SUPPLIES	-	200	-	-	-	-
500 EQUIPMENT	-	3,225	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	41,527	-	-	-	-
CAPITAL	-	-0-	-	-	-	-
REVENUE	-	-0-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-0-	-	-	-	-

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: See attached analysis.

Prepared By: Ervin B. Jones
 Division: Administrative Services

Phone: 465-2313
 Date: 02/10/84

Approved by Commissioner: George Annello
 Agency: Revenue

Date: 2/15/84

Distribution (by Agency preparing fiscal note):

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

Analysis:

Section 1 of the bill provides for two changes to the current law. First, it provides that convicted felons are ineligible for a permanent fund dividend for any year, when during all or part of that year as a result of their felony conviction, the individual was:

- a. incarcerated
- b. on probation
- c. on parole
- d. under a suspended imposition of sentence.

Secondly, it provides that an amount equal to the foregone dividend would be transferred to the crime victim compensation fund.

There are several major factors which make the provisions of this section, as written, difficult to administer:

1. The permanent fund dividend program is designed by statute to make payments for the same given year for which applications are filed. For example, the 1983 dividend was declared on September 1, 1983, and largely paid by December 31, 1983, based on applications received during the filing period April 1 - June 30, 1983. Assuming the Department of Revenue was able to sort out applications filed by convicted felons who meet the requirements of Section 1, we would have to hold all payments until the end of the dividend year, in order to review all applications for "felon status" through the whole year including December. This would not necessarily change the filing period or the declaration date, but would mandate payments being made no sooner than January or February of the year following the dividend year. After the department makes one last massive cross examination of all applications filed, probably in January following the dividend year. The department would still attempt to make all payments by April 30 of the year following the dividend year.
2. The second problem is determining which PFD applicants are convicted felons who meet the statutory test (i.e. incarcerated, on probation, etc.). For the department to identify those persons would require a one-time matching of the PFD master file for a given year against a currently non-existent data base of all Alaskans who met the prescribed condition during the preceding dividend year. This cross match is the one described above as taking place in January following the dividend year. Creating the needed data base would involve two steps:
 - a) Using the OPSIS data base recently established by the Corrections Department, Health & Social Services would need to build a file of all convicted felons who as a result of their felony conviction were, at any time during the dividend year:
 - 1) incarcerated (in or out of Alaska)
 - 2) on probation (in or out of Alaska)
 - 3) on parole (in or out of Alaska).

It should be noted that Corrections has no control over, or records of, convicted felons under suspended imposition of sentence, nor does Corrections have any record of, or knowledge of, Alaska residents who

Analysis (cont.)

are convicted of felonies outside Alaska and are still outside Alaska imprisoned, on parole, on probation, or under suspended sentence. Roger Lang, Deputy Commissioner of Administration for Corrections expressed the opinion that the incidences of the latter would be negligible.

- b) Literally building a tracking system of those felons under suspended sentence. Apparently, individual courts keep these records separately, in a non-computerized fashion. If it is the Legislature's final decision that such a system be created, I think a great deal of study and research, probably by a consultant, would be needed before even an estimate of cost could be arrived at. Deputy Commissioner Lang suggests that the number of convicted felons under suspended sentence in Alaska might be so low as to render the search cost-ineffective.
3. Transferring an amount equivalent to the dividend that is denied the felon applicant to the crime victim compensation fund indirectly funds the crime victim compensation fund (previously strictly a general fund appropriation) from the earnings of the Permanent Fund. Since the number of felons filing will very shortly drop off sharply (when they realize they won't be paid), a more direct appropriation to the crime victims compensation fund would appear to be more beneficial.

In summary, to the extent that a data base is available which identifies the subject felons, and to the extent that they file applications, the Department of Revenue will be able to deny their applications. The cost of doing so, with the exception of suspended sentences, will be very low. The Enforcement Division will need one full-time investigator as reflected on the attached analysis. The postponment of all payments by several months will obviously irritate the general public. For this reason, the department recommends that lines 13, 14 and 15 of the bill be changed to read " . . . permanent fund dividend for a year when, during all or part of the eligibility period for that year's dividend, [that year] as a result of the conviction the individual is incarcerated, on probation, on parole or under a suspended imposition of sentence." This would enable the department to process applications against a fixed file of subject felons and to make payments as soon as the dividend amount is declared.

Enforcement Division Analysis of HB 575
February 10, 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. (Please see the discussion under C.)

B. Program Summary

This bill would require one full time PFD Investigator who would be assigned felons on a project basis. In addition, there would be associated contractual services, supply costs, and equipment costs.

	<u>FY '84</u>
<u>Personal Services (100)</u>	
PFD Investigator II (R13) 12 months @ \$2,800/mo.	<u>\$33,600 (1)</u>
<u>Contractual Services (300)</u>	
Telephone	
Telephone purchase 1 phone @ \$60	60 (2)
Installation 1 phone @ \$90	90 (2)
Local Centrex 12 months @ \$46/mo.	552
Long Distance 12 months @ \$150/mo.	1,800
Computer Terminal	
Installation 1 terminal @ \$2,000	<u>2,000 (2)</u>
<u>Total Contractual Services (300)</u>	<u>4,502</u>
<u>Supplies (400)</u>	
General Office Supplies	<u>200</u>
<u>Equipment (500)</u>	
Computer Terminal	1,600 (2)
Desk	575 (2)
Chair	175 (2)
File	275 (2)
Partitions 2 @ \$300/ea.	<u>600 (2)</u>
<u>Total Equipment (500)</u>	<u>3,225</u>
<u>Total Enforcement</u>	<u>\$41,527</u>

- (1) In FY '85 the cost of the salary and benefits for the investigator is estimated to increase by the negotiated 3.8% salary increase. Accordingly, the FY '85 and subsequent year costs are projected to be \$34,877.
- (2) Several items in contractual services and all equipment items are one time and are not included in FY '85 and subsequent year cost projections.

C. Additional Comments on the Legislation

This legislation is likely to be difficult to administer. The preceding cost analysis was based on the assumption that we would be able to obtain information from several federal, state, and local law enforcement agencies, court systems, and corrections agencies which would have information on the status of felons. Because the bill declares a convicted felon ineligible if at any time during the year he/she was incarcerated, on probation, on parole, or under a suspended sentence the number of ineligibles would grow with each passing day. Since there is not one comprehensive criminal justice system within the United States, it would be a difficult task, at best, to try to obtain and keep that information updated.

Under current law PFD payments could be made in calendar year 1984 for the 1984 program. If subsequent to receiving a PFD payment an applicant became ineligible due to felony conviction, Enforcement would be faced with the task of trying to recover from the felon.

The appeals process may also be impacted as any person who applies and is denied has the right to appeal. It is conceivable that some incarcerated convicted felons, although ineligible by law, may file appeals for the lack of anything else better to do.

TCW/dlr

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 *DTC*
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:

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.

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/

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.

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.

Legislature '84

Barnes' bill would put stop to inmates' dividend checks

Associated Press

Juneau — Although bars do a prison make, prisoners are not barred from receiving Permanent Fund dividend checks, a situation that House Majority Leader Ramona Barnes wants to correct with a bill she will introduce Monday.

Barnes, R-Anchorage, said Thursday she has readied a measure that should put a stop to dividend money going to Alaska prison inmates.

Although she said she wasn't sure how many prisoners were receiving the checks, a number of constituents told her that "felons were getting Permanent Fund dividend checks while behind bars.

"I was told that one of them was playing the stock market with his (money)," she said. "And one inmate a year ago got a \$6,000 student loan for a real estate course that no longer existed. The course only cost \$225,

but luckily he didn't get ahold of the check.

"The intent of the bill is not to compensate inmates while they're paying their debt in prison," Barnes said, indicating that the Department of Law believed the measure was constitutional. "We have a victim's compensation fund and that (dividend) money would be better spent on victims than criminals."

Kerry Romesburg, executive director of the Postsecondary Education Commission, confirmed the report about an inmate getting a loan approved for a real estate course.

That person was in minimum security and cleared to take classes, Romesburg said, adding that he "had signed up for a course that didn't exist.

"We will not grant a loan to a person who is incarcerated," he said. "In fact, one of the first things we do to people who process loans is make sure they know the addresses of our correctional institutions," he said. "We get a lot of them (requests) — around 10 a year."

The Alaska Permanent Fund, the state's oil wealth savings account, was established by constitutional amendment in 1976.

It requires that at least 25 percent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the state shall be placed in a permanent fund.