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STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY
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May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H. JUD.	3-24-87	1:30 p.m.
H. HESS	3-10-87	8:30 a.m.

1 IN THE HOUSE

BY LARSON AND MENARD

2

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 13

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL *attachment of P.F.D.*

6 For an Act entitled: "An Act relating to medical expenses of prisoners."

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

8 * Section 1. AS 33.30 is amended by adding a new section to read:

9 Sec. 33.30.015. MEDICAL EXPENSES OF PRISONERS. The commissioner
10 may attach the permanent fund dividend check of a prisoner who is in a
11 correctional facility or committed by a court to the custody of the
12 commissioner in order to pay the prisoner's medical expenses. The
13 commissioner may apply for a permanent fund dividend under AS 43.23.-
14 005(d) on behalf of a person whose dividend is subject to being taken
15 under this section. Property other than a permanent fund dividend
16 check may not be taken to pay a prisoner's medical expenses.

17 * Sec. 2. AS 43.23.005 is amended by adding a new subsection to read:

18 (d) The commissioner of corrections may claim the permanent fund
19 dividend of an individual as provided in AS 33.30.015 if the
20 commissioner has reason to believe the individual is eligible to
21 receive the dividend. A claim for a dividend under this subsection
22 has priority over a claim under (a) or (c) of this section.

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

24 (b) The department shall prescribe and furnish an application
25 form for claiming a permanent fund dividend. The application for a
26 claim under AS 43.23.005(d) must include a statement by the department
27 of corrections of the basis for its belief that the individual is
28 eligible to receive the dividend. The application for a claim under
29 AS 43.23.005(a) or (c) must contain a statement of eligibility and a

1 subsection shall be invested by the commissioner in accordance with
2 AS 37.10.070.

3 * Sec. 6. AS 43.23.065(b) is amended to read:

4 (b) An exemption is not available under this section for perma-
5 nent fund dividends taken to satisfy

6 (1) child support obligations required by court order or
7 decision of the child support enforcement agency under AS 47.23.140 -
8 47.23.220;

9 (2) court ordered restitution under AS 12.55.045 - 12.55.-
10 051 or 12.55.100;

11 (3) a court ordered probation fee under AS 12.55.105; [OR]

12 (4) a debt owed by an eligible individual to an agency of
13 the state, unless the debt is contested and an appeal is pending, or
14 the time limit for filing an appeal has not expired; or

15 (5) a debt owed by a prisoner for medical expenses under
16 AS 33.30.015.



Official Business

Alaska State Legislature

House

P.O. BOX V
State Capitol
Juneau, Alaska 99811

DATE: April 6, 1987
TO: House Judiciary Committee
FROM: Representative Ron Larson
SUBJ: Proposed CS for Sponsor Substitute for HB 13

Sectional Analysis:

Section 1 would add a subsection (d) to AS 43.23.005 that would make an individual convicted of an offense and incarcerated for 10 or more days during a fiscal year ineligible for a permanent fund dividend, whether or not the individual applied for the dividend.

Section 2 would add a subsection (b) to AS 43.23.025 prescribing that for the purpose of calculating the amount of the permanent fund dividend, and individual determined ineligible by AS 43.23.005(d), but who is otherwise ~~eligible~~, is counted as an eligible individual whether or not the individual applies for the dividend.

Section 3 would add a subsection (d) to AS 43.23.045 directing the commissioner of revenue to transfer from the permanent fund dividend fund to a special claims fund an amount that would otherwise be paid as dividends to individuals made ineligible by AS 43.23.005(d).

Section 4 would give the Department of Revenue two additional responsibilities under AS 43.23.055. First, in cooperation with the Department of Corrections, the department would have to determine annually the number and identity of individuals ineligible for dividends under AS 43.23.005(d), and the number of ineligible individuals counted as eligible under AS 43.23.025. Secondly, the department would have to adopt regulations to implement AS 43.23.005(d).

Section 5 would create a special claims fund consisting of money transferred from the permanent fund dividend fund under AS 43.23.045(d). The special claims fund would be used to satisfy debts under AS 43.23.065(b)(1) and (2) (a child support obligation, court ordered restitution, court order probation fee, and/or a debt owed to a state agency) owed by an individual ineligible to receive a permanent fund dividend under AS 43.23.005(d). The commissioner of revenue would be charged with determining the validity of claims. Payment of claims could not exceed the amount of the permanent fund dividend for each year. At the end of each fiscal year, all unexpended and unobligated money remaining in the special claims fund would lapse into the general fund.

Section 6 stipulates that this Act applies only to eligibility for permanent fund dividends for years after 1987.

Section 7 sets an immediate effective date.

Jeff Bush

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL 13(____): 4/3/87
Work Draft ~~4~~

1. Remove sec. 3 of the bill.
2. At page 3, line 4, remove "transferred" and insert "appropriated".
3. Page 3, line 5: remove "under AS 43.23.045(d)".
4. Page 3, line 6: remove "appropriated from" and insert "in".
5. Page 3, line 8: remove "the" at the beginning of the line and insert "any".
6. Page 3, line 15: remove "appropriated from" and insert "in".
7. Page 3, line 16: remove "an" and insert "a total".
8. Remove everything at page 3, line 19-23.
9. Insert new (c) at end of section 5 of the bill, to read as follows:

(c) The commissioner shall separately account for the money in the dividend fund that would otherwise be paid as permanent fund dividends to ineligible individuals who are counted as eligible under AS 43.23.025(b). The annual estimated balance in the account may be used by the legislature to make appropriations to the special claims account.

Alaska State Legislature



Session Address:
STATE CAPITOL BUILDING
BOX V
JUNEAU, ALASKA 99811
(907) 465-3727

Interim Address:
BOX 53
PALMER, ALASKA 99645
(907) 745-3820 - Palmer
(907) 376-8628 - Wasilla

Representative Ronald L. Larson
District 16B

DATE: March 27, 1987
TO: Representative Ron Larson
FROM: Larry Bussone
SUBJ: Identified problems with SSHB 13 if amended as proposed

Following are the legal and practical problems with SSHB 13 if amended as we have proposed. The problems were identified in Tuesday's Judiciary Committee hearing by committee members and representatives from the Departments of Law, Corrections, and Administration.

Legal Questions:

(1) The suspension of AS 09.35 and AS 09.38 raise questions of due process (i.e., failure to provide prisoners the opportunity for a hearing).

(2) There are questions as to whether a prisoner can be forced to accept income, or stated differently, whether the commissioner of corrections can apply on behalf of a prisoner.

(3) Despite the three memoranda we received--two from Legal Affairs and one from the Division of Audit--there remain questions about taxation of PFDs for which the commissioner of corrections applies and receives.

(4) The alternative of simply making prisoners ineligible for dividends and then appropriating the money from the permanent fund's earning reserve account to the Department of Corrections raises three questions in my mind:
-- The way permanent fund earnings are handled (dividends are calculated first), wouldn't this method result in much of the deferred money going to the dividend program?
-- Are there a questions about dedicating funds?

-- Wouldn't this method eliminate the opportunity to collect obligations under AS 43.23.065(b)--child support obligations, court ordered restitution, court ordered probation fee, and debts to the state?

(5) There is an equal protection question. That is, would the bill penalize prisoners who are Alaska residents without doing so to those who are not?

-- As suggested by Mike Stark, to avoid equal protection problems does the bill need to have language added stating the purpose of the legislation is to offset the costs of prisoner care?

Practical Questions:

(1) There might be problems if the wrong dividend is attached or taken by corrections (i.e., there seems to be no current method of dealing with such a mistake).

(2) Can a simple procedure be established by the Departments of Correction and Revenue to implement this legislation?

-- Particularly for the provision allowing the commissioner of corrections to apply on behalf of prisoners.

-- Would there be problems determining which prisoners applied on their own behalf and those who did not?

(3) Can timing problems be resolved? That is, what can be done to avoid problems with the limited three month dividend application period?

-- What would be done with the prisoner who has applied for and spent his or her dividend before incarceration?

-- Could the following year's dividend be taken?

-- If so, what about the prisoner who leaves the state after release, and therefore is no longer eligible?

-- Should the bill be designed to take the dividend for incarceration during the previous fiscal year?

I plan to work with Representative Sund and his staff this weekend. Now that we have identified the problems, I believe we can move toward resolution.

cc. Representative John Sund, Chairman, House Judiciary

5-0173L
Levy
4/3/87

Original sponsors: Larson and Menard

1 IN THE HOUSE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 13 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to permanent fund dividends for
7 individuals incarcerated for 10 days or more after
8 conviction for an offense; and providing for an
9 effective date."

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

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

13 (d) Notwithstanding the provisions of (a) - (c) of this section,
14 an individual who has been convicted of an offense is not eligible for
15 a permanent fund dividend for a calendar year when, during all or part
16 of the fiscal year ending June 30 of that calendar year, as a result
17 of the conviction the individual is incarcerated for a period of 10
18 days or more. This subsection applies whether or not the individual
19 has applied for the dividend.

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

21 (b) For the purpose of calculating the amount of a permanent
22 fund dividend under (a) of this section, an individual who is ineli-
23 gible to receive a dividend under AS 43.23.005(d), but who is other-
24 wise eligible under AS 43.23.005(a)(1) and (2), is counted as an
25 eligible individual whether or not the individual has applied for the
26 dividend.

27 * Sec. 3. AS 43.23.045 is amended by adding a new subsection to read:

28 (d) Each year the commissioner shall transfer from the dividend
29 fund to the special claims fund (AS 43.23.069) an amount equal to the

1 money that would otherwise be paid as permanent fund dividends to
2 ineligible individuals who are counted as eligible under AS 43.23.-
3 025(b).

4 * Sec. 4. AS 43.23.055 is amended to read:

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

6 (1) annually pay permanent fund dividends from the dividend
7 fund;

8 (2) adopt regulations under the Administrative Procedure
9 Act (AS 44.62) that establish procedures and time limits for claiming
10 a permanent fund dividend; the department shall set the time limit for
11 applications for permanent fund dividends so that the number of eli-
12 gible applicants is determined by October 1 of the year for which the
13 dividend is declared and permanent fund dividends for a year are paid
14 before April 30 of the year following that year;

15 (3) adopt regulations under the Administrative Procedure
16 Act (AS 44.62) that establish procedures and time limits for an indi-
17 vidual upon emancipation or upon reaching majority to apply for perma-
18 nent fund dividends not received during minority because the parent,
19 guardian, or other authorized representative did not apply on behalf
20 of the individual; [AND]

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

25 (5) annually determine, in cooperation with the Department
26 of Corrections, the number and identity of individuals ineligible for
27 a permanent fund dividend under AS 43.23.005(d), and the number of
28 ineligible individuals counted as eligible under AS 43.23.025; and

29 (6) adopt regulations that are necessary to implement

1 AS 43.23.005(d).

2 * Sec. 5. AS 43.23 is amended by adding a new section to read:

3 Sec. 43.23.069. SPECIAL CLAIMS FUND. (a) The special claims
4 fund is established consisting of money [transferred] to the special
5 claims fund from the dividend fund [under AS 43.23.045(d)]. The commis-
6 sioner shall use money [appropriated from] the special claims fund to
7 pay claims under (b) of this section. At the end of each fiscal year,
8 ~~the~~ ^{any} unexpended and unobligated money remaining in the special claims
9 fund lapses into the general fund.

10 (b) A person having a claim for an unsatisfied debt of the type
11 described in AS 43.23.065(b)(1) and (2) owed by an individual who is
12 ineligible to receive a permanent fund dividend under AS 43.23.005(d)
13 may apply to the commissioner for payment of the claim from the
14 special claims fund. If the commissioner determines that the claim is
15 valid, the commissioner shall use money [appropriated from] the special
16 claims fund to pay the claims against each ineligible individual in ^{a total} an
17 amount not to exceed the amount of the permanent fund dividend for
18 that year. Claims have priority in the order listed in AS 43.23.065-
19 (b). [The commissioner may pay a claim under this section only if the
20 person making the claim assigns to the state the right to collect the
21 debt from the ineligible individual.

22 (c) The commissioner shall take the steps necessary to collect
23 debts assigned to the state under (b) of this section.]

24 * Sec. 6. This Act applies only to eligibility for permanent fund
25 dividends for years after 1987.

26 * Sec. 7. This Act takes effect immediately under AS 01.10.070(c).
27
28
29

Alaska State Legislature

Session Address:
STATE CAPITOL BUILDING
90X V
UNEAU, ALASKA 99811
907 485-3727



Interim Address:
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PALMER, ALASKA 99645
907 745-3928 - Palmer
307 378-8628 - Wasilla

Representative Ronald L. Larson
District 16B

DATE: February 19, 1987
TO: Representative Niilo Koponen, Chairman House HESS
Committee
FROM: Representative Ron Larson *R.L.*
SUBJ: Sponsor Substitute for House Bill No. 13

I respectfully request that you schedule Sponsor Substitute for HB 13 at the committee's earliest possible convenience.

I enclose an analysis of the bill, a letter of support from the Department of Corrections, and a letter and information from the Department of Revenue, which includes a fiscal note with accompanying explanation. Do I understand correctly that the Department of Corrections has sent you a fiscal note on the bill?

The Sponsor Substitute was written after--and in response to--Commissioner Malone's letter. The original HB 13 included only Section 1 and Section 6 of the current Sponsor Substitute. The bill's intent was to allow the state to attach a prisoner's PFD check to pay medical costs incurred by the state during the prisoner's incarceration. Commissioner Malone pointed out that many (and perhaps most) prisoners' medical expenses for a year are more than the amount of the permanent fund. He suggested that, and rightly so I believe, once prisoners realized their PFD checks would be garnished, they would likely refuse to file an application for the dividend. Sponsor Substitute for HB 13 remedies that situation by allowing the Department of Corrections to apply on behalf of a prisoner who it believes is eligible for the dividend.

The fiscal analysis provided by Revenue states that in December of 1986 there were 2,306 inmates housed in state institutions and 233 out-of-state institutions, for a total of 2,539. The department basis its fiscal note on those numbers, assumes that all would have their PFD checks

garnished as a result of the legislation, and requests one additional document processor to handle the garnishments.

I see the need for three corrections to the department's assumptions. First and most obvious, not all prisoners would have medical expenses (those serving a three day incarceration for a D.W.I. conviction, for instance). There would not be a need for garnishment of these prisoners' dividends.

Secondly, as explained in the sectional analysis, the bill would allow for garnishment only after four other types of garnishments were satisfied--as stipulated in AS 43.23.065(b)(1)-(4). I would assume that many inmates would have their PFD checks garnished under those four clauses, and therefore garnishments for medical expenses would be a moot issue.

More importantly, however, the department bases its estimates on the number of inmates housed during one month. I can only refer to the Department of Corrections' fiscal year 1985 annual report, as a 1986 report has to my knowledge not been released. That report shows on page 26 that 30,441 bookings occurred during the fiscal year 1985. Some of those bookings, no doubt, involved the same individual booked more than once, and some of the bookings would entail incarceration for a very short period of time (and therefore not entail medical expenses of any large degree); nevertheless, we are talking substantially more than 2,539 garnishments a year. If I am correct on this point, the Department of Revenue will surely need more than one seasonal processor to handle the load. On the other hand, we are talking a substantial savings to the Department of Corrections and therefore to the state (I don't think I am out of line to estimate in the millions). For this reason, I think this bill is a significant one, and should be examined very closely, and at the committee's earliest convenience.

I thank the committee and its chairman for their consideration.

HOUSE COMMITTEE REPORT

(7)

Date referred: 2/20/87

FURTHER REFERRALS: Judiciary
Finance

The Health, Education and Social Services Committee has considered SSHB 13 DATE: _____

"An Act relating to medical expenses of prisoners."

RECOMMENDS:

- replace with _____ the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING TO PASS:

[Handwritten signature]

SIGNING OTHER RECOMMENDATIONS:

[Handwritten signature] No Rec

[Handwritten signature] No Rec

[Handwritten signature] No Rec

[Handwritten signature] NO REC

[Handwritten signature]

 COChairman's signature
[Handwritten signature]

5-0701A
Cook
2/20/87

1 IN THE HOUSE

BY BARNES

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to permanent fund dividends for
7 individuals incarcerated after conviction for a
8 felony; and providing for an effective date."

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

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

12 (d) Notwithstanding the provisions of (a) - (c) of this section,
13 an individual who has been convicted of a felony is not eligible for a
14 permanent fund dividend for a year when, during all or part of the
15 ~~eligibility period for that year's dividend~~ ^{fiscal year}, as a result of the con-
16 viction the individual is incarcerated. This subsection applies
17 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 AS 43.23.005(d) ^{but who may otherwise be eligible for a dividend} is considered to be
22 an eligible individual.

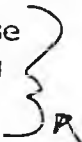
23 * Sec. 3. AS 43.23.055 is amended to read:

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

determine the number of individuals who would otherwise be eligible for a dividend for purposes of calculating the amount of a permanent fund dividend under section 2 of this act.



1 applications for permanent fund dividends so that the number of eli-
2 gible applicants is determined by October 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; [AND]

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 Corrections, the number and identity of individuals ineligible for
17 a permanent fund dividend under AS 43.23.005(d); and —insert new language

18 (6) ^{in cooperation w/ the Dept. of Corrections} adopt regulations^A that are necessary to implement
19 AS 43.23.005(d).

20 * Sec. 4. This Act applies only to eligibility for permanent fund
21 dividends for years after 1987.

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 De-
26 partment of Corrections to be used for upkeep of inmates.

27 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).
28
29



Alaska Court System

State of Alaska

303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274-8611

April 3, 1987

Representative John Sund
Chair, House Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

Dear Representative Sund:

I am writing with regard to HB 129, an act relating to criminal fines. This bill would authorize the state to take a defendant's permanent fund dividend to pay a fine, and would remove fines from the 50% exemption currently provided in AS 43.23.065(a).

Collection of unpaid fines is an executive branch function. Under current law, it appears that civil execution procedures set out in AS 09.35 and AS 09.38 would be the method used to obtain a defendant's dividend. These procedures commence with a writ of execution, which must be served by a process server or a state trooper on the Department of Revenue. Additional statutory procedures must be followed to make certain that a debtor is properly notified of exemption rights. In addition to the paperwork and service requirements, it is not clear under existing law whether a debtor (or under this bill, a criminal defendant) is entitled to assert the liquid assets exemption set out in AS 09.38.030(b). A further complication is the fact that some defendants will not have applied to receive a dividend, in which case procedures to levy on the dividend will be unsuccessful.

Many bills have been introduced this legislative session to authorize various state entities to obtain permanent fund checks. These separate bills on behalf of individual agencies could be combined into an overall approach which could be used to take dividend checks to satisfy any obligation owed to the state.

Representative John Sund
April 3, 1987
Page Two

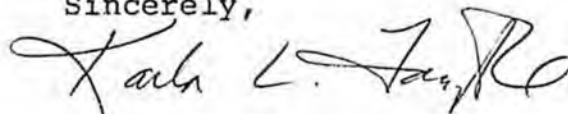
In order to develop a comprehensive yet expeditious procedure for obtaining permanent fund dividends which also protects a defendant's due process rights, the committee might wish to consider adding several provisions to this bill:

1. Expanding it to apply to all state agencies;
2. Authorizing the state to claim a dividend on behalf of an eligible individual who has not applied;
3. Clarifying whether the defendant is entitled to assert the liquid assets exemption under AS 09.30.030(b);
4. Establishing expedited procedures for executions on dividend checks by permitting delivery of a certified copy of a court order or judgment in the event the state is seeking the dividend to satisfy a fine, developing standard execution procedures for debts owed to other state agencies (SB 227 contains language along these lines), and permitting a private party to serve a writ of execution for a permanent fund dividend on the department by certified mail rather than by a process server.

Language contained in HB 223, which is sponsored by Representatives Swackhammer and Larson and which is now before the House State Affairs Committee, is one example of a consolidated approach to these issues.

The court system takes no position on the substantive policy decisions involved in making it easier for the state to levy on dividend checks. Legislative efforts to create new procedures may result in additional clerical work for courts and other agencies. Nonetheless, the court system supports development of workable procedures, and will be glad to work with the committee to this end.

Sincerely,



Karla L. Forsythe
General Counsel

c: Rep. Larson
Rep. Menard
Rep. Swackhammer
Arthur Snowden, II
Susan Miller

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 2, 1987

The Hon. C. E. Swackhammer
Alaska State House
P.O. Box V
Juneau, AK 99811

Re: House Bill 223, relating to
permanent fund dividends
Our File No.: 663-87-0446

Dear Representative Swackhammer:

By memorandum dated March 19, 1987, you asked us to review a proposed bill to permit agencies to apply for and receive the permanent fund dividends of individuals who owe debts to the agencies. Specifically, you asked us to comment on the tax consequences of the proposal and to make any other general comments regarding the draft. A later version of this proposed bill was recently introduced as House Bill 223, and we will direct our comments to the version currently under consideration.

Federal Tax Implications

House Bill 223 would permit an "agency," defined as any state agency, state court, or municipality, to apply for and receive the permanent fund dividend of an individual who owes a debt to the agency. Assuming the procedure proposed to implement this process is workable (see discussion below), you have asked whether the agency's action will have federal income tax consequences to the individual. Although an absolute answer is impossible without either an Internal Revenue Service official ruling or a court decision, we believe a court would characterize this transaction as a discharge of a taxpayer's debt, thereby constituting income to the taxpayer under 26 U.S.C. § 61.

We understand that you asked the same question of the Legislative Affairs Agency. By memorandum dated March 20, 1987, Theresa L. Bannister stated that she could not, with any certainty, provide an answer to your question. On the one hand, the discharge of a taxpayer's debts is generally included in a taxpayer's gross income under 26 U.S.C. § 61. On the other hand, because the agency would claim the dividend on behalf of the taxpayer, who would never claim the dividend himself, the transaction could be viewed as simply a write-off of the

STEVE COWPER, GOVERNOR

REPLY TO:

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ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

P.O. BOX K-STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

taxpayer's debt by the agency. Thus the transaction might be excluded from income as a gift under 26 U.S.C. § 102.

We believe the better argument is that the discharge of a debt under these circumstances would constitute gross income. The bill permits agencies other than the state to apply for and receive an individual's dividend. In those cases where a municipality received an individual's dividend, an actual transfer of funds would take place from the dividend fund (within the state general fund) to the municipality. This would clearly be a discharge of debt, rather than a write-off of debt. Although the question is arguably closer where the state is the debtor, the language of the bill implies an actual discharge of a debt by the state, rather than a gift. Finally, as noted by Tamara Brandt Cook, Director of the Legal Services Division, Legislative Affairs Agency, in a memorandum dated March 23, 1987, were this to be interpreted as a gift, the transaction could violate article IX, section 6, of the Alaska Constitution. Given the generally aggressive posture of the Internal Revenue Service, which views any exemption claim with skepticism, we believe the IRS would treat any agency claim for a permanent fund dividend as taxable income to the individual.

Other Legal Issues

In addition to the tax issues, this bill raises other legal issues which deserve discussion. First, as outlined by Ms. Cook, this legislation would be subject to challenge under the due process requirements of the state and federal constitutions, because by exempting these transactions from the normal execution procedures in AS 09.25, the bill does not provide for notice and prior hearing before the seizure of the individual's property. Balancing the interest of the individual in a prior hearing against the interest of the agency in efficient government operations, and taking into account the relatively slight chance of a permanent deprivation in the event of an agency mistake, we believe the legislation might withstand a due process challenge. However, the only thing we can say with any certainty is that a challenge would likely occur.

Second, although providing an exemption from AS 09.25, the bill fails to mention applicable court rules. The Alaska Supreme Court has provided specific procedures for execution on judgments in Civil Rule 69. Because this rule specifically provides that enforcement of a judgment be by a writ of execution unless otherwise directed by the court, this rule would supercede the new legislation unless the bill is amended to specifically amend Civil Rule 69. Of course, the bill will then need to be

adopted by a two-thirds vote in each house of the legislature. Alaska Constitution art. IV, § 15.

Third, this legislation raises some questions concerning how a particular agency is going to determine whether or not a particular individual "is eligible to receive the dividend." AS 43.23.005(a) provides as part of the eligibility requirements for a permanent fund dividend that the individual be a state resident. "Residency" is established when an individual is physically present in the state "with the intent to remain in the state indefinitely and to make a home in the state." AS 01.10.055(a). Since residency depends on the state of mind of the individual, it is difficult to see how an agency could defend its "belief" that the individual is a resident, should the belief be challenged by the individual himself. Although it is unlikely that many will make such a challenge, since the only negative consequence of the agency's actions will be an increased tax liability and the individual will gain an even larger debt write-off, such a challenge is certainly plausible, and if made, the agency's position would likely be indefensible.

We also note a few other practical questions raised by the bill. The bill fails to mention what procedures to use if the agency's claim is for less than the full amount of the dividend. In that case, is the entire check sent to the agency, or should the Department of Revenue issue separate checks to both the individual and the agency? Also, the bill provides that the Commissioner of the Department of Revenue must notify the individual that the execution has occurred. In addition to increasing the Department of Revenue's administrative costs, this procedure may cause an individual who wishes to challenge the action to believe that his challenge should be made through the administrative processes at the Department of Revenue. We believe it would be more appropriate for the agency making the claim to defend against any challenge, and we would therefore recommend that the bill be amended to add an additional section specifying that any challenge to the execution should be made to the agency making the claim.

Finally, we believe sec. 5 of the bill should be clarified. The reference to AS 09.38.085 should also include a reference to AS 09.38.075(b) and AS 09.38.080(c). Further, it appears that the final two sentences being added to AS 43.23.-065(a) refer only to situations where the court is the creditor.

The Hon. C. E. Swackhammer
Alaska State House
File No.: 663-87-0446

April 2, 1987
Page 4

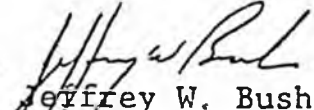
If this is the drafter's intent, we would recommend that these two sentences be moved to a separate subsection.

We hope this answers your questions.

Sincerely,

GRACE BERG SCHAIBLE
ACTING ATTORNEY GENERAL

By:


Jeffrey W. Bush
Assistant Attorney General

JWB:lb

cc: Ervin Jones, Director
Administrative Services
Department of Revenue

Arthur H. Peterson, AAG
Department of Law



Alaska State Legislature

House

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

To: Rep. Martin

From: J. Manly *jm*

Date: March 25, 1987

RE: Prisoners receiving permanent fund dividends

You asked that I try to find out how many people incarcerated in the Alaska correctional system could be estimated to have applied for and received permanent fund dividend checks.

I spoke with Susan Knighton of the Department of Corrections at 465-3376, who gave me the following figures:

1801 Long-term inmates

1585 Short-term inmates

3386 Total resident inmate population

Of these, Ms. Knighton said that 169 had their pfd attached for one reason or another, and only 485 actually had their check pass through the Department's accounting system. In other words, most of the prisoner's checks actually did not go directly to them, but to someone else, probably to a relative.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: SS HB 13

Publish Date: _____

REQUEST _____

Revision Date: 3/24/87

Title: "An act relating to medical expenses of prisoners."

Sponsor: Larson and Manard

Requestor: Rep. Larson

Agency Affected: Department of Revenue

BRU: Permanent Fund Dividend

Components: Administrative Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES	6.3	6.3	6.3	6.3	6.3	6.3
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	1.1	1.1	1.1	1.1	1.1	1.1
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	7.4	7.4	7.4	7.4	7.4	7.4
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER - PFD	7.4	7.4	7.4	7.4	7.4	7.4
TOTAL	7.4	7.4	7.4	7.4	7.4	7.4

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

(See attached)

Prepared By: Ervin B. Jones

Division: Administrative Services

Phone: 465-2313

Date: 3/24/87

Approved by Commissioner: [Signature]

Agency: Revenue

Date: 3/24/87

Distribution (by Agency preparing fiscal note):

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

Senate Secretary

page _____ of _____

Department of Revenue
Administrative Services Division
Fiscal Note Analysis
SS HB 13
3/24/87

Assumptions:

1. The bill will take effect in time to affect the permanent fund dividends to be paid for the 1987 year.
2. According to the Department of Corrections, virtually every prisoner who is in a correctional facility or who is committed by a court to the custody of the Commissioner of Corrections receives some medical care from the state, each year. The average cost is approximately \$6.00 per day, or \$2,190 per year, well in excess of the expected value of the permanent fund dividend.
3. According to the Department of Corrections, the average number of prisoners in custody, as of December 1986 is as follows:

Institutions	2,069
Community Residential Centers	<u>237</u>
TOTAL in custody of state	<u>2,306</u>

4. Prisoners held in federal facilities or in Minnesota institutions on contract, also incur medical expenses, but the provision of such services is included in the contract for service. I assume the Department of Corrections would be able, and would wish to file for, or attach the dividends of applicants who were in custody outside the state.

TOTAL in custody out-of-state	233
-------------------------------	-----

5. Taking the provisions of Sec. 1 and Sec. 2 together, it is assumed that the Department of Corrections would file applications for those inmates who they believe to be eligible, and would serve attachments by computer tape with appropriate identifying information (e.g. full name, birthdate, and social security number), on the dividends of those inmates who Corrections believes to be ineligible.

Program Summary:

The PFD system currently identifies duplicate applications. Since Section 2 requires that an application filed by the Commissioner of Corrections has priority over an application filed under AS 43.23.005(a) or (c), the department would need to identify competing applications and deny them. This would be accomplished by computer match and would result in denied applications for every inmate who filed a competing application. Assuming that 2000 of the approximate 2500 inmates will file on their own behalf, we will generate 2000 denial notices, with notice of appeal rights, and mail notices to each denied applicant. As a result of the applications filed by the Commissioner of Corrections, Revenue will review and either approve or deny the applications. In the general case, the applications will be approved and payment will be transferred to the general fund (Sec. 5).

It is assumed that the Commissioner of Corrections will file applications only for those inmates who meet the general eligibility requirements (i.e. residency and intent to remain). For inmates who in the judgment of the Commissioner of Corrections do not meet those criteria, the Commissioner will file attachments under Sec. 1 and Sec. 7. It is assumed that this will generate approximately 500 new attachments.

Since the implementation of the Permanent Fund Dividend program, the attachment of dividends by third parties has grown dramatically. Garnishment and assignments received and processed by the program numbered 20,548. Of those processed, a total of 14,507 have been paid. Each attachment received has to be recorded, matched against the dividend application file, and acknowledged in one of two ways: rejected with an explanation, or paid in part or in whole, again with an explanation.

Currently, the program has one full-time accounting clerk assigned to this process. Even with recent improvements to the process, we cannot keep up with the increasing demands.

The Department of Corrections estimates that there are a total of 2,539 prisoners in custody, either in or out of state. Based on the statement that the average medical costs for each prisoner is \$6.00 per day, we would expect to receive approximately 500 attachments from the Department of Corrections each year.

1. Positions

1 PPT Document Processor I, R7 @ \$2,117.76/Mo.
including salary and benefits for 3 months = \$6.3

This position would assist the one existing position in receiving, processing and responding to the attachments, and responding to the expected contact from the affected parties. This would be a continuing expense. This position would also assist in the determination of duplicate filings and distribution of denial notices.

2. Other Expenditures:

a) Travel: None.

b) Contractual:

Postage for 2,000 denials, printing costs for denial forms, appeal notices, envelopes. = \$1.1

c) Supplies: None.

d) Equipment: Use existing.

TOTAL COST

\$7.4

Funding: Permanent Fund Dividend Fund.

4. Section Cost Analysis: N/A.

Computations: N/A.

Economic Impact: N/A.

Impact on Local Government: N/A.

Suggested Amendments: None.

Attachments: None.

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

TABLE OF CONTENTS

- (1) House Bill No. 13 (original)
 - Letter of support from Department of Corrections Acting Commissioner William Ladwig
 - Informational letter and materials and fiscal note from Department of Revenue Commissioner Hugh Malone
- (2) Sponsor Substitute for House Bill No. 13
 - Fiscal note, Department of Public Safety, Alaska State Troopers
 - Fiscal note, Department of Corrections
 - Sectional analysis
- (3) Proposed amendment to Sponsor Substitute for House Bill No. 13
 - Fiscal note, Department of Corrections (with updated narrative)
 - Memorandum from Keith B. Levy, Legislative Counsel, regarding added Section 7 of bill
 - Sectional analysis
 - Letter of support of proposed amendments, Department of Corrections
- (4) Memorandum from Keith Levy, Legislative Counsel, regarding prisoner liability for costs associated with incarceration
- (5) Memorandum from Theresa L. Bannister, Legislative Council, regarding tax treatment of certain permanent dividend fund moneys
- (6) Letter from Steven E. Kettel, Acting Director Division of Audit, Department of Revenue, regarding tax treatment of certain permanent fund moneys
- (7) Letter to Editor of Anchorage Daily News, responding to criticism of bill
- (8) Letter and accompanying information regarding prisoners' payment of incarcerations costs from David L. Soulak, City Manager of Palmer
- (9) Memorandum from Keith Levy, Legislative Counsel, regarding tax treatment of certain permanent dividend fund moneys

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF CORRECTIONS

REPLY TO:

POUCH T
JUNEAU, ALASKA 99811
PHONE: (907) 465-3376

February 2, 1987

The Honorable Ron Larson
House of Representatives
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

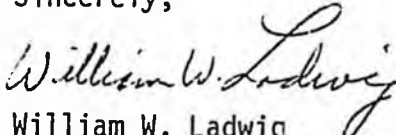
Dear Representative Larson:

You have requested the Department of Corrections to indicate its position on H.B. 13, "An act relating to medical expense of prisoners."

Please be advised that the department supports H.B. 13 as currently written.

If you have any questions or desire further information, please do not hesitate to contact me.

Sincerely,


William W. Ladwig
Acting Commissioner

WWL:cc

cc: Bob Evans, Legislative Liaison
Office of the Governor
Nadine Winters
H.B. 13 file

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX 5
JUNEAU, ALASKA 99811-0400
PHONE: (907) 465-2300

February 11, 1987

The Honorable Ron Larson
Representative
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

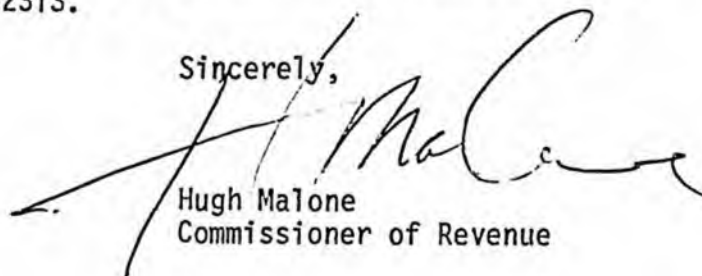
Re: HB 13

Dear Representative Larson:

Enclosed please find a copy of the fiscal note prepared on HB 13, at your request. The statutory language referenced in AS 47.23 is AS 47.23.140-250. I would refer you to legal counsel to consider whether this type of approach is necessary and/or desirable. One other problem to be considered is that once prisoners realize that their PFD's will be garnished, they will likely refuse to file an application for the dividend. Unless a person files, there is no income to attach.

If I may be of further assistance, please let me know or contact Ervin Jones directly at 465-2313.

Sincerely,



Hugh Malone
Commissioner of Revenue

HM:EJ:ms
87-22

Enclosure

Department of Revenue
Administrative Services Division
Fiscal Note Analysis
HB 13
2/10/87

Assumptions:

1. The bill will take effect in time to affect the permanent fund dividends to be paid for the 1987 year.
2. According to the Department of Corrections, virtually every prisoner who is in a correctional facility or who is committed by a court to the custody of the Commissioner of Corrections receives some medical care from the state, each year. The average cost is approximately \$6.00 per day, or \$2,190 per year, well in excess of the expected value of the permanent fund dividend.
3. According to the Department of Corrections, the average number of prisoners in custody, as of December 1986 is as follows:

Institutions	2,069
Community Residential Centers	<u>237</u>
TOTAL in custody of state	<u>2,306</u>

4. Prisoners held in federal facilities or in Minnesota institutions on contract, also incur medical expenses, but the provision of such services is included in the contract for service. I assume the Department of Corrections would be able, and would wish to, attach the dividends of applicants who were in custody outside the state.

TOTAL in custody out-of-state	233
-------------------------------	-----

5. The Department of Corrections would serve their attachments by computer tape with appropriate identifying information (e.g. full name, birthdate, and social security number).

Program Summary:

Since the implementation of the Permanent Fund Dividend program, the attachment of dividends by third parties has grown dramatically. Garnishment and assignments received and processed by the program numbered 20,548. Of those processed, a total of 14,507 have been paid. Each attachment received has to be recorded, matched against the dividend application file, and acknowledged in one of two ways: rejected with an explanation, or paid in part or in whole, again with an explanation.

Currently, the program has one full-time accounting clerk assigned to this process. Even with recent improvements to the process, we cannot keep up with the increasing demands.

The Department of Corrections estimates that there are a total of 2,539 prisoners in custody, either in or out of state. Based on the statement that the average medical costs for each prisoner is \$6.00 per day, we would expect

to receive approximately 2,539 attachments from the Department of Corrections each year. Even assuming a magnetic tape match, this sizable increase in cases would overload the one employee. For that reason, I would request one (1) seasonal Document Processor, Range 7, for the two month period of July-August each year.

1. Positions

1 PPT Document Processor I, R7 @ \$2,117.76/Mo.
including salary and benefits for 2 months = \$4,235.52

This position would assist the one existing position in receiving, processing and responding to the attachments, and responding to the expected contact from the affected parties. This would be a continuing expense.

2. Other Expenditures: - None \$ -0-

3. Funding: Permanent Fund Dividend Fund.

4. Section Cost Analysis: N/A.

Computations: N/A.

Economic Impact: N/A.

Impact on Local Government: N/A.

Suggested Amendments:

Legislation should be considered to allow the Department of Corrections to establish judgments for the medical expenses administratively, and to serve an order to withhold and deliver based on the administrative judgment. The alternative, going to court on each case to get a court judgment and a writ of execution, would largely negate any value of this legislation. I would reference similar provisions for Child Support Enforcement in AS 47.23.

Attachments: None.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HB 13

Publish Date: _____

REQUEST _____

Revision Date: _____

Title: "An act relating to medical expenses of prisoners."

Sponsor: Larson and Manard

Requestor: Rep. Larson

Agency Affected: Department of Revenue
BRU: Permanent Fund Dividend

Components: Administrative Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES	4.2	4.2	4.2	4.2	4.2	4.2
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	4.2	4.2	4.2	4.2	4.2	4.2
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER - PFD	4.2	4.2	4.2	4.2	4.2	4.2
TOTAL	4.2	4.2	4.2	4.2	4.2	4.2

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

(See attached)

Prepared By: Ervin B. Jones
Division: Administrative Services

Phone: 465-2313
Date: 2/11/87

Approved by Commissioner: [Signature]
Agency: Revenue

Date: 2/12/87

Distribution (by Agency preparing fiscal note):

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

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: SSHB 13
Publish Date: HOUSE 3/11/87

153
REQUEST
Revision Date: _____
Title: "An Act relating to medical
expenses of prisoners."
Sponsor: Rep. Larson and Menard
Requestor: HOUSE HESS

Agency Affected: Public Safety
BRU: Alaska State Troopers
Components: Judicial Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated.

Prepared by: Francis C. Allan *F.C.A.*
Division: Alaska State Troopers

Phone: 269-5691
Date: 2/23/87

Approved by Commissioner: William R. Nix *W.R.N.*
Agency: Public Safety

Date: 2/25/87

Distribution (by preparer):

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

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version : SSHB 13
Publish Date : _____

Revision Date: _____
Title : "An Act related to medical
expenses of prisoners."
Sponsor : Rep. Larson and Menard
Requestor : _____

Agency Affected : Department of Corrections
BRU : Administrative Services
Components : _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES	61.0	64.0	67.0	70.0	74.0	78.0
TRAVEL						
CONTRACTUAL	2.0	2.0				
SUPPLIES						
EQUIPMENT	5.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	68.0	66.0	67.0	70.0	74.0	78.0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	68.0	66.0	67.0	70.0	74.0	78.0
FEDERAL FUNDS						
OTHER						
TOTAL	68.0	66.0	67.0	70.0	74.0	78.0

POSITIONS:

FULL-TIME	2	2	2	2	2	2
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See Attached.

Susan Knighton

Prepared by : Susan Knighton, Research Analyst IV
Division : Administrative Services

Phone : 465-3376
Date : 3-8-87

Approved by Commissioner : Susan Humphrey-Barnett *SH-B*
Agency : Department of Corrections

Date : 3/8/87

Distribution (by preparer) :

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SSHB 13

ANALYSIS

Sponsor Substitute for House Bill No. 13 will allow the Commissioner of the Department of Corrections to attach a prisoner's permanent fund dividend checks in order to pay the prisoner's medical expenses. The amount to be attached is limited each year to the amount of the permanent fund dividend less child support obligations and court ordered restitution.

It is very difficult to estimate the amount of revenue to be collected until it is determined how the medical expenses will be assessed. The Department could assess the average daily medical cost of \$6.00 for each day an offender was housed in an institution plus the cost of specialized medical care received by an individual. The yearly revenues collected under this scenario might be:

2648	persons incarcerated on 12-87
-132	less persons whose permanent fund is already being attached for child support payments and restitution. (Estimated at 5%)
<u>2516</u>	persons eligible to pay for medical costs on 12-87
<u>\$1,383,800</u>	\$2516 X \$550 PF dividend check

The implementation of this bill will add on-going administrative costs to the Department of Corrections' budget. The Department will be able to utilize the Offender-Based State Correctional Information System (OBSCIS) to collect the necessary cost information, but additional Restitution Unit staff and OBSCIS equipment must be acquired. These are costs which must be funded as there is no staff available to absorb such a large workload.

Costs:

Accounting Clerk IV	\$31,319/year
Clerk Typist III	29,705/year
2 OBSCIS Terminals	5,000 purchase
Data Processing Chargeback	2,016/year for 2 years
	<u>\$68,040</u>

A yearly inflation factor of 5% is assumed for the personnel costs.

Alaska State Legislature



Session Address:
STATE CAPITOL BUILDING
BOX V
JUNEAU, ALASKA 99811
(907) 485-3727

Interim Address:
BOX 53
PALMER, ALASKA 99645
(907) 745-3828 - Palmer
(907) 378-8828 - Wasilla

Representative Ronald L. Larson
District 16B

DATE: February 19, 1987
TO: House HESS Committee
FROM: Representative Ron Larson *R.L.*
SUBJ: Analysis of Sponsor Substitute for House Bill No. 13

General Analysis:

Sponsor Substitute for HB 13 would amend statute to allow the state to attach a prisoner's PFD check to pay medical costs incurred by the state during the prisoner's incarceration. It would also allow the Department of Corrections to apply on behalf of a prisoner who is eligible for the dividend but refuses to apply for it. The bill's intentions are two: (1) to reduce expenses to the Department of Corrections and therefore to the state and (2) to provide an incentive for prisoners not to abuse the medical services they are provided.

Section by section analysis:

Section 1: Section 1 amends Title 33 (Probation, Prisons, and Prisoners) to allow the Commissioner, Department of Corrections, to attach the PFD check of a prisoner in order to pay that prisoner's medical expenses.

Section 2: Section 2 amends AS 43.23.005 to allow the commissioner to apply on behalf of a prisoner who he believes is eligible for the dividend (when the prisoner refuses to apply for him- or herself).

Section 3: Section 3 states that the commissioner's application for the dividend must include a statement explaining why the commissioner believes the prisoner is eligible for the dividend.

Section 4: Section 4 stipulates that the prisoner on whose behalf the commissioner has filed does not have to sign the dividend application him- or herself.

Section 5: Section 5 mandates that permanent fund dividends claimed by the commissioner must be deposited into the general fund.

Section 6: AS 43.23.065(a) mandates that 50 percent of an individual's annual PFD is exempt from levy, execution, garnishment, attachment, or any other remedy for the collection of debt except for claims stipulated in AS 43.23.065(b). Currently, AS 43.23.065(b) disallows the 50 percent exemption for four types of claims. Substitute Sponsor for HB 13 would add a fifth, a debt owed by a prisoner for medical expenses incurred while the prisoner was incarcerated. AS 43.23.065(c) stipulates that the claims listed in (b) have priority in the order they are listed; therefore, if Sponsor Substitute for HB 13 were to become law, the state could attach a prisoner's PFD check for medical expenses only after each of the other four types of claims was satisfied.



Alaska State Legislature

House

Official Business

P.O. BOX V
State Capitol
Juneau, Alaska 99811

PROPOSED AMENDMENT TO SSHB 13

Offered in the House

By Larson

Page 1, line 6:

Delete "medical expenses"

Insert "the attachment of permanent fund dividends"

Page 1, line 9:

Delete "MEDICAL EXPENSES"

Insert "PERMANENT FUND DIVIDENDS"

Page 1, line 10:

Delete "may"

Insert "shall"

Page 1, lines 10 through 12:

Amend as follows: ". . . prisoner who, after conviction, is in a correctional facility and [OR] committed by a court to the custody of the commissioner for a period of 10 days or more" [TO PAY A PRISONER'S MEDICAL EXPENSES]

Page 1, line 16:

Delete "to pay a prisoner's medical expenses"

Insert "under this section"

Page 3, line 15:

Delete "a debt owed by a prisoner for medical expenses under"

Insert "provision of"

Page 3, following line 16, insert a new bill section to read:

"Sec. 7. AS 43.23.065 is amended by adding new subsections to read:

(d) AS 09.38 does not apply to permanent fund dividends taken to satisfy the provisions of AS 33.30.015 under (b)(5) of this section.

(e) Notwithstanding AS 09.35, the commissioner of corrections may execute against a permanent fund dividend under (b)(5) of this section by serving an affidavit stating the basis of the execution on the commissioner of revenue by certified mail or a process server. The commissioner of corrections shall also serve a copy of the affidavit on the prisoner whose dividend is executed against."

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

Bill Version : SSHB 13

Publish Date : _____

REQUEST: _____

Revision Date: 3/19/87

Title : "An act relating to medical expenses of prisoners."

Sponsor : Rep. Larson and Menard

Requestor : _____

Agency Affected : Department of Corrections

BRU : Administrative Services

Components : _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES	61.0	64.0	67.0	70.0	74.0	78.0
TRAVEL						
CONTRACTUAL SUPPLIES	2.0	2.0				
EQUIPMENT	5.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	68.0	66.0	67.0	70.0	74.0	78.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	68.0	66.0	67.0	70.0	74.0	78.0
FEDERAL FUNDS						
OTHER						
TOTAL	68.0	66.0	67.0	70.0	74.0	78.0

POSITIONS:

FULL-TIME	2	2	2	2	2	2
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See Attached

Slaughter

Prepared by : Susan Knighton, Research Analyst IV
Division : Administrative Services

Phone : 465-3376
Date : 3/19/87

Approved by Commissioner : *Susan Humphrey-Barnett*
Agency : Department of Corrections

Date : 3/19/87

Distribution (by preparer) :

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SSHB 13

ANALYSIS

The amended sponsor substitute for House Bill No. 13 will allow the Commissioner of the Department of Corrections to attach the permanent fund dividend check of all sentenced prisoners who serve 10 days or more of jail time. The amount to be attached is limited each year to the amount of the permanent fund dividend less child support obligations and court ordered restitution.

Based on the number of long-term felons incarcerated and the number of short-term prisoners who are incarcerated for 10 days or more, the Department estimates that it will be able to attach \$1,500,000 to \$1,800,000 in permanent fund dividends.

1,801	Long-term felons
1,585	Short-term prisoners
<u>3,386</u>	
- 169	less persons whose permanent fund is already being attached for child support payments and restitution (estimated at 5%)
<u>3,217</u>	persons whose permanent fund dividend could be attached during the year.
<u>\$1,769,350</u>	3,217 x \$550 Permanent Fund Divident Check

The implementation of this bill will add on-going administrative costs to the Department of Corrections' budget. The Department will be able to utilize the Offender-Based State Correctional Information System (OBSCIS) to collect the necessary cost information, but additional Restitution Unit staff and OBSCIS equipment must be acquired. These are costs which must be funded as there is not staff available to absorb such a large workload.

Costs:

Accounting Clerk II	\$31,319/year
Clerk Typist III	29,705/year
2 OBSCIS Terminals	5,000 purchase
Data Processing Chargeback	<u>2,016/year for 2 years</u>
	\$68,040

A yearly inflation factor of 5% is assumed for the personnel costs.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 16, 1987

SUBJECT: Attachment of prisoners' permanent fund
dividends (SSHB 13)

TO: Representative Ron Larson

FROM: Keith B. Levy *KBL*
Legislative Counsel

Enclosed is an amendment to SSHB 13 providing for the attachment of prisoners' permanent fund dividends. You have requested an analysis of sec. 7 of the bill, added by your amendment.

Section 7 adds new subsections to AS 43.23.065. Subsection (d) provides that AS 09.38, the Alaska Exemptions Act, does not apply to the taking of prisoners' permanent fund dividends. The Alaska Exemptions Act exempts certain money and property from execution under the law. Generally, this means that a judgment creditor is limited in the amount and types of property he can take from a judgment debtor to satisfy a judgment. Subsection (d) makes it clear that in attaching a prisoners' permanent fund dividend under the bill, those exemptions don't apply.

Subsection (e) provides that AS 09.35, the provisions of law setting out the process for executing against property, don't apply to execution against prisoners' permanent fund dividends under the bill. Under AS 09.35, a judgment creditor must go through a specific judicial process before the creditor can take the property of a judgment debtor. Subsection (e) provides that the creditor does not have to follow that process in the case of prisoners' permanent fund dividends under the bill. Instead, the Commissioner of Corrections serves an affidavit on the Commissioner of Revenue stating the basis of the execution and sends a copy to the prisoner.

If I may be of further assistance, please advise.

KBL:mkr
m10/004
Enclosure



Official Business

Alaska State Legislature

House

P.O. BOX V
State Capitol
Juneau, Alaska 99811

DATE: March 18, 1987

TO: House Judiciary Committee

FROM: Representative Ron Larson

SUBJ: Analysis of Sponsor Substitute for House Bill No. 13,
with suggested amendments

General Analysis:

Sponsor Substitute for HB 13, with suggested amendments, would do the following: (1) It would require the commissioner of corrections to attach the permanent dividend check of a prisoner who, after conviction, is in a correctional facility or who is committed by a court to the custody of the commissioner for a period of ten days or more. (2) It would allow the Department of Corrections to apply on behalf of a prisoner who is eligible for the dividend but refuses to apply for it. (3) It would require permanent fund dividends attached by corrections be deposited into the general fund. (4) It would provide that AS 09.38, the Alaska Exemptions Act, and AS 09.35, the provisions of law setting out the process for executing against property, would not apply to executing against prisoners' permanent fund dividends.

Section by section analysis:

Section 1: Section 1 amends Title 33 (Probation, Prisons, and Prisoners) to require the commissioner of corrections to attach the permanent dividend check of a prisoner who, after conviction, is in a correctional facility or who is committed by a court to the custody of the commissioner for a period of ten days or more.

Section 2: Section 2 amends AS 43.23.005 to allow the commissioner to apply on behalf of a prisoner who he believes is eligible for the dividend (when the prisoner refuses to apply for him- or herself).

Section 3: Section 3 states that the commissioner's application for the dividend must include a statement explaining why the commissioner believes the prisoner is eligible for the dividend.

Section 4: Section 4 stipulates that the prisoner on whose behalf the commissioner has filed does not have to sign the dividend application him- or herself.

Section 5: Section 5 mandates that permanent fund dividends claimed by the commissioner must be deposited into the general fund.

Section 6: AS 43.23.065(a) mandates that 50 percent of an individual's annual PFD is exempt from levy, execution, garnishment, attachment, or any other remedy for the collection of debt except for claims stipulated in AS 43.23.065(b). Currently, AS 43.23.065(b) disallows the 50 percent exemption for four types of claims. Substitute Sponsor for HB 13, with amendments, would add a fifth, the costs of 10 or more days of incarceration. AS 43.23.065(c) stipulates that the claims listed in (b) have priority in the order they are listed; therefore, if Sponsor Substitute for HB 13, with suggested amendments, were to become law, the commissioner of corrections could attach a prisoner's PFD check only after each of the other four types of claims was satisfied.

Section 7: Section 7 adds new subsections to AS 43.23.065. Subsection (d) provides that AS 09.38, the Alaska Exemptions Act, does not apply to the taking of prisoners' permanent fund dividends. Subsection (e) provides that AS 09.35, the provisions of law setting out the process for executing against property, don't apply to execution against prisoners' permanent fund dividends. (Please see enclosed March 16, 1987 memorandum from Keith B. Levy, Legislative Counsel of the Legislative Affairs Agency.)

STATE OF ALASKA

DEPARTMENT OF CORRECTIONS

STEVE COWPER, GOVERNOR

REPLY TO:

POUCH 1
JUNEAU, ALASKA 99811
PHONE: (907) 465-3376

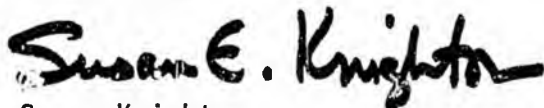
March 19, 1987

The Honorable Ron Larson
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Larson:

The Department of Corrections supports the proposed amendments to SSHB 13,
"An act related to medical expenses of prisoners."

Sincerely,



Susan Knighton
Legislative Liaison

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

October 22, 1986

SUBJECT: Prisoner liability for costs associated with
incarceration (Work Order No. 15-0110)

TO: Mike Greany
Director, Legislative Finance Division

FROM: Keith B. Levy KBL
Legislative Counsel

You have asked whether prisoners may be held liable for the costs of their medical care and if so, whether permanent fund dividends may be attached to pay those costs. You have also asked whether prisoners may be held liable for other costs of incarceration. There does not appear to be any specific constitutional prohibition against requiring people convicted under state law to pay at least some of the costs of their incarceration, to the extent that they are financially able and the requirement is administered in a fair and equitable manner. In fact, there are several current laws that require prisoners to pay certain costs of their incarceration. The statutes could be amended to clarify exactly what costs prisoners are liable for. In addition, since individuals have no vested right to receive a permanent fund dividend except by statute, the legislature can limit that right by statute as long as it does so in a manner that does not violate the constitution.

I. EXISTING STATUTES AND CONSTITUTIONAL PROVISIONS.

AS 12.80.030 provides that no costs may be taxed against a criminal defendant unless ordered by Supreme Court Rule. This section appears to apply to costs of prosecution rather than costs of incarceration. In any case, it does not appear to be constitutionally required and could be amended. Moreover, the Alaska Supreme Court has enacted Criminal Rule 39(c) which provides that a court may order a defendant to pay costs of appointed counsel to the extent the defendant

is able to pay. That rule prohibits the court from attaching exempt property to pay the costs of counsel.

AS 33.30.071(c) provides that a law enforcement agency having custody of a person before incarceration must provide necessary medical care and may require the prisoner to compensate the agency for those costs in certain circumstances. AS 33.30.131 provides that if a prisoner earns wages on a short-duration furlough or as part of serving time in a correctional restitution center, the prisoner's wages must be paid to the Commissioner of Corrections and the commissioner must disburse those wages for payment of several items including "room, board, and personal expenses of the prisoner." Similarly, AS 33.32.050(c) requires the commissioner to use wages earned by prisoners in correctional industries "for the purchase of clothing and commissary items for the prisoner's personal use."

These statutes are all legislative endorsements of a requirement that prisoners pay certain costs related to their incarceration. There does not appear to be any reason why the legislature could not amend the law to specify other costs prisoners are required to pay. However, constitutional limitations on criminal sentencing found in the Eighth Amendment to the United States Constitution and art. I, sec. 12, of the Alaska Constitution, prohibit the imposition of "excessive fines" and "cruel and unusual punishment." Thus, a requirement that prisoners pay a portion of the costs of incarceration would have to be tailored so that those costs, which would probably be viewed as fines, do not disproportionately outweigh the crime for which the prisoner is incarcerated.

Since the Alaska Supreme Court has ruled that incarcerated prisoners clearly have a constitutional right to have their medical needs met (Goodlatav v. State, 698 P.2d 1190, 1193 (Alaska 1985)), a law requiring prisoners to pay medical costs could not deny medical care based on the prisoner's inability to pay. Such a denial of protective or emergency medical care would amount to cruel and unusual punishment under the State and Federal Constitutions. Goodlatav, at 1193. Similarly, art. I, sec. 17, of the Alaska Constitution prohibits imprisonment for debt. Thus, a legislative requirement that prisoners pay costs of incarceration could not be drafted so that individual sentences could be enhanced based on the prisoner's inability to pay. But to the extent prisoners are able to pay the costs of medical

Mike Greany
October 22, 1986
Page 3

care or other costs of incarceration, there appears to be no reason that the legislature could not require them to do so.

A recent decision of the Supreme Court of Oklahoma upheld several state statutes regulating funds earned by prisoners during incarceration. Cumbey v. State, 699 P.2d 1094 (Okla. 1985). The court reasoned that a state may legitimately restrict an inmate's ability to earn a wage while incarcerated and the benefits of employment during incarceration are granted by the state as a privilege and not as a right. Since the prisoner has no legal entitlement to money "earned" while in prison, the state may use that money in any reasonable manner, including the payment of costs associated with incarceration. Cumbey, at 1097 - 1098. While this case is not binding on the Alaska Supreme Court, it is quite possible that the court would adopt similar reasoning if faced with the same question.

II. ATTACHMENT OF PERMANENT FUND DIVIDENDS TO PAY PRISONER COSTS.

It seems clear that if the state has the power to require prisoners to pay certain costs of incarceration, it may attach non-exempt property to satisfy those costs. AS 43.23.065 provides that 50 percent of the permanent fund is exempt from attachment, unless the attachment is sought to satisfy certain enumerated debts. Among those debts to which the exemption does not apply are debts "owed by an eligible individual to an agency of the state, unless it is contested and an appeal is pending, or the time limit for filing an appeal has not expired." This exception would seem to include debts owed by prisoners to the state for costs of incarceration. In any case, AS 43.23.065 could be amended to make it clear that prisoner's permanent fund dividends are not exempt from attachment to pay the costs of incarceration. In fact, it is possible that the legislature could simply deny incarcerated prisoners the right to a permanent fund dividend altogether, since there is no constitutional entitlement to the dividend.

If I may be of further assistance, please advise.

KBL:mkr
m6/132

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 20, 1987

SUBJECT: Federal tax treatment of certain
permanent fund dividend moneys
(Work Order No. 5-0886)

TO: Representative C. E. Swackhammer

FROM: Theresa L. Bannister *TB*
Legislative Counsel

You have asked the following question: If a governmental agency is able to apply for and receive an individual's permanent fund dividend and then applies the dividend to payment of the individual's debts, will the agency's action result in income to the individual for federal income tax purposes despite the fact that the individual did not act to obtain the dividend?

It is not likely that the permanent fund dividend received by the agency would be characterized as income to the individual taxpayer. The individual has not taken any action to obtain the dividend, and although the money would be used for the taxpayer's debts, the taxpayer does not control when, how, or to whom it is paid.

However, a more difficult issue arises as to whether the discharge of the taxpayer's debts would be characterized as income to the taxpayer. With certain exceptions, the discharge of a debt is included in a taxpayer's gross income under 26 U.S.C. 61. The reason for the inclusion is that the taxpayer receives economic benefit from the discharge of the debts. However, because the dividend money was not claimed by the taxpayer, the governmental agency would be essentially using its own funds to pay off the taxpayer's debts. These facts suggests a donative intent on the part of the state, which would exclude the debt discharge from the gross income of the taxpayer under 26 U.S.C. 102. That section excludes gifts from gross income.

Representative Swackhammer
Page 2
March 20, 1987

There is little authority available to determine if a court would in fact characterize the discharge as a gift. Since the agency is using money that the taxpayer would have been entitled to by just applying for it, and since it is uncharacteristic for a state to "donate" money to pay private debts, the court may determine that the debt discharge is income to the individual. The final outcome of this issue is unclear.

If I may be of further assistance, please advise.

TLB:mkr
m10/027

STATE OF ALASKA

DEPARTMENT OF REVENUE

STEVE COWPER, GOVERNOR

STATE OFFICE BUILDING
P.O. BOX SA
JUNEAU, ALASKA 99811-0400

March 20, 1987

The Honorable Ronald L. Larson
P.O. Box V
Juneau, Alaska 99811

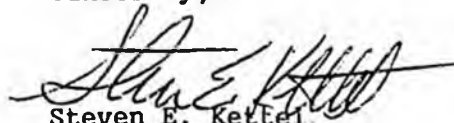
Dear Representative Larson:

The question has been raised whether inmates at a correctional facility would have taxable income attributable to them when the Commissioner of Corrections applies for and receives their Permanent Fund Dividend in order to pay the prisoner's medical expenses. As I understand the intent of HB 13, the dividend will be applied against inmate expenses for which the inmate is not otherwise liable to pay.

As a general rule, individuals must include in taxable income all compensation, dividends and interest, including "income from discharge of indebtedness" (Internal Revenue Code Section 61 (a)). I do not believe that the bill as drafted would cause prisoners to have taxable income from the Permanent Fund Dividend since the money is used to pay for expenses which are liabilities of the Department of Corrections and not an obligation of the prisoner.

Another common rule of income taxation requires that taxable income be reported when "constructively received". Income is taxable to an individual when the money has not actually been received, provided that it is within the person's control. It appears that HB 13 only applies when the inmate has failed to apply for and receive 'control of' the dividend. Thus, in my opinion, the taking of the dividend under this bill would likely not result in taxable income to prisoners.

Sincerely,



Steven E. Kettel
Acting Director
Division of Audit

SEK:sp

87-56

Alaska State Legislature



Session Address:
STATE CAPITOL BUILDING
BOX V
JUNEAU, ALASKA 99811
(907) 465-3727

Interim Address:
BOX 53
PALMER, ALASKA 99645
(907) 745-3828 - Palmer
(907) 376-8828 - Wasilla

Representative Ronald L. Larson
District 16B

March 19, 1987

Suzan Nightingale, Editorial Page Editor
Anchorage Daily News
P.O. Box 14-9001
Anchorage, Alaska 99514-9001

Dear Editor:

I would like to respond to a March 16 letter critical of SSHB 13, a bill Representative Curt Menard and I introduced that would attach prisoners' permanent fund dividends in partial payment of incarceration costs.

Currently, the state is facing an estimated \$3 billion revenue shortfall over this and the following four fiscal years. The Legislature is faced with the task of eliminating or substantially reducing programs and services affecting the gamut of Alaskan citizens. We must cut funds to public education, to the poor, to children's programs, to the elderly, to the University. We must drastically reduce spending on road construction and maintenance, on public safety, on the Marine Highway System, on municipal assistance. At the same time we are spending each day approximately \$90 a day to house an average of 2,600 prisoners convicted of crime.

With this in mind, I don't think it justifiable to give each of those prisoners over \$700 each year. I think that money--and we are talking several millions of dollars each year--could be, and should be, used to meet the many unmet needs of the state.

Finally, I would point out that SSHB 13 would allow attachment of prisoners' permanent dividend only after four other obligations are met--most importantly, child support

page 2

obligations and court ordered restitution of victims (in that order). Therefore, prisoners who have child support obligations or restitution payments resulting from their crimes would have to meet those obligations first. Only after those obligations were met would permanent dividends be taken to compensate the state citizenry as a whole for the cost of their incarceration.

Sincerely,

RONALD L. LARSON
STATE REPRESENTATIVE



231 W. EVERGREEN AVE.
PALMER, ALASKA 99645

CITY OF PALMER



A HOME RULE CITY



Phone (907) 745-3271

March 10, 1987

The Honorable Ron Larson
House of Representatives
P.O. Box V, Mail Stop 3100
Juneau, AK 99811

RE: Prison Costs

Dear Representative Larson:

Enclosed is an excerpt from a recent edition of the Engineering News Record which tells of Michigan's way of funding prison expansion through the use of surcharges.

Since the wheel was invented in Kentucky, this may be a means of helping to pass the burden on to those who helped create the problem.

Anyway, it is good food for thought.

Should you have any questions, please feel free to contact me.

Sincerely,


David L. Soulak
City Manager

DLS/jep

Enclosure

years ago. But new proposals and a lawsuit could limit growth in these areas.

In December, the two council backers of Proposition U, Marvin Braude and Zev Yaroslavski, submitted a 10-point proposal that would require city planning commission approval for all buildings over 50,000 sq ft. An estimated 50 to 60 buildings over this size are routinely given permits every year in the city. Under the proposals, however, permit approval would require some sort of environmental review.

City planners are wary about the cost of implementing the proposals and have suggested that commission approval be required only for buildings of more than 100,000 sq ft. The council is already considering some of the proposals. According to Baude's deputy, Cindy Mischkowski, the council will decide in June or July whether to go directly to the electorate with a referendum initiative on these matters.

The situation in unincorporated Los Angeles County mirrors that in the city. As the result of a lawsuit, the county recently agreed to adopt clearer procedures for issuing permits for new development. Officials will have to make sure new developments do not burden local roads, water systems or even schools.

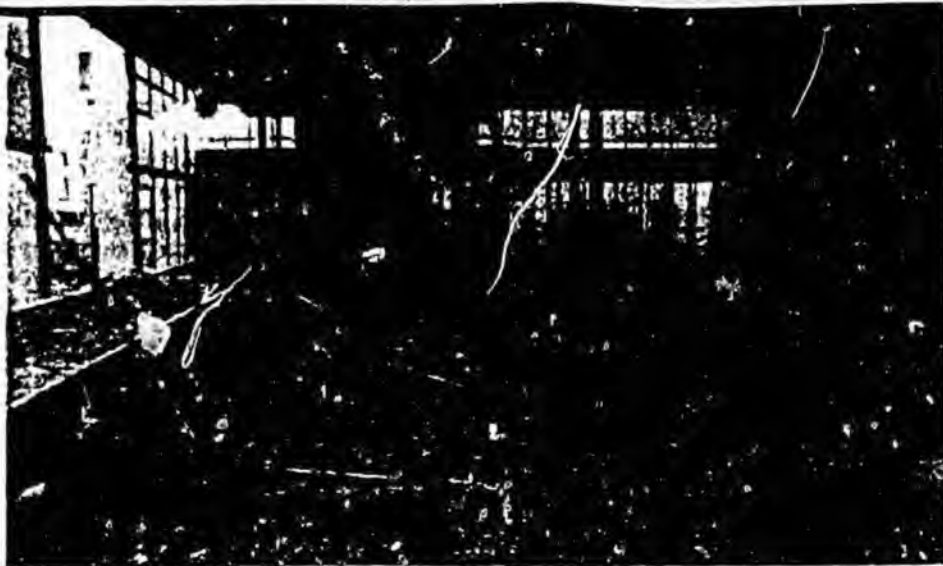
Environmental reviews. A separate lawsuit awaiting a judge's decision in Los Angeles asks that the city comply with a state law on environmental impact reviews (EIRs). Local environmental and neighborhood groups claim that the city has been violating the California Environmental Quality Act (CEQA) ever since it was passed in 1970. The act requires that any time a zoning change is needed for a project of "significant environmental impact," a complete environmental review be made.

Groups suing the city claim that it regularly makes important environmental decisions by granting building permits without requiring EIRs. The city claims its permitting procedure is strictly ministerial—no discretion is involved. If a builder fills out the proper papers and the project fits the codes and zoning, a permit is automatically granted.

Critics claim that much discretion is required and that large projects have impact on the environment. They also claim that the city never adequately reviewed its zoning and codes and does not have a legitimate, objective framework within which to grant permits.

The state attorney general's office has joined in the suit against Los Angeles. A decision by the state court of appeals is expected by the end of March. If the judge rules against the city, and no further appeals are filed, the city will have to require EIRs for most large buildings and some smaller ones. ■

By Michael P. Sponseller in Los Angeles



Ceiling of Swiss pool fell as the result of chloride corrosion in stainless steel hangers.

Three face collapse charges

Stress corrosion cracking of stainless steel in a chloride environment is a problem well understood by metallurgists but not by structural engineers, experts say.

The problem has been established as the cause of the 1985 collapse of a suspended concrete ceiling over an indoor swimming pool in Switzerland. The collapse killed 12 people and injured two in Uster, near Zurich (ENR 6/13/85 p. 17). Swiss government investigators say acidic water vapor—containing chlorine ions—coated the stainless steel hangers supporting the ceiling and led to pitting, stress corrosion and cracking.

The Uster district attorney says he will bring criminal charges of involuntary manslaughter against the owner and director of Ernst Waedenschweiler Engineering Co., the engineer on the pool project, and against the project's architect as well. "The deaths are very sad, but I don't feel guilty," Waedenschweiler says. "Until 1985, no one knew that stainless steel could corrode."

Franz Theiler, a Swiss corrosion specialist and one of the accident's two chief investigators, says that while building engineers may not have understood the danger, it is well-known among corrosion engineers.

Alan W. Pense, a metallurgical expert at Lehigh University in Bethlehem, Pa., agrees. Pense has investigated cases of corrosion in equipment used to process insecticides and in microwave towers exposed to marine environments. The problem has been written up in books on corrosion engineering, "but the typical structural engineer would not be reading those books," Pense says. "It's probably not part of their experience."

The criminal charges in this case

stem, however, from the district attorney's contention that the accused had ignored glaring danger signs. In 1984, the steel frame of a window in the pool building had to be repaired because of corrosion. During the repairs a worker noticed that one of the rods holding up the ceiling was broken. The engineers and the architect merely ordered that a new rod be welded on to replace the broken one, the district attorney says.

"They should have called an expert," says Theiler. "The fracture was a brittle one, as if sawed through. There were none of the characteristic signs of stress or pulling. They should have known this was no ordinary fracture."

The suspended concrete roof that collapsed was in one piece measuring 95 x 129 ft. It weighed 166 tons and was suspended by 207 hangers from an ordinary concrete roof supported by prestressed concrete beams. The rods were made of chromium-nickel stainless steel. The investigation showed that corrosion had completely eaten through 30 of the 207 hangers. All of the fracture surface showed corrosion. ■

Criminals in Michigan may pay for punishment

Crime does not pay in Michigan. Instead, criminals may pay—for their own prison accommodations, that is.

Legislation under consideration in the state senate calls for the levying of a \$25 surcharge against those guilty of criminal infractions. A \$5 surcharge would be levied in most civil convictions, including those for traffic violations.

With the user fees, the state could

construct new prisons. The fees are being considered as one way to ease the taxpayer's burden in funding needed jails (see p. 17).

State Sen. Doug Cruce (R), who introduced the legislation, estimates that the fines would generate up to \$5 million annually. The fund might be used to establish a financing authority. That would "take a big chunk out of the general taxpayer's bill," Cruce says. He believes as much as \$100 million could be raised.

Michigan courts convict 30,000 serious felons every year, but the state prison system has space for only about half that number. However, lawmakers predict that much of the money would come from civil offenders.

The state has budgeted \$94 million to be spent this year for three new prisons (ENR 1/1 p. 15). Most is from the so-called "rainy day" fund, a reserve to help the state avoid tax increases when the economy turns sour. Michigan lawmakers want to avoid raiding the fund.

The bill has bipartisan support in the state legislature and is backed by the state treasurer, Robert Bowman, and the Michigan Association of Police.

Michigan would not be the first state to make criminals responsible for prison construction costs. Kentucky lawmakers first levied a \$5 user fee in 1982 against everyone convicted of a misdemeanor in the state's district courts. They have since upped the fee to \$10. The fees generated \$4 million last year. Mississippi is considering a crime tax as well. ■

A third round on Fort Drum

Best and final offers are now due in early March from four joint ventures vying for a big, fixed-price contract to build the Fort Drum light infantry base in northern New York State. It is the second time the joint ventures have had to revise their prices.

Initial prices were submitted in November to the top-secret team analyzing the proposals for the New York District of the Corps of Engineers. Second-round prices, based on revised contract documents and a reduced scope of work, were tendered last month (ENR 1/22 p. 25). The third round will be based on an even thinner set of contract documents sent out to bidders last Friday, according to ENR sources.

To get Fort Drum substantially built by 1991, the project is being fast-tracked under severe time constraints. Conceptual designs and some 8,000 detailed drawings were produced by 11 private design firms in about 2½ years.

Busted budget. The first round of bidding is said to have busted the Corps's \$610-million construction budget, which includes the agency's administrative costs. The district is locked into a three-year authorization won from Congress in 1986 when the Fort Drum design was 35% complete. Contractors' prices have consistently been over the Corps's limit, according to observers.

F.H. Griffis, former commander and district engineer of the Corps's New York District, says the Corps value-engineered about \$40 million out of the job before coming up in late 1985 with its unofficial estimate of \$700 million to \$750 million for the big contract. "We figured that's as low as we can go," he recalls. But he says "somebody in the Pentagon said this thing shouldn't cost over \$610 million" because of economies of scale gained by awarding the job to one contractor.

The \$610-million estimate was sent to Congress, but at subsequent meetings with Pentagon officials Griffis says he pointedly asked, "Did we design the

right scope?" He says he was assured that the district had not overestimated the scope of the project.

Rather than reduce quality, Army designers are now cutting back on the scope of work by deferring some projects. What the final work package includes is still a secret. For the second round, contractor sources say that the joint ventures were asked to pare down their bids. When it failed to find enough money in contractor-proposed savings or value engineering changes, the Corps is reported to have deleted 11 projects from the original 70, revised a large number of drawings and allowed less-costly construction methods.

As originally envisioned by the Corps, the total Fort Drum work package included 170 buildings totaling 4.5 million sq ft, 35 miles of new roads, and dozens of miles of water, sewer, electri-

cal and communications lines. The four teams competing for the contract are:

• Perini Corp., Framingham, Mass.; Guy F. Atkinson Co., South San Francisco; and Peter Kiewit Sons Inc., Omaha.

• Morrison-Knudsen Co. Inc., Boise; Martin K. Eby Construction Co. Inc., Wichita; and Huber, Hunt & Nichols Inc., Indianapolis.

• Blount International Ltd., Montgomery, Ala.; and Brinderson Corp., Irvine, Calif.

• Jones Group Inc., Charlotte, N.C.; Harbert International Inc., Birmingham, Ala.; and Hensel Phelps Construction Co., Greeley, Colo.

The negotiated procurement process allows the Corps to change the scope of the job to fit the budget. Only time will tell how far off the Pentagon estimate is, but Griffis is betting it will be nearly \$100 million too low in today's dollars. The proof will be in the final cost of completing Fort Drum after the current work is finished in 1991.

By William G. Reinhardt

City dredges up trouble

A circuit court jury in Tampa may have kicked sand on plans by cities to enter into contracts with private developers.

The jury has ordered the city of Clearwater, Fla., to pay a condominium developer more than \$2 million because the city failed to keep its promise to restore a beach near the developer's land. The developer contended that not enough sand had been dredged from Clearwater Inlet to create the beach, and that the lack of a beach had made the condominiums harder to sell.

The decision could have a chilling effect. Ross Davis, attorney for the National League of Cities, says the ruling "makes cities increasingly apprehensive" about private-public contracts. An attorney for Clearwater says it may discourage cities "from undertaking certain projects with private parties."

The situation began in 1980 when city officials were looking for dump sites

for the 1 million cu yd of sand they planned to dredge from the inlet. Property owners on adjoining Sandy Key suggested that the city put the dredged sand there to repair erosion damage.

Then one of the landowners sold his property—using the allure of a city-built beach on the Gulf of Mexico as a sales incentive—to a condominium developer. The developer, Mills Development Group of Florida Inc., fully expected to have a beach by 1982.

But the city fell behind schedule and was still dredging by late 1983. The amount of sand that had been dumped and the beach it created were unacceptable, according to Mills Development's suit. The developer said it had spent more than \$120,000 to build a seawall as a stop-gap measure against erosion. It also said it spent \$4 million more than necessary to market the condos without a beach to pull buyers in. ■

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STATE OF ALASKA
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LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 20, 1987

SUBJECT: Federal tax treatment of certain
permanent fund dividend moneys
(SSHB 13)

TO: Representative Ron Larson

FROM: Keith B. Levy *KBL*
Legislative Counsel

You have asked the following question: If a governmental agency is able to apply for and receive an individual's permanent fund dividend and then applies the dividend to payment of the individual's debts, will the agency's action result in income to the individual for federal income tax purposes despite the fact that the individual did not act to obtain the dividend?

It is not likely that the permanent fund dividend received by the agency would be characterized as income to the individual taxpayer. The individual has not taken any action to obtain the dividend, and although the money would be used for the taxpayer's debts, the taxpayer does not control when, how, or to whom it is paid.

However, a more difficult issue arises as to whether the discharge of the taxpayer's debts would be characterized as income to the taxpayer. With certain exceptions, the discharge of a debt is included in a taxpayer's gross income under 26 U.S.C. 61. The reason for the inclusion is that the taxpayer receives economic benefit from the discharge of the debts. However, because the dividend money was not claimed by the taxpayer, the governmental agency would be essentially using its own funds to pay off the taxpayer's debts. These facts suggests a donative intent on the part of the state, which would exclude the debt discharge from the gross income of the taxpayer under 26 U.S.C. 102. That section excludes gifts from gross income.

Representative Larson
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There is little authority available to determine if a court would in fact characterize the discharge as a gift. Since the agency is using money that the taxpayer would have been entitled to by just applying for it, and since it is uncharacteristic for a state to "donate" money to pay private debts, the court may determine that the debt discharge is income to the individual. The final outcome of this issue is unclear.

If I may be of further assistance, please advise.

KBL:mlr
m10/030