

H B

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REPRESENTATIVE
C.E. "SWACK" SWACKHAMMER

Alaska State Legislature



House of Representatives

SOLDOTNA
PO. BOX 417
SOLDOTNA, ALASKA 99869
(907) 262-7663
JUNEAU
BOX V
JUNEAU, ALASKA 99811
(907) 465-2689

TO: Representative John Sund
Chairman, House Judiciary Committee

FROM: Representative C.E. Swackhammer *Swack*

DATE: January 11, 1988

SUBJECT: Judiciary Committee Substitute for House Bill 223

After reviewing the substitute for HB 223, I concur with the improvements proposed by the Judiciary Committee.

By directing the claim through the Department of Revenue and automatically executing the claim, if a hearing is not requested, the amendments streamline the procedure and serve the purpose of claiming permanent fund dividends to satisfy student loan debts.

RECEIVED APR 16 1987



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

KARLA L. FORSYTHE
STAFF COUNSEL

303 K Street
Anchorage, Alaska 99501

(907) 264-8228

April 13, 1987

Representative Fran Ulmer
Chair, House State Affairs Committee
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Dear Representative Ulmer:

I am writing with regard to House Bill 223, which relates to permanent fund dividends. The Alaska Court System takes no position on the various substantive policy decisions involved in this measure. However, to the extent that this measure is intended to establish a procedure for taking permanent fund dividends to satisfy court-ordered fines, the court system has an interest in making certain that the adopted procedures are workable. The following comments address procedural and fiscal concerns.

Section 1. This section permits an agency, including the court system, to claim a permanent fund dividend on behalf of an individual believed to be eligible to receive a dividend. It is the understanding of the court system that many persons who are eligible to apply for dividends do not do so, particularly if they believe that the dividend will be attached to satisfy a child support obligation, a restitution order, or a private creditor. This provision would make the permanent fund dividend available to the court system to satisfy a fine even if a defendant has not applied for a dividend.

The court system takes no position on the desirability of this provision. Questions have been raised about the constitutionality of requiring a person to receive taxable income. It would be helpful if the Legislature could resolve the constitutional issue so that agencies can use this procedure without fear of litigation.

Section 2. This section sets forth the procedure for agencies to use in applying for a permanent fund dividend. It requires the Department of Revenue to provide an application form which an agency must fill out to support its belief that the individual is eligible to receive the dividend.

Representative Fran Ulmer

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Again, the court system takes no position about the desirability of this provision. Questions have been raised by the Department of Law about the ability of an agency to determine the eligibility of another person. Additionally, there are timing concerns which are particularly relevant to action by the court. Since a defendant may be sentenced several months before the current dividend application period (April through June), the court will not have current residency information at the time when the Department of Revenue is accepting dividend applications.

As a procedural matter, this section will require the courts to gather information about an individual's residency. This will probably occur at the time a defendant is sentenced (at arraignment, at a change of plea, or after trial). Additionally, court personnel will complete the application form, arrange for an appropriate signature, and forward the form to the Department of Revenue. It is estimated that this procedure will take approximately one hour.

Section 3 and Section 4. The court system takes no position on these two sections.

Section 5. This section clarifies confusion under existing law by providing that no exemption other than the one described in the first sentence of this statute is available to a person receiving a permanent fund dividend. Arguably, under the existing law, some debtors could also claim the liquid asset exemption described in AS 09.38.030(b).

Assuming the Department of Revenue automatically grants the 50% exemption provided by the first sentence, since no additional exemption is provided, this section further provides that the creditor (including the courts and other agencies as well as private creditors) need not serve the debtor with notice of exemption rights, thus significantly simplifying the execution procedures otherwise required by AS 09.38. The debtor will still receive notice, but it will come from the Department of Revenue, as provided in Section 6 of the bill, rather than from the creditor.

Additionally, this section provides that a writ may be mailed by certified mail to the Department of Revenue rather than delivered by a process server. This provision benefits not only state agencies but also private parties who are seeking to levy on a permanent fund dividend, since mailing is a less expensive method of service. This may, however, mean more work for the courts, since Civil Rule 4(h) requires service by certified mail to be done by courts.

Finally, this section specifically includes court-ordered fines within the non-exempt category and gives the fines a priority behind child support payments and restitution.

Section 5 of the bill is critical to developing a workable procedure. If existing execution procedures must be used, the state agencies will be required to process a substantial amount of paperwork and give the debtor an opportunity for a court hearing. In the case of a court-ordered fine the defendant is already before the court so due process considerations are met.

Some minor changes in Section 5 would be helpful. The court system proposes that the second and third sentences underlined in paragraph (a) [on lines 16-18 of page 3] be revised to provide: "When levying upon the non-exempt portion of a dividend, a creditor is not required to serve the individual with notice of levy under AS 09.38.080(c) and AS 09.38.085. A writ of execution may be served on the commissioner by certified mail under the rules of court for civil procedure." These additions would clarify the procedure and answer technical concerns raised by the Department of Law.

Section 6. This section permits the court system to send a certified copy of a court order or judgment to the Department of Revenue, rather than a writ of execution. Originally, the court system proposed this procedure because it appeared to be the easiest for the court. After discussion with the Department of Revenue, it appears that a writ of execution would be much more helpful to the department because it would provide more information about the defendant. The court system therefore proposes deleting the second sentence of paragraph D, starting at line 10 on page 4.

Although the court would be using a writ of execution, procedures under existing law would be much less burdensome because the court would be able to either mail the writ or have it delivered by troopers, whichever appeared most expedient.

The court system's fiscal note is based primarily on work requirements attributable to this section. Based on information provided by the Anchorage trial court, it is assumed that fines are due in approximately 1/6 of criminal cases charged under state law (not including traffic infractions). The clerical work require to process a writ of execution will include physical review of the file, cross-checking against various monitoring lists maintained by the clerk's office including those for outstanding warrants, and bookkeeping. All of this work must be completed with a high level of accuracy, since execution on a dividend for a defendant who has already paid the fine could result in costly litigation. The supervisor of the criminal division of the Anchorage clerk's office estimates that approximately three hours will be required to issue a writ of execution and arrange for delivery to the Department of Revenue, as well as to account for the dividend when it is received. Substantial time will also be expended reviewing old files to determine if a writ of execution should be issued to obtain a current dividend.

Although additional clerical positions would be required to perform this function, at an ongoing cost of \$112,400, the state will break even on this expenditure if an average of \$52 is collected from the dividend for each outstanding fine. A review of court records indicates an average fine of \$400 so it appears the work required to issue a writ of execution will be offset by revenue.

Representative Fran Ulmer
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In summary, although the court system takes no position on substantive issues raised by this legislation, and although efforts to create new procedures will result in additional clerical work, the court system supports development of workable procedures, and will be glad to work with the committee to this end.

Sincerely,



Karla L. Forsythe
Staff Counsel

KLF:bs

cc: Representative C. E. Swackhammer
Representative Dave Donley
Representative Terry Martin
Arthur H. Snowden, II, Administrative Director
Robert G. Fisher, Fiscal Officer
Susan Miller, Manager, Special Projects

4/10/87-2

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 ~~DISBURSEMENT OF REVENUE~~

ADMINISTRATIVE SERVICES

APR 03 1987

DEPARTMENT

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

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

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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.

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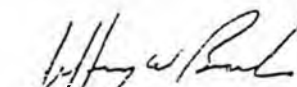
If this is the drafter's intent, we would recommend that these two sentences be moved to a separate subsection.

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 V. Peterson, AAG
Department of Law

L.S. (Dusty) Rhodes
10446 Chatanika Loop
Eagle River, AK 99577

April 27, 1987

Representative Fran Ulmer
P.O. Box V
Juneau, AK 99811

Dear Representative Ulmer:

I'm going to have a tough time getting anyone to listen, but I have to try. HB13 and SB177, the proposal to use prisoners' dividend funds for something other than giving it to the prisoner, is wrong. Maybe wrong is the wrong word; how about unjust since everyone talks about being just.

First, the "sentence" imposed by the court did not say five years and \$5,000. plus your permanent fund dividend for the next five years. Secondly, the sentence imposed did not say 5 years and \$5,000. plus whatever expenses the State incurs in keeping you in prison. Third, the sentence imposed varied from individual to individual, depending on the crime committed. Let's say Sam is serving ten years for breaking into a ladie's home and raping her; Joe is serving a five-year term for driving drunk, causing an accident in which someone was seriously hurt; Jim is serving a two-year term for shoplifting an \$8,000. Rolex watch. The sentence imposed was different but is now amended by HB13 and SB177 to say they each give up their permanent fund dividend. Fourth, the legislature keeps getting into the judicial process further and further. Whatever happended to "separation of powers" theory? We have presumptive sentences, which I doubt you could get one judge in the United States to agree with, dictated by the legislative action. Now the legislative branch wants to dictate monetary penalties (that is exactly what HB13 and SB177 will do.

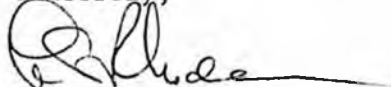
I would also wager that not more than 10 House or Senate members voting on this bill have ever visited one of our correctional facilities for more than "a guided tour". For example, what percentage of the inmates have families that bring them needd items, i.e. underwear, shirts, pants, shoes, socks, hairbrushes, deodorant, and the other things we use in our daily lives? What percentage of the inmates have more than a few dollars in their accounts to buy these things, plus cigarettes, treats, sodas, etc., on the approximately 50 cents per hour they make while in prison? What percentage of the prisoners are still wearing the same clothes they came in with? The answer to those questions should be disturbing if you knew the truth. Contrary to what you may have been told, the facility I am familiar with doesn't provide any of those things - the inmates must purchase them from the Company Store. Inmates are not allowed to borrow each other's clothes, even for a short period of time, while they wash and dry the ones they had

on. In many, many, many cases the dividend check is the year-round source of income to provide these necessities. Finally, the hope of many of these inmates is to have enough saved when they do get released to get a place to live and a means of transportation. The approximately 50 cents per hour they earn will never amount to (1) a months rent in advance (2) a deposit on the electric/telephone bill (3) the second-hand "junker" with minimum insurance to get back and forth to work. The dividend at least gives them hope.

Finally, just how much "justice" do we want? Too many of us who have never committed a crime seem to think the criminal deserves everything bad we can dish out. Prison, the loss of freedom, is only one of the penalties a criminal must pay. A felon loses his/her citizenship rights - many job opportunities are closed to them for a lifetime because of bonding requirements - many friends and relatives no longer will socialize with 'hem - families are separated and sometimes permanently divided (especially where children are concerned) - and certainly the criminal is financially reduced to ruin with legal costs and fines assessed before prison begins. The power to dig in one more time - to deliver one more punishment - is just too great for some people to leave alone! Besides, who cares what happens to the prisoner? Even if they complain, who cares? They deserve what they get - right?

Well, I say it's WRONG and I hope someone listens!

Sincerely,

A handwritten signature in cursive script, appearing to read "L.S. Rhodes", with a long horizontal flourish extending to the right.

L.S. (Dusty) Rhodes

STATE OF ALASKA THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

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

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.	1-14-88	1:30p.m.
H. JUD.	1-13-88	1:30p.m.

HOUSE COMMITTEE REPORT

(7)

Date referred: 5/5/87

FURTHER REFERRALS: Finance

DATE: 1-14-88

The Judiciary Committee has considered HB 223

"An Act relating to permanent fund dividends; and providing for an effective date."

RECOMMENDS:

replace with CS HB 223 (Jud) 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

zero fiscal note

zero with analysis

same as previous fiscal note published _____

same as previous zero fiscal note published _____

SIGNING DO PASS:

[Signature]
[Signature]
[Signature]
[Signature]
[Signature]

SIGNING OTHER RECOMMENDATIONS:

[Signature]
[Signature]

[Signature]
Chairman's signature

Original sponsors: Swackhammer and Larson

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 223 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to remedies for the collection of
7 debt owed to state agencies and courts involving
8 permanent fund dividends, to assignments of divi-
9 dends, and to the exemption for dividends; amending
10 Alaska Rule of Civil Procedure 69; and providing for
11 an effective date."

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

13 * Section 1. AS 09.38.015(a) is amended to read:

14 (a) An individual is entitled to exemption of the following
15 property:

16 (1) a burial plot for the individual and the individual's
17 family;

18 (2) health aids reasonably necessary to enable the indi-
19 vidual or a dependent to work or to sustain health;

20 (3) benefits paid or payable for medical, surgical, or
21 hospital care to the extent they are or will be used to pay for the
22 care;

23 (4) an award under AS 18.67 (Violent Crimes Compensation
24 Board) or a crime victim's reparations Act of another jurisdiction;

25 (5) benefits paid or payable as a longevity bonus under
26 AS 47.45;

27 (6) compensation or benefits paid or payable and exempt
28 under federal law;

29 (7) liquor licenses granted under AS 04;

1 (8) limited entry permits granted under AS 16.43, except as
2 provided in that chapter;

3 (9) that portion of a permanent fund dividend exempted
4 under AS 43.23.065(a).

5 * Sec. 2. AS 09.38.030(b) is amended to read:

6 (b) An individual who does not receive earnings either weekly,
7 semi-monthly or monthly is entitled to a maximum exemption for the
8 aggregate value of cash and other liquid assets available in any month
9 of \$700, except as provided in AS 09.38.050 and AS 43.23.065(a). The
10 term "liquid assets" includes deposits, securities, notes, drafts,
11 accrued vacation pay, refunds, prepayments, and receivables.

12 * Sec. 3. AS 09.38.065(a) is amended to read:

13 (a) Notwithstanding other provisions of this chapter,

14 (1) a creditor may make a levy against exempt property of
15 any kind, except property exempted under AS 43.23.065(a), to enforce a
16 claim for

17 (A) child support;

18 (B) unpaid earnings of up to one month's compensation
19 or the full-time equivalent of one month's compensation for
20 personal services of an employee; or

21 (C) state or local taxes; and

22 (2) a creditor may make a levy against exempt property to
23 enforce a claim for

24 (A) the purchase price of the property or a loan made
25 for the express purpose of enabling an individual to purchase the
26 property and used for that purpose;

27 (B) labor or materials furnished to make, repair,
28 improve, preserve, store, or transport the property; and

29 (C) a special assessment imposed to defray costs of a

1 public improvement benefiting the property.

2 * Sec. 4. AS 43.23.065(a) is amended to read:

3 (a) One hundred dollars [EXCEPT AS PROVIDED IN (b) OF THIS
4 SECTION, 50 PERCENT] of the annual permanent fund dividend payable to
5 an individual is exempt from levy, execution, garnishment, attachment,
6 or any other remedy for the collection of debt. This exemption ap-
7 plies to an eligible individual's permanent fund dividend both before
8 and after payment is made to the individual. No other exemption
9 applies to a dividend. The commissioner shall include the case name
10 and number with a dividend delivered to the court in accordance with a
11 writ of execution. An exemption is not available under this subsec-
12 tion for permanent fund dividends taken to satisfy child support
13 obligations required by court order or decision of the child support
14 enforcement agency under AS 47.23.140 - 47.23.220.

15 * Sec. 5. AS 43.23.065(b) is amended to read:

16 (b) The following claims, or voluntary assignments of dividends
17 in payment or partial payment of the claims, have priority in the
18 order listed over other claims on permanent fund dividends: [AN
19 EXEMPTION IS NOT AVAILABLE UNDER THIS SECTION FOR PERMANENT FUND
20 DIVIDENDS TAKEN TO SATISFY]

21 (1) child support obligations required by court order or
22 decision of the child support enforcement agency under AS 47.23.140 -
23 47.23.220;

24 (2) court ordered restitution under AS 12.55.045 - 12.55.-
25 051 or 12.55.100;

26 (3) a court ordered fine;

27 (4) a court ordered probation fee under AS 12.55.105; or

28 (5) [(4)] a debt owed by an eligible individual to an
29 agency of the state or state court, unless the debt is contested and

1 an appeal is pending, or the time limit for filing an appeal has not
2 expired.

3 * Sec. 6. AS 43.23.067 is amended to read:

4 Sec. 43.23.067. CERTAIN DIVIDEND CLAIMS [CLAIMS OF DEFAULTED
5 SCHOLARSHIP LOANS]. (a) AS 09.38 does not apply to permanent fund
6 dividends taken to satisfy debts listed under AS 43.23.065(b) for
7 which payments are at least 45 days overdue [AS 14.43.120(i)]. Not-
8 withstanding AS 09.35, execution on a claim to satisfy a debt listed
9 under AS 43.23.065(b) for which payments are at least 45 days overdue
10 may be [AS 14.43.120(i) IS] accomplished by delivering a [CERTIFIED]
11 claim to the department containing the following information:

12 (1) the name [AND SOCIAL SECURITY NUMBER] of the individual
13 whose dividend is being claimed and sufficient information to identify
14 the individual;

15 (2) the amount the individual owes to the agency of the
16 state or state court [ON THE SCHOLARSHIP LOAN]; [AND]

17 (3) a statement of the basis for the claim, including the
18 date payment on the debt became due; and

19 (4) a statement that

20 (A) if the debt has not been contested, the individual
21 has had notice of the debt and an opportunity to contest, or, if
22 contested, that the issue has been resolved in favor of the
23 agency or court [ALASKA COMMISSION ON POSTSECONDARY EDUCATION];
24 and

25 (B) if the debt has been contested and resolved in
26 favor of the agency or court [ALASKA COMMISSION ON POSTSECONDARY
27 EDUCATION], no appeal is pending, the time limit for filing an
28 appeal has expired, or the appeal has been resolved in favor of
29 the agency or court [COMMISSION].

1 (b) Upon receipt of a claim under (a) of this section the de-
2 partment shall send notice [NOTIFY THE INDIVIDUAL OF THE CLAIM. THE
3 NOTICE SHALL BE SENT] to the address provided in the individual's
4 permanent fund dividend application that contains [AND MUST PROVIDE]
5 the following information:

6 (1) the identity of the agency or court making the claim;

7 (2) the amount of the claim; [AND]

8 (3) a statement of the basis for the claim, including the
9 date payment on the debt became due; and

10 (4) [(2)] notice that the amount of the permanent fund
11 dividend that does not exceed the amount of the claim, after deducting
12 the exemption under AS 43.23.065(a), will [SHALL] be paid to the
13 agency or court [ALASKA COMMISSION ON POSTSECONDARY EDUCATION] unless
14 the agency or court [COMMISSION] releases the claim or the individual
15 requests a hearing on the validity of the claim from the agency or
16 court making the claim within 45 [30] days after the date the notice
17 is sent by the department.

18 (c) If a hearing is requested by an individual, the agency or
19 court making the claim shall notify the department. The agency or
20 court making the claim is responsible for affording the individual a
21 hearing on the validity of the claim and notice of any appeal rights
22 the individual may have. A hearing is not required under this sub-
23 section on the validity of the debt that forms the basis for the claim
24 if the individual has already been provided an opportunity for a
25 hearing on that issue. If no notice of a request for a hearing or
26 release of the claim is received by the department from the agency or
27 court [AS 44.62.330 - 44.62.630 APPLY TO A HEARING REQUESTED BY AN
28 INDIVIDUAL UNDER (b)(2) OF THIS SECTION. IF A REQUEST FOR A HEARING
29 IS NOT RECEIVED BY THE DEPARTMENT WITHIN THE REQUIRED TIME LIMIT], the

1 department shall pay to the agency or court [ALASKA COMMISSION ON
2 POSTSECONDARY EDUCATION] the amount of the permanent fund dividend
3 that does not exceed the amount of the claim, after deducting the
4 exemption under AS 43.23.065(a). The commissioner shall include the
5 case name and number with a payment to the court.

6 * Sec. 7. AS 43.23 is amended by adding a new section to read:

7 Sec. 43.23.068. ADMINISTRATIVE COSTS. The department shall
8 charge the claimant or assignor for costs of processing a claim on or
9 assignment of a permanent fund dividend. Fees under this section
10 shall be established by regulation at levels that cover the adminis-
11 trative costs of processing all claims and assignments. The commis-
12 sioner of administration shall separately account for receipts depos-
13 ited in the general fund by the department under this section. The
14 department shall submit to the legislature a request for an appro-
15 priation of the receipts for the costs of processing claims and as-
16 signments each year.

17 * Sec. ^[7] 8. AS 43.23.067, as amended by sec. 6 of this Act, has the
18 effect of amending Alaska Rule of Civil Procedure 69 by authorizing agen-
19 cies of the state and state courts to execute on permanent fund dividends
20 in certain cases without using the execution procedures provided in that
21 rule.

22 * Sec. ^[8] 9. AS 43.23.065(c) is repealed.

23 * Sec. ^[9] 10. This Act takes effect ^{immediately under AS} April 1, 1989.

Adopted

5-0686P
Cook
1/13/88

Original sponsors: Swackhammer and Larson

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 223 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to remedies for the collection of
7 debt involving permanent fund dividends and to the
8 exemption for dividends; amending Alaska Rule of
9 Civil Procedure 69; and providing for an effective
10 date."

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

12 * Section 1. AS 43.23.065(a) is amended to read:

13 (a) One hundred dollars [EXCEPT AS PROVIDED IN (b) OF THIS
14 SECTION, 50 PERCENT] of the annual permanent fund dividend payable to
15 an individual is exempt from levy, execution, garnishment, attachment,
16 or any other remedy for the collection of debt. This exemption ap-
17 plies to an eligible individual's permanent fund dividend both before
18 and after payment is made to the individual. Notwithstanding
19 AS 09.38, no other exemption applies to a dividend. The commissioner
20 shall include the case name and number with a dividend delivered to
21 the court in accordance with a writ of execution.

22 * Sec. 2. AS 43.23.065(b) is amended to read:

23 (b) The following claims, or voluntary assignments of dividends
24 in payment or partial payment of the claims, have priority in the
25 order listed over other claims on [AN EXEMPTION IS NOT AVAILABLE UNDER
26 THIS SECTION FOR] permanent fund dividends: [TAKEN TO SATISFY]

27 (1) child support obligations required by court order or
28 decision of the child support enforcement agency under AS 47.23.140 -
29 47.23.220;

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

3 (3) a court ordered fine;

4 (4) a court ordered probation fee under AS 12.55.105; or

5 (5) [(4)] a debt owed by an eligible individual to an
6 agency of the state, state court, or municipality unless the debt is
7 contested and an appeal is pending, or the time limit for filing an
8 appeal has not expired.

9 * Sec. 3. AS 43.23.067 is amended to read:

10 Sec. 43.23.067. CERTAIN DIVIDEND CLAIMS [CLAIMS OF DEFAULTED
11 SCHOLARSHIP LOANS]. (a) AS 09.38 does not apply to permanent fund
12 dividends taken to satisfy debts listed under AS 43.23.065(b) [AS 14.-
13 43.120(i)]. Notwithstanding AS 09.35, execution on a claim to satisfy
14 a debt listed under AS 43.23.065(b) [AS 14.43.120(i)] is accomplished
15 by delivering a [CERTIFIED] claim to the department containing the
16 following information:

17 (1) the name [AND SOCIAL SECURITY NUMBER] of the individual
18 whose dividend is being claimed and sufficient information to identify
19 the individual;

20 (2) the amount the individual owes to the agency of the
21 state, court, or municipality [ON THE SCHOLARSHIP LOAN]; [AND]

22 (3) a statement of the basis for the claim; and

23 (4) a statement that

24 (A) if the debt has not been contested, the individual
25 has had notice of the debt and an opportunity to contest, or, if
26 contested, that the issue has been resolved in favor of the
27 agency, court, or municipality [ALASKA COMMISSION ON POSTSECOND-
28 ARY EDUCATION]; and

29 (B) the debt has been contested and resolved in

1 favor of the agency, court, or municipality [ALASKA COMMISSION ON
2 POSTSECONDARY EDUCATION], no appeal is pending, the time limit
3 for filing an appeal has expired, or the appeal has been resolved
4 in favor of the agency, court, or municipality [COMMISSION].

5 (b) Upon receipt of a claim under (a) of this section the de-
6 partment shall send notice [NOTIFY THE INDIVIDUAL OF THE CLAIM. THE
7 NOTICE SHALL BE SENT] to the address provided in the individual's
8 permanent fund dividend application that contains [AND MUST PROVIDE]
9 the following information:

10 (1) the identity of the agency, court, or municipality
11 making the claim;

12 (2) the amount of the claim; [AND]

13 (3) a statement of the basis for the claim; and

14 (4) [(2)] notice that the amount of the permanent fund
15 dividend that does not exceed the amount of the claim, after deducting
16 the exemption under AS 43.23.065(a), will [SHALL] be paid to the
17 agency, court, or municipality [ALASKA COMMISSION ON POSTSECONDARY
18 EDUCATION] unless the agency, court, or municipality [COMMISSION]
19 releases the claim or the individual requests a hearing on the validi-
20 ty of the claim from the agency, court, or municipality making the
21 claim within 30 days after the date the notice is sent by the depart-
22 ment.

23 (c) If a hearing is requested by an individual, the agency,
24 court, or municipality making the claim shall notify the department.
25 The agency, court, or municipality making the claim is responsible for
26 affording the individual a hearing on the validity of the claim and
27 notice of any appeal rights the individual may have. A hearing is not
28 required under this subsection on the validity of the debt that forms
29 the basis for the claim. If no notice of a request for a hearing or

1 release of the claim is received by the department from the agency,
2 court, or municipality [AS 44.62.330 - 44.62.630 APPLY TO A HEARING
3 REQUESTED BY AN INDIVIDUAL UNDER (b)(2) OF THIS SECTION. IF A REQUEST
4 FOR A HEARING IS NOT RECEIVED BY THE DEPARTMENT WITHIN THE REQUIRED
5 TIME LIMIT], the department shall pay to the agency, court, or munic-
6 ipality [ALASKA COMMISSION ON POSTSECONDARY EDUCATION] the amount of
7 the permanent fund dividend that does not exceed the amount of the
8 claim, after deducting the exemption under AS 43.23.065(a). The
9 commissioner shall include the case name and number with a payment to
10 the court.

11 * Sec. 4. AS 43.23.067, as amended by sec. 3 of this Act, has the
12 effect of amending Alaska Rule of Civil Procedure 69 by authorizing
13 agencies of the state, state courts, and municipalities to execute on
14 permanent fund dividends without using the execution procedures provided in
15 that rule.

16 * Sec. 5. AS 43.23.065(c) is repealed.

17 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).
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Adopted
AMENDMENT #3

Swack

Offered in the HOUSE

~~By Swackhammer~~

TO: CSHB 223 (Judiciary)

Page 2, line 12, after "43.23.065(b)":

Insert "for which payments are at least 45 days overdue"

Page 2, line 14, after "43.23.065(b)":

Insert "for which payment is at least 45 days overdue"

Page 2, line 22, after "claim":

Insert ", including the date payment on the debt became due"

Page 3, line 13, after "claim":

Insert ", including the date payment on the debt became due"

Page 4, line 14, after "dividends":

Insert "in certain cases"

Adopted
~~Withdrawn~~

A M E N D M E N T

#1

Offered in the HOUSE

By Swackhammer

TO: CSHB 223 (Judiciary)

Page 2, line 6:

Delete "state court, or municipality"

After "state" insert "or state court"

Page 2, line 21:

Delete ", court, or municipality"

Insert "or state court"

Page 2, line 27:

Delete ", court, or municipality"

Insert "or court"

Page 3, line 1:

Delete ", court, or municipality"

Insert "or court"

Page 3, line 4:

Delete ", court. or municipality"

Insert "or court"

Page 3, line 10:

Delete ", court, or municipality"

Insert "or court"

Page 3, line 17:

Delete ", court, or municipality"

Insert "or court"

Page 3, line 18:

Delete ", court, or municipality"

Insert "or court"

Page 3, line 20:

Delete ", court, or municipality"

Insert "or court"

Page 3, lines 23 and 24:

Delete ", court, or municipality"

Insert "or court"

Page 3, line 25:

Delete ", court, or municipality"

Insert "or court"

Page 4, lines 1 and 2:

Delete ", court, or municipality"

Insert "or municipality"

Page 4, lines 5 and 6:

Delete ", court, or municipality"

Insert "or court"

Page 4, line 13:

Delete ", state courts, and municipalities"

Insert "and state courts"

Adopted

A . E N D M E N T

~~#1~~ #9

Offered in the HOUSE

By Gruenberg

TO: CSHB 223 (Judiciary)

Page 1, after line 11:

Insert the following new bill sections to read:

"* Section 1. AS 09.38.015(a) is amended to read:

(a) An individual is entitled to exemption of the following property:

(1) a burial plot for the individual and the individual's family;

(2) health aids reasonably necessary to enable the individual or a dependent to work or to sustain health;

(3) benefits paid or payable for medical, surgical, or hospital care to the extent they are or will be used to pay for the care;

(4) an award under AS 18.67 (Violent Crimes Compensation Board) or a crime victim's reparations Act of another jurisdiction;

(5) benefits paid or payable as a longevity bonus under AS 47.45;

(6) compensation or benefits paid or payable and exempt under federal law;

(7) liquor licenses granted under AS 04;

(8) limited entry permits granted under AS 16.43, except as provided in that chapter;

(9) that portion of a permanent fund dividend exempted under AS 43.23.065(a).

* Sec. 2. AS 09.38.030(b) is amended to read:

(b) An individual who does not receive earnings either weekly, semi-monthly or monthly is entitled to a maximum exemption for the aggregate value of cash and other liquid assets available in any month of \$700, except as provided in AS 09.38.050 and AS 43.23.065(a). The term "liquid assets" includes deposits, securities, notes, drafts, accrued vacation pay, refunds, prepayments, and receivables.

* Sec. 3. AS 09.38.065(a) is amended to read:

(a) Notwithstanding other provisions of this chapter,

(1) a creditor may make a levy against exempt property of any kind, except property exempted under AS 43.23.065(a), to enforce a claim for

(A) child support;

(B) unpaid earnings of up to one month's compensation or the full-time equivalent of one month's compensation for personal services of an employee; or

(C) state or local taxes; and

(2) a creditor may make a levy against exempt property to enforce a claim for

(A) the purchase price of the property or a loan made for the express purpose of enabling an individual to purchase the property and used for that purpose;

(B) labor or materials furnished to make, repair, improve, preserve, store, or transport the property; and

(C) a special assessment imposed to defray costs of a public improvement benefiting the property."

Page 1, line 12:

Delete "* Section 1."

Insert "* Sec. 4."

Renumber the following bill sections accordingly.

Page 1, lines 18 - 19:

Delete "Notwithstanding AS 09.38, no"

Insert "No"

Page 4, line 11:

Delete "Sec. 3"

Insert "Sec. 6"

Chapter 38. Alaska Exemptions Act.

Section

- 15. Property exempt without limitation
- 30. Exemption of earnings and liquid assets

Section

- 115. Adjustment of dollar amounts

No. S-1004,

Sec. 09.38.010. Homestead exemption.

Cross references. — For current exemption amounts, see 8 Alaska Administrative Code 95.030.

NOTES TO DECISIONS

Avoidance of judicial lien to extent of impairment of homestead exemption — Section 522(f) of the Bankruptcy Code provides that "... the debtor may avoid the fixing of a [judicial] lien on ... property to the extent that such lien impairs an exemption" To determine whether there is such an impairment of a homestead exemption, the following steps are taken by the court: (1) all liens are ranked in order of priority (and equity, if any) to the extent of the value of the prop-

erty; (2) the gross amount of the homestead exemption is subtracted from the value of the property; and (3) from the remainder left, each lien is subtracted, one at a time, beginning with the most senior lien, until a judicial lien is reached. Then the judicial lien is subtracted. To the extent that all or any portion of the judicial lien exceeds the remainder derived in (2), above, it is voidable. In re Duncan, 43 Bankr. 833 (Bankr. D. Alaska 1984).

Section 1

→ **Sec. 09.38.015. Property exempt without limitation.** (a) An individual is entitled to exemption of the following property:

- (1) a burial plot for the individual and the individual's family;
- (2) health aids reasonably necessary to enable the individual or a dependent to work or to sustain health;
- (3) benefits paid or payable for medical, surgical, or hospital care to the extent they are or will be used to pay for the care;
- (4) an award under AS 18.67 (Violent Crimes Compensation Board) or a crime victim's reparations Act of another jurisdiction;
- (5) benefits paid or payable as a longevity bonus under AS 47.45;
- (6) compensation or benefits paid or payable and exempt under federal law;
- (7) liquor licenses granted under AS 04;
- (8) limited entry permits granted under AS 16.43, except as provided in that chapter.

(b) The right to benefits held by the state on behalf of an individual which may become payable by reason of disability, unemployment or illness, amounts held in the teachers' or public employees' retirement system, and child support collections made by the child support enforcement agency are exempt.

(c) Property of the state, a general law or home rule municipality, the Alaska State Building Authority, the Alaska Municipal Bond Bank Authority, or other state public corporation is exempt.

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Section 1 continued

(d) Real property held by a cemetery association established under AS 10.30 for the purpose of a cemetery and not exceeding 80 acres is exempt. (§ 2 ch 62 SLA 1982)

Editor's notes. — This section is set out to reflect the change in the name of the former "Alaska State Housing Authority" to the "Alaska State Building Au-

thority" made by § 1, ch. 103, SLA 1986. Implementation of this legislative action is made by the revisor of statutes under AS 01.05.031.

NOTES TO DECISIONS

Cited in Municipality of Anchorage v. No. 3083 (File Nos. S-699, S-831), P.2d
Baugh Constr. & Eng'g Co., Sup. Ct. Op. (1986).

Sec. 09.38.020. Exemptions of personal property subject to value limitations.

Cross references. — For current exemption amounts, see 8 Alaska Administrative Code 95.030.

Sec. 09.38.025. Exemption of unmatured life insurance and annuity contracts.

Cross references. — For current exemption amounts, see 8 Alaska Administrative Code 95.030.

Section 2

Sec. 09.38.030. Exemption of earnings and liquid assets.
(a) Except as provided in (b) and (c) of this section and AS 09.38.050, an individual debtor is entitled to an exemption of the individual debtor's weekly net earnings not to exceed \$175. The weekly net earnings of an individual are determined by subtracting from the weekly gross earnings all sums required by law or court order to be withheld. The weekly net earnings of an individual paid on a monthly basis are determined by subtracting from the monthly gross earnings of the individual all sums required by law or court order to be withheld and dividing the remainder by 4.3. The weekly net earnings of an individual paid on a semi-monthly basis are determined by subtracting from the semi-monthly gross earnings all sums required by law or court order to be withheld and dividing the remainder by 2.17.

(b) An individual who does not receive earnings either weekly, semi-monthly or monthly is entitled to a maximum exemption for the aggregate value of cash and other liquid assets available in any month of \$700, except as provided in AS 09.38.050. The term "liquid assets" includes deposits, securities, notes, drafts, accrued vacation pay, refunds, prepayments, and receivables.

(c) A creditor may levy upon earnings exempt under (a) and (b) of this section if the creditor's claim is

§ 09.38.030

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CODE OF CIVIL PROCEDURE

§ 09.38.115

Section 2

(1) enforceable against exempt property under AS 09.38.065(a)(1);
or

(2) enforceable under an order of a court of bankruptcy under 11
U.S.C. 1301 — 1330 (Bankruptcy Reform Act of 1978).

(d) If the individual debtor is a nonresident, the limitations on gar-
nishment imposed under 15 U.S.C. 1673 apply.

(e) The following property, unless exempt without limitation under
AS 09.38.015, upon receipt by and while it is in the possession of the
individual, shall be treated as earnings, income, cash, or other liquid
assets under this section:

(1) benefits paid by reason of disability, illness, or unemployment;

(2) money or property received for alimony or separate mainte-
nance;

(3) proceeds of insurance, a judgment, or a settlement, or other
rights accruing as a result of bodily injury of the individual or of the
wrongful death or bodily injury of another individual of whom the
individual was or is a dependent;

(4) proceeds or benefits paid or payable on the death of an insured,
if the individual was the spouse or a dependent of the insured; and

(5) amounts paid under a stock bonus, pension, profit-sharing, an-
nuity, or similar plan or contract, providing benefits by reason of age,
illness, disability, or length of service. (§ 2 ch 62 SLA 1982; am § 36
ch 6 SLA 1984)

Effect of amendments. — The 1984 reference in paragraph (2) of subsection
amendment changed the federal statutory (c).

Sec. 09.38.050. Increased exemption amount.

Cross references. — For current ex-
emption amounts, see 8 Alaska Adminis-
trative Code 95.030.

Sec. 09.38.065. Claims enforceable against exempt property.

NOTES TO DECISIONS

Execution on limited entry permit. due child support claims to execute
— Expressions of legislative intent in against an otherwise exempt limited
combination with the clear provisions of entry permit. *Anderson v. Anderson*, Sup.
of the 1982 Exemptions Act are persuasive Cl. Op. No. 3172 (File No. S-1320),
evidence that the legislature meant what P.2d (1987).
it said in permitting a parent with past

Sec. 09.38.115. Adjustment of dollar amounts. (a) The dollar
amounts in this chapter change, as provided in this section, according
to and to the extent of changes in the Consumer Price Index for all
Urban Consumers for the Anchorage Metropolitan Area compiled by
the Bureau of Labor Statistics, United States Department of Labor

en. The effective service upon the virtue of previous writs terminate.

1) An individual as payment for an increase in the total debt shall the request as exemption amount and all the individual, includ-

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ceeding under ons under AS 030 apply. (§ 2

property, or a nestead under a health aid a value limi- as been taken destroyed and entitled to an after the pro- ption of pro- id under AS proceeds are ion does not excess of the or 09.38.020.

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tracing selected by the individual claiming the exemption. (§ 2 ch 62 SLA 1982)

Section 3

Sec. 09.38.065. Claims enforceable against exempt property.

- (a) Notwithstanding other provisions of this chapter,
 - (1) a creditor may make a levy against exempt property of any kind to enforce a claim for
 - (A) child support;
 - (B) unpaid earnings of up to one month's compensation or the full-time equivalent of one month's compensation for personal services of an employee; or
 - (C) state or local taxes; and
 - (2) a creditor may make a levy against exempt property to enforce a claim for
 - (A) the purchase price of the property or a loan made for the express purpose of enabling an individual to purchase the property and used for that purpose;
 - (B) labor or materials furnished to make, repair, improve, preserve, store, or transport the property; and
 - (C) a special assessment imposed to defray costs of a public improvement benefiting the property.

(b) Except as provided in AS 09.38.070 limiting the enforcement of certain security interests, this chapter does not affect any statutory lien or security interest in exempt property.

(c) A creditor having a claim enforceable under (a) of this section against exempt property, before, at the time of, or a reasonable time after making a levy on property of an individual, shall serve on the individual a notice of the levy and of the basis for the creditor's right to make a levy on exempt property. (§ 2 ch 62 SLA 1982)

Sec. 09.38.070. Limitation on enforcement of certain security interests in exempt goods. (a) This section applies to a security interest, except a purchase-money security interest, or a security interest in a motor vehicle, in an item of goods (1) possessed by an individual, (2) being used by that individual or a dependent, and (3) exempt under AS 09.38.020(a) — (d).

(b) Unless the individual, after receiving written notice of the individual's rights under this section, voluntarily surrenders to the secured creditor possession of an item of goods to which this section applies, the creditor may not take possession of the item or otherwise enforce the security interest according to its terms without an order or process of court.

(c) The court may order or authorize process respecting any item of goods to which this section applies only after a hearing, upon notice to the individual of the hearing and of the individual's rights at it. The notice shall be as directed by the court. The order or authorization may prescribe appropriate conditions as to payments upon the debt secured

5-0686P

Cook
1/13/88

Original sponsors: Swackhammer and Larson

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 223 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to remedies for the collection of
7 debt involving permanent fund dividends and to the
8 exemption for dividends; amending Alaska Rule of
9 Civil Procedure 69; and providing for an effective
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18 and after payment is made to the individual. Notwithstanding
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20 shall include the case name and number with a dividend delivered to
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Pass through to individual

Pass section

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1 favor of the agency, court, or municipality [ALASKA COMMISSION ON
2 POSTSECONDARY EDUCATION], no appeal is pending, the time limit
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Original sponsors: Swackhammer and Larson

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^{new}
^{§ 1.}

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2 051 or 12.55.100;

3 (3) a court ordered fine;

4 (4) a court ordered probation fee under AS 12.55.105; or

5 (5) [(4)] a debt owed by an eligible individual to an
6 agency of the state, state court, or municipality unless the debt is
7 contested and an appeal is pending, or the time limit for filing an
8 appeal has not expired.

9 * Sec. ~~3~~⁴. AS 43.23.067 is amended to read:

10 Sec. 43.23.067. CERTAIN DIVIDEND CLAIMS [CLAIMS OF DEFAULTED
11 SCHOLARSHIP LOANS]. (a) ~~[AS 09.38 does not apply to permanent fund~~
12 ~~dividends taken to satisfy debts listed under AS 43.23.065(b), AS 14.~~
13 ~~43.120(i)].~~ Notwithstanding AS 09.35, execution on a claim to satisfy
14 a debt listed under AS 43.23.065(b) [AS 14.43.120(i)] is accomplished
15 by delivering a [certified] claim to the department containing the
16 following information:

17 (1) the name [AND SOCIAL SECURITY NUMBER] of the individual
18 whose dividend is being claimed and sufficient information to identify
19 the individual;

20 (2) the amount the individual owes to the agency of the
21 state, court, or municipality [ON THE SCHOLARSHIP LOAN]; [and]

22 *insert 2* (3) a statement that

23 (A) ^{if} the debt has not been contested, or, if contested, *the individual has had notice of the debt and opportunity*
24 _{to contest it}
25 that the issue has been resolved in favor of the agency, court,
26 or municipality [ALASKA COMMISSION ON POSTSECONDARY EDUCATION];
27 and

28 (B) if the debt has been contested and resolved in
29 favor of the agency, court, or municipality [ALASKA COMMISSION ON
POSTSECONDARY EDUCATION], no appeal is pending, the time limit

1 for filing an appeal has expired, or the appeal has been resolved
2 in favor of the agency, court, or municipality [COMMISSION].

3 (b) Upon receipt of a claim under (a) of this section the de-
4 partment shall ^{send notice} ~~notify the individual of the claim. The notice shall~~
5 ~~be sent~~ to the address provided in the individual's permanent fund
6 dividend application ^{which} ~~and~~ must provide the following information:

7 (1) the identity of the agency, court, or municipality
8 making the claim;

9 (2) the amount of the claim; ~~and~~

10 ^{10-5-81 T 3} → ⁴
11 ~~(2)~~ [(2)] notice that the amount of the permanent fund
12 dividend that does not exceed the amount of the claim, after deducting
13 the exemption under AS 43.23.065(a), will [SHALL] be paid to the
14 agency, court, or municipality [ALASKA COMMISSION ON POSTSECONDARY
15 EDUCATION] unless the agency, court, or municipality [COMMISSION]
16 releases the claim or the individual requests a hearing on the validi-
17 ty of the claim from the agency, court, or municipality making the
18 claim within 30 days after the date the notice is sent by the depart-
19 ment.

20 (c) If a hearing is requested by an individual, the agency,
21 court, or municipality making the claim shall notify the department.
22 The agency, court, or municipality making the claim is responsible for
23 affording the individual a hearing on the validity of the claim. ^{and notice of any appeal rights} A
24 hearing is not required under this subsection on the validity of the
25 debt that forms the basis for the claim. If no notice of a request
26 for a hearing or release of the claim is received by the department
27 from the agency, court, or municipality [AS 44.62.330 - 44.62.630
28 APPLY TO A HEARING REQUESTED BY AN INDIVIDUAL UNDER (b)(2) OF THIS
29 SECTION. IF A REQUEST FOR A HEARING IS NOT RECEIVED BY THE DEPARTMENT
WITHIN THE REQUIRED TIME LIMIT], the department shall pay to the

1 agency, court, or municipality [ALASKA COMMISSION ON POSTSECONDARY
2 EDUCATION] the amount of the permanent fund dividend that does not
3 exceed the amount of the claim, after deducting the exemption under
4 AS 43.23.065(a).

5 ^{AMEND}
4

* Sec. 4. AS 43.23.067, as amended by sec. 3 of this Act, has the
6 effect of amending Alaska Rule of Civil Procedure 69 by authorizing
7 agencies of the state, state courts, and municipalities to execute on
8 permanent fund dividends without using the execution procedures provided in
9 that rule.

10 * Sec. 5. AS 43.23.065(c) is repealed.

11 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).
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Adopted

A M E N D M E N T #1

Offered in the HOUSE

By Swackhammer

TO: CSHB 223 (Judiciary)

Page 2, line 6:

Delete "state court, or municipality"

After "state" insert "or state court"

Page 2, line 21:

Delete ", court, or municipality"

Insert "or state court"

Page 2, line 27:

Delete ", court, or municipality"

Insert "or court"

Page 3, line 1:

Delete ", court, or municipality"

Insert "or court"

Page 3, line 4:

Delete ", court, or municipality"

Insert "or court"

Page 3, line 10:

Delete ", court, or municipality"

Insert "or court"

Page 3, line 17:

Delete ", court, or municipality"

Insert "or court"

Page 3, line 18:

Delete ", court, or municipality"

Insert "or court".

Page 3, line 20:

Delete ", court, or municipality"

Insert "or court"

Page 3, lines 23 and 24:

Delete ", court, or municipality"

Insert "or court"

Page 3, line 25:

Delete ", court, or municipality"

Insert "or court"

Page 4, lines 1 and 2:

Delete ", court, or municipality"

Insert "or municipality"

Page 4, lines 5 and 6:

Delete ", court, or municipality"

Insert "or court"

Page 4, line 13:

Delete ", state courts, and municipalities"

Insert "and state courts"

A M E N D M E N T

K 3

[Signature]

By Swackhammer

Offered in the HOUSE

TO: CSHB 223 (Judiciary)

adopted

Page 2, line 12, after "43.23.065(b)":

Insert "for which payments are at least 45 days overdue" <

Page 2, line 14, after "43.23.065(b)":

Insert "for which payment is at least 45 days overdue"

Page 2, line 22, after "claim":

Insert ", including the date payment on the debt became due"

Page 3, line 13, after "claim":

Insert ", including the date payment on the debt became due"

Page 4, line 14, after "dividends":

Insert "in certain cases"

Adopted #5
AMENDMENT #1

Offered in the HOUSE

By Gruenberg

TO: CSHB 223 (Judiciary)

Page 1, after line 11:

Insert the following new bill sections to read:

"* Section 1. AS 09.38.015(a) is amended to read:

(a) An individual is entitled to exemption of the following property:

(1) a burial plot for the individual and the individual's family;

(2) health aids reasonably necessary to enable the individual or a dependent to work or to sustain health;

(3) benefits paid or payable for medical, surgical, or hospital care to the extent they are or will be used to pay for the care;

(4) an award under AS 18.67 (Violent Crimes Compensation Board), or a crime victim's reparations Act of another jurisdiction;

(5) benefits paid or payable as a longevity bonus under AS 47.45;

(6) compensation or benefits paid or payable and exempt under federal law;

(7) liquor licenses granted under AS 04;

(8) limited entry permits granted under AS 16.43, except as provided in that chapter;

(9) that portion of a permanent fund dividend exempted under AS 43.23.065(a).

* Sec. 2. AS 09.38.030(b) is amended to read:

(b) An individual who does not receive earnings either weekly, semi-monthly or monthly is entitled to a maximum exemption for the aggregate value of cash and other liquid assets available in any month of \$700, except as provided in AS 09.38.050 and AS 43.23.065(a). The term "liquid assets" includes deposits, securities, notes, drafts, accrued vacation pay, refunds, prepayments, and receivables.

* Sec. 3. AS 09.38.065(a) is amended to read:

(a) Notwithstanding other provisions of this chapter,

(1) a creditor may make a levy against exempt property of any kind, except property exempted under AS 43.23.065(a), to enforce a claim for

(A) child support;

(B) unpaid earnings of up to one month's compensation or the full-time equivalent of one month's compensation for personal services of an employee; or

(C) state or local taxes; and

(2) a creditor may make a levy against exempt property to enforce a claim for

(A) the purchase price of the property or a loan made for the express purpose of enabling an individual to purchase the property and used for that purpose;

(B) labor or materials furnished to make, repair, improve, preserve, store, or transport the property; and

(C) a special assessment imposed to defray costs of a public improvement benefiting the property."

Page 1, line 12:

Delete "* Section 1."

Insert "* Sec. 4."

Renumber the following bill sections accordingly.

Page 1, lines 18 - 19:

Delete "Notwithstanding AS 09.38, no"

Insert "No"

Page 4, line 11:

Delete "Sec. 3"

Insert "Sec. 6"

A M E N D M E N T

Offered in the HOUSE:

BY: SUND

TO: HB 223

PAGE: ~~1~~ 2

LINE: ~~22~~ 23

Insert new subsection (4), to read:

(4) a statement that payment on the debt is at least ¹²⁰~~45~~ days
overdue; and

Renumber following sections accordingly

INSERT # 1

* Section 1.

AS 09.38.065 (a) is amended by adding a ^{new} paragraph to read:

(3) a creditor may levy on a permanent fund dividend under AS 43.23.065 - 43.23.067, except that one hundred dollars ~~is~~ of the dividend is exempt from levy.

Insert 2

a statement of the basis ~~of~~ ^{for} the claim; and

(4)

Insert 3

(3) a statement of the basis for the claim; and

Insert 4

~~AS 43.23.067~~

(d) The commissioner shall include the case name and number with a dividend delivered to the court under this section.

Adopted

Amendment #2
Offered in the House by Sund
TO CS HB 223 (Jud)

Pg 2, Line 23

~~repeal subsec~~

Add new subsection to read:

(3) IF the claimant is a municipality or court, evidence of ~~the~~ judgement against the individual;

Renumber following sections accordingly

Repealed on Pg 3, Line 14

Repealed by #3

1 (1) child support obligations required by court order or
2 decision of the child support enforcement agency under AS 47.23.140 -
3 47.23.220;

4 (2) court ordered restitution under AS 12.55.045 - 12.55.-
5 051 or 12.55.100;

6 (3) a court ordered fine;

7 (4) a court ordered probation fee under AS 12.55.105; or

8 (5) [(4)] a debt owed by an eligible individual to an
9 agency of the state, state court, or municipality unless the debt is
10 contested and an appeal is pending, or the time limit for filing an
11 appeal has not expired.

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

13 (d) AS 09.38 does not apply to permanent fund dividends taken to
14 satisfy debts listed under (b) of this section.

15 (e) Before payment of part of an individual's permanent fund
16 dividend is made to a creditor under this section the commissioner
17 shall provide the individual with

18 (1) notification of the claim and amount claimed;

19 (2) a statement of the basis for the claim; and

20 (3) if applicable, identification of the case under which
21 the claim has been made, including court case name and case number.

22 * Sec. 4. AS 43.23.065(c) is repealed.

23 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

Mail to individual @ address
~~*appearing on PER APP*~~
Certified or Return Receipt?

Original sponsors: Swackhammer and Larson

1 IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE
2 CS FOR HOUSE BILL NO. 223 (State Affairs)
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 remedies for the collection of
7 debt involving permanent fund dividends and to the
8 exemption for dividends; and providing for an effective
9 date."

*Liab. in tax
For 800 - may
be over 100.*

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

*Allows
Private
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Section 1. AS 43.23.065(a) is amended to read:

(a) One hundred dollars [EXCEPT AS PROVIDED IN (b) OF THIS SECTION, 50 PERCENT] of the annual permanent fund dividend payable to an individual is exempt from levy, execution, garnishment, attachment, or any other remedy for the collection of debt. This exemption applies to an eligible individual's permanent fund dividend both before and after payment is made to the individual. Notwithstanding other laws, no other exemption applies to a dividend. (A creditor is not required to serve the individual with notice of levy under AS 09.38.080(c) and 09.38.085. [A writ of execution may be served on the commissioner by certified mail under the rules of court for service of a civil summons. The commissioner shall include the case name and number with a dividend delivered to the court in accordance with a writ of execution.]

*Execution
Civil
Rule
69
Attachment
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* Sec. 2. AS 43.23.065(b) is amended to read:

(b) The following claims, or voluntary assignments of dividends in payment or partial payment of the claims, have priority in the order listed over other claims on [AN EXEMPTION IS NOT AVAILABLE UNDER THIS SECTION FOR] permanent fund dividends: [TAKEN TO SATISFY]

*Process
Server*

OUTLINE OF PROCEDURE


- I. Agency, court, or municipality issues a bill (i.e., tax assessment, delinquent loan, license fee, court ordered fine, final judgment in lawsuit or utility bill) to the individual.
 - A. Individual must have notice and an opportunity to contest the bill.
 - B. If contested, debt must have been resolved in favor of the agency and no appeal must be pending or possible.
- II. Agency, court or municipality then sends a claim to DOR, containing
 - A. Name of debtor and other sufficient identifying information;
 - B. Amount of claim;
 - C. Basis of the claim; and
 - D. Confirmation that person had notice and an opportunity to contest the debt, and the debt has been resolved in claimant's favor.
- III. DOR then sends notice of claim to debtor, containing
 - A. Identity of claimant;
 - B. Amount of claim;
 - C. Basis of claim; and
 - D. Notice of right to hearing, if requested within 30 days.
- IV. If individual requests a hearing within 30 days, agency must provide it.
 - A. Hearing only on validity of claim, not underlying debt.
 - B. If individual loses, must notify person of appeal rights.
- V. If no hearing requested, or upon resolution of hearing in agency's favor, DOR pays claimant amount claimed, up to amount of PFD minus \$100.

POSSIBLE STATE CLAIMS

- I. State loans in default
 - A. Student loans
 - B. DCED loans
- II. Taxes
 - A. DOR taxes
 - B. Labor taxes
 - C. Insurance premium taxes (if individual liability exists)
- III. License Fees
 - A. Occupational licenses
 - B. Business licenses
 - C. Commercial fishing licenses
- IV. Child support enforcement claims
- V. Civil judgments and attorneys fee awards
- VI. Court fines
- VII. Court ordered restitution
- VIII. DNR land contracts and leases in default
- IX. Administrative regulatory fines - e.g., DEC, Motor Vehicles, DCED

House of Representatives

MEMORANDUM

TO: All House Members
FROM: Rep. C.E. Swackhammer 
DATE: February 10, 1988
RE: CSHB 223 (Fin)

RATIONALE

The original intent of House Bill 223 was to address the outstanding court fines and include statutory language that would allow the Courts to collect those monies via the permanent fund dividend program. There is a provision in current statutes that allows a state agency the right to collect a person's Permanent Fund Dividend check if that person owes money to that particular state agency. However, it was unclear whether the Court System was included as a state agency. House Bill 223 clarifies that issue.

The state currently has \$237.5 million in direct loans in default. This is only in the loan programs. This total does not include overdue court fines, overpaid unemployment benefits, unpaid child support, restitution fees nor probation fees. The Court System has approximately \$6 million outstanding in court fines.

EXEMPTION: The \$100 exemption offers an incentive to those who normally would not apply, knowing their dividend check is going to be attached as a means to repay a debt owed to a state agency. A \$100 exemption from levy, execution, garnishment, attachment or other remedy for collection of debt is provided in House Bill 223. This applies to all state agencies with the exception of child support enforcement which can attach an entire dividend check. It was estimated that the Child Support Enforcement Division would lose approximately \$600,000 in revenue and over \$70,000 in federal funds if the \$100 exemption was in effect for that agency.

COST OF COLLECTIONS: The administrative costs should not be borne by the dividend fund thus the general public does not have to bear the cost of debt collection through reduced dividends. Fees would be established by

the Department of Revenue that cover the administrative costs of processing all claims and assignments which will be paid for by the claiming agency.

DUE PROCESS: The question of due process is covered in House Bill 223. Before a claim can be made on an individual's permanent fund dividend check, the following must occur:

- 1) An administrative hearing must be offered to the individual on the basis of the debt. This hearing will be conducted by the agency making the claim.
- 2) The debt must be at least 45 days overdue.
- 3) A claim will be forwarded to the Department of Revenue.
- 4) The Department will send a 45 day notice to the individual advising that, absent notice of appeal by the claiming agency, the Department of Revenue will pay the dividend or the portion being claimed to the agency.
- 5) The individual shall be granted an administrative hearing on the basis of the claim upon request.

EFFECTIVE DATE: The effective date for House Bill 223 is April 1, 1989, which allows the Department of Revenue adequate time to process all dividend checks for 1988.

Your vote for CSHB 223 (Fin) would be greatly appreciated.

Thank you for your consideration.

PUBLIC OPINION MESSAGE

JH
JAN 18 1988

DEAR: REPRESENTATIVE SUND

NAME: MARTY LASSE
TITLE:
ADDRESS: BOX 7402
CITY: KETCHIKAN, AK. ZIP: 99901
PHONE: N/R-
BILL NO: HB 223

SUBJECT: TAKE PF DIVIDENDS WHEN DEBT OWED TO STATE
MESSAGE: I STRONGLY SUPPORT THE STATE OF ALASKA BEING ABLE TO ATTACH PERMANENT
AND CHECKS FOR DEBTS OWED THE STATE, ESPECIALLY FOR THOSE WHO OWE ON THEIR STUD
NT LOANS.

FOMID: 08112311
DATE: 01/15/88
TIME: 11:23:11
LIONAME: KETCHIKAN LIO

COPIES: REPRESENTATIVES

- ADAMS
- BOYER
- BROWN
- DAVIS
- FRANK
- GOLL
- LARSON
- POURCHOT
- RIEGER
- SWACKHAMMER
- WALLIS
- BARNES
- COTTEN
- GRUENBERG
- NAVARRE
- TAYLOR
- ULMER

NO RESPONSE REQUIRED

JOHN SUND, REPRESENTATIVE

2504 2nd Avenue
Ketchikan, Alaska 99901
(907) 225-5552

While in Juneau
P. O. Box V
Juneau, Alaska 99811
(907) 465-4919

January 21, 1988

Marty Lasse
Box 7402
Ketchikan, Alaska 99901

Dear Mr. Lasse:

Thank you for writing concerning House Bill 223, which would streamline procedures for State attachment of Permanent Fund Dividends. I appreciate your support.

We heard the bill and redrafted it in the House Judiciary Committee, which I chair. The Committee worked on the difficult balance which must be struck between streamlining the procedure for attachment and protecting the due process rights of individuals whose PFD's are attached. We didn't feel that it should be necessary for the State to go to court for a judgement against a person who is delinquent on a state loan. At the same time, however, there is a fair possibility for a mistake by the state bureaucracy, and the individual's rights to appeal have to be protected in cases where the wrong check may have been taken.

We feel that we have come up with a good approach, which, for example, protects \$100.- from any attachment whatsoever. Two levels of appeals have been provided for. First, the person must be provided an opportunity to appeal to the agency which wants the money. Second, an opportunity is provided to appeal the attachment itself.

The bill has moved out of the Judiciary Committee and is now in the House Finance Committee.

Thanks again for your letter. Please let me know if there is any further information I can provide.

Sincerely,

John Sund
Representative

FISCAL NOTE

REQUEST:

Revision Date: 1/15/88
Title: An act relating to collection of debt involving permanent fund dividends
Sponsor: Judiciary
Requestor: House Judiciary Committee

Agency Affected: Revenue
BRU: Permanent Fund Dividend

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
OPERATING						
PERSONAL SERVICES	-	56.7	56.7	56.7	56.7	56.7
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	83.1	63.1	63.1	63.1	63.1
SUPPLIES	-	1.8	1.8	1.8	1.8	1.8
EQUIPMENT	-	15.6	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	157.2	121.6	121.6	121.6	121.6
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER (PFD)	-	157.2	121.6	121.6	121.6	121.6
TOTAL	-	157.2	121.6	121.6	121.6	121.6

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	5	5	5	5	5
TEMPORARY	-	-	-	-	-	-

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Ervin B. Jones
Division: Permanent Fund Dividend

Phone: 465-2323

Date: 1/15/88

Approved by Commissioner: [Signature]
Agency: Revenue

Date: 1/15/88

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Department of Revenue
Permanent Fund Dividend Division
Fiscal Note Analysis
CSHB 223
1/15/88

Assumptions:

- 1) Since a claim under the proposed section 3 would be infinitely easier for state agencies and the courts to use, those entities would use this mechanism exclusively. It is impossible to estimate the number of such claims the Department of Revenue might receive. However, the following will give some idea of the volume.
 - a) In 1986, the Postsecondary Education Commission was able to get only 800 of their 2,000 attachments through the courts and served on the Department of Revenue. In 1987, under provisions similar to the proposal in this bill, the Commission was able to serve 5,038 certified claims on the Department of Revenue, a 500% increase.
 - b) The Child Support Enforcement Division currently serves approximately 6,012 attachments. This is an almost 50% increase over 1986.
 - c) The court system of Alaska processes approximately 25,000 criminal cases, alone, a percentage of which result in fines.
 - d) Under the present system, private parties account for 8,820 claims each year. Given that the cost of service will stay the same and that the amount of recovery has gone from a potential \$400 to a potential \$700, the number of private party services will increase dramatically.
 - e) In 1987, the department experienced 37,393 claims on Permanent Fund Dividends, almost twice as many as in 1986 and four times as many as in 1985. Even without the passage of this bill, we expect at least 50,000 claims in 1988. With the passage of this bill, the total numbers could easily reach 100,000.
- 2) I would assume and hope that this bill would not effect the 1988 dividend distribution. Assuming that the bill became law in mid-May it would be impossible to get everything in place, and complete the printing, programming, staff recruitment and training necessary to implement the bill before the filing deadline of June 30. By that time, the department has already received thousands of claims and assignments, made under the expectation that they will be processed under the current law. It is arguably not fair to take an applicant's dividend (except \$100) when the applicant filed under a law which provided for a 50% exclusion.

If the provisions of this bill are intended to take effect in mid-stream, a new analysis of costs will have to be done to include the cost of dealing with a very irate public.

Program Summary:

The department's responsibilities under this bill would be as follows:

- a) Forms Printing: The Department of Revenue would print an auxiliary Permanent Fund Dividend "Claim by Government Agency" to be distributed to all agencies identified in the definition of agency. The "PFD Claim form" would require of the agency:
 - 1) The name and address of the agency.
 - 2) The full name, address and birthdate of the obligee.
 - 3) The amount of the claim.
 - 4) A statement of the basis of the claim. (Some consistent, short form of reasons would have to be worked out with the many "agencies." The data capture of a free form reason would be very expensive.)
 - 6) If applicable, a case name and number.
- b) Systems/Programming Changes: The bill will require many changes, including the recognition of a new category of "claim form."
- c) Individual, private claims will continue to be processed one at a time, with unique problems. Claims from state agencies will be automated to some extent. The court system is not be prepared to provide automated services of claims via tape matches and so the claims will be served and processed the same as private claims.
- d) Agencies which are part of the Alaska State Accounting System will be paid through the system with supporting information provided. The court system will be paid by check.
- e) The department currently receives thousands of contacts from debtors whose dividends have been attached, despite our best efforts to steer their complaints, appeals, etc. to the creditor who served the attachment. At the point when 50,000 - 60,000 Alaskan families are being affected by this expedited process, the number of such contacts, and the number of contacts with the Legislature, the Governor's Office and the Ombudsman is definitely going to increase.

1. Positions:

2 PPT Accounting Clerk I, R8,
@ \$2,270.18/Mo each including
salary and benefits for
8 months = \$36.3

These positions will assist the existing Accounting Clerk II in the processing of the existing attachments and assignments. This also involves correspondence and telephone contact with the many competing garnishors.

3 PPT Data Processing Clerk I,
R8, @ \$2,270.18/Mo each including
salary and benefits for 3 months = 20.4

These positions will perform the
data capture necessary on the
claims to enable the department to
comply with the provisions of
the bill.

Total Personal Services \$56.7

2. Other Costs:

a) Travel: None.

b) Contractual:

Printing \$5.1

Includes printing costs associated
with 75,000 claim forms, 60,000
notices of appeal rights, and
60,000 notices of claim.

Postage 28.0

Includes postage for claim
notices and bulk shipment of
claim forms to agencies.

Data Processing Chargeback from 50.0
Department of Administration
estimated 50.0 in FY89, including
development; 30.0 in years
thereafter.

TOTAL Contractual \$83.1

c) Equipment

Purchase 2 Wang 4250 workstations
to provide access to the PFD
System for the accounting staff = \$4.8

Purchase 3 Wang 4230 workstations
for data capture = 7.2

Purchase 1 Wang VS-100 IOP = 3.6

TOTAL Equipment \$15.6

d) Supplies: \$1.8

TOTAL COST \$157.2

Suggested Amendments:

It is impractical for the Department of Revenue to be sending thousands of notices of claim and appeal rights to applicants, on behalf of other agencies. The notices and all further contact should be by the creditor agency, not Revenue. We will need to work with the concerned agencies and the committee staff to effect this change.

Attachments: None.

Revised for publication

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

June 8, 1987

Honorable Steve Cowper
Governor
State of Alaska
P.O. Box A
Juneau, AK 99811

Re: HCS CSSB 227(SA) am H -- state
agency claims to PFD's
Our file: 883-87-0053

Dear Governor Cowper:

At Bob Evans' request on your behalf, we have reviewed HCS CSSB 227(SA) am H, a bill purportedly designed to make it easier for state agencies to attach permanent fund dividends of individuals owing debts to the state. If it were to become law, this bill would allow state agencies to execute on an individual's permanent fund dividend administratively, without the need to obtain a prior court judgment and writ of execution. We understand that the Commission on Postsecondary Education and the Department of Commerce and Economic Development each supported this bill, on the assumption that they would recover significant amounts of money through this process. We do not share their confidence, and for this reason, as well as other administrative and legal considerations, we recommend that you veto this bill.

Under the bill, execution by a state agency on a permanent fund dividend is exempted from the standard execution procedures contained in AS 09.35. Instead, a state agency need only serve the Department of Revenue with a claim identifying the individual whose dividend is sought (by name and social security number), the amount the individual owes the agency, and a statement that the debt is not currently contested. Upon receiving a claim, the Department of Revenue then is to notify the individual, by certified mail, of the claim and of the individual's right to a hearing before the agency making the claim.

This hearing requirement is our first concern. The bill provides that the hearing must be held under the administrative adjudication portion of the Administrative Procedure Act (APA), AS 44.62.330 -- 44.62.630. Even though the scope of the hearing is limited to the validity of the agency's claim to the dividend, and not to the validity of the underlying debt (which, presumably, has already been resolved), APA hearings are still

extremely expensive. Many agencies that might use this program have never operated under the APA and will require education and information on appropriate procedures, probably from this department. Under the APA, the hearing must be presided over by an independent hearing officer -- a lawyer with at least two years of experience, generally hired from the private sector. AS 44.62.350 and AS 44.62.450. With the notice sent by the Department of Revenue to the dividend applicant about the claim, which will have to conform to the form outlined in AS 44.62.380(b), the department will have to include a postcard, addressed to the agency making the claim, entitled "Notice of Defense", which the dividend applicant may simply sign and mail in to request and obtain a hearing. AS 44.62.360 and 44.62.380. If the applicant mails in the "Notice of Defense" postcard, the affected agency must then send a notice of hearing under AS 44.62.420. Finally, at the conclusion of the hearing, a written decision must be rendered. AS 44.62.510.

All of these procedures are expensive and time-consuming, and we believe that these factors have not been adequately considered or addressed by the agencies, especially in light of the ease with which an aggrieved applicant can obtain a hearing. The Department of Revenue estimates that there will be 6,000 -- 8,000 claims by state agencies under this Act. Even if the issues involved in the hearings are relatively simple, the sheer number of hearings that will be required under this Act make it likely that state savings, if any, will be minimal.

The Department of Revenue is concerned about an additional expense that will be incurred if this bill becomes law. An amendment adopted on the house floor added a requirement that the notice of claim sent by the Department of Revenue be mailed by certified mail. Page 2, line 7. This requirement adds a significant cost to the department's administration of this program, both in additional postage and in the tracking of return receipts.

We have been contacted by representatives of the Municipality of Anchorage, who have raised additional issues with respect to this bill. The municipality is interested in using the procedures in the bill to collect on debts owed to it. However, the bill is limited to collection of debts owed "to an agency of the state." Proposed AS 43.23.067(a), referring to AS 43.23.065(b)(4). The first issue is whether a municipality qualifies as an agency of the state, qualified to use this expedited execution procedure. As a general proposition, a municipality is not a state agency; municipalities are generally referred to as "political subdivisions" of the state. On the other hand, the

Municipality of Anchorage has indicated that the debts it would seek to collect under the program are fines imposed by the state courts for municipal violations. These fines are payable to the court, which then turns the money over to the municipality. Since the fine is owed and payable to the court, a good argument can be made that these fines constitute debts owed to an agency of the state. If this bill becomes law, we believe that the municipality will attempt to make this argument, which may result in litigation on this question. The municipality also recommends that you veto this bill and persuade the legislature to pass an alternate bill clearly applicable to agencies of the state and its political subdivisions.

We also note another potential legal problem raised by this bill. Rule 69(a), Alaska Rules of Civil Procedure, provides that the sole means of execution on a court judgment in this state must be by a writ of execution, unless the court directs otherwise. It appears that this bill would effect a change in the execution procedures prescribed by this court rule. Article IV, sec. 15, of the Alaska Constitution provides, however, that the legislature may not change a court rule absent a two-thirds vote of each legislative body (which, in fact, this bill received). Furthermore, to change a court rule the bill must specifically state that its purpose is to effect such a change (which this bill did not state). Leege v. Martin, 379 P.2d 447 (Alaska 1963). Thus, for those cases where a judgment has been obtained by the state concerning the debt in question (which we believe will occur in the majority of cases), a question exists as to whether the procedures outlined in this bill may be used or whether that Rule 69(a) provision controls.

Another problem we have identified is the requirement that the agency making a claim provide the Department of Revenue with the individual's social security number. Many times a state agency with a debt owed to it does not know the debtor's social security number. (For example, prisoners are not required to provide social security numbers to the Department of Corrections.) A far better approach would be to require a social security number or other appropriate identification.

Throughout the legislative session, there were several bills being considered to achieve the purposes of HCS CSSB 227(SA) am H. Unfortunately, it appears that the bill that passed was not the bill that received the most input and work. See, for example, House Bills 13 and 223. Since this legislation does not contain a special effective date, and thus would take effect 90 days after you sign it or after it becomes law without your signature, administrative impossibilities prevent it from

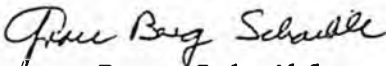
Hon. Steve Cowper, Governor
File No. 883-87-0053

June 8, 1987
Page 4

affecting this year's permanent fund dividend program.

We recommend that you veto this bill, due to its serious problems, while endorsing the concept, and encourage the legislature to complete a better bill next session. If that bill has an immediate effective date, it can still apply to next year's dividend program. A draft veto message is attached for your consideration.

Sincerely,


Grace Berg Schaible
Attorney General

GBS/JWB/lb/nb

cc w/enc.: Hon. Hugh Malone, Commissioner
Dept. of Revenue

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 ~~discharge of a~~ ~~taxpayer's~~ ~~debt~~ ~~to~~ ~~the~~ ~~agency~~ ~~and~~ ~~therefore~~ ~~not~~ ~~income~~ ~~to~~ ~~the~~ ~~taxpayer~~.

4
STEVE COWPER, GOV.

REPLY TO:

1031 W 4th AVENUE
SUITE 200
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

APR 03 1987

DEPARTMENT OF LAW

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 supersede 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

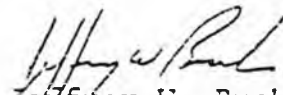
April 2, 1987
Page 4

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

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

053

June 15, 1987

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: HSC CSSB 227 (SA) am H --
state agency claims to
PFD's

Dear Representative Grussendorf:

Under the authority of art. II, sec. 15 of the Alaska Constitution, I have vetoed HSC CSSB 227 (SA) am H. The proposed Act would have permitted state agencies to attach permanent fund dividends of individuals owing debts to the state without using normal execution procedures.

I commend the efforts of the legislature to make collection of state debts easier. However, serious problems in administration of this proposed Act make it necessary that I ask the legislature to pass alternative legislation next session to deal with these concerns. I understand that substantial work has been done on HB 223, which may be an appropriate vehicle. If the legislature includes an immediate effective date on legislation passed next session, no time will be lost. HCS CSSB 227(SA) am H has no specified effective date, and therefore, because of the administrative impossibility of implementing it after a mid-September effective date, could not affect this year's dividend distribution.

My primary concern is that the proposed Act is far too costly. By requiring administrative hearings under the Administrative Procedure Act (APA), AS 44.62.330 -- 44.62.-630, any savings realized by the legislation through expedited executions would be lost in added costs. These hearings are extremely easy for a debtor to request but are very expensive for an agency to hold. In addition, the proposed

The Honorable Ben Grussendorf

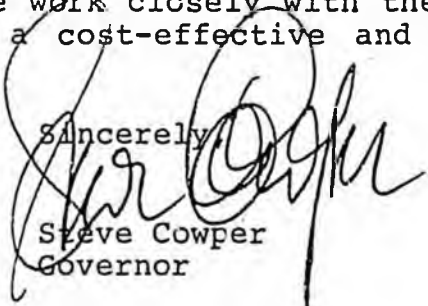
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June 15, 1987

Act attempts to modify the execution procedures provided under Rule 69(a), Alaska Rules of Civil Procedure, without following the requirements of the Alaska Constitution, art. IV, sec. 15, for amendment of court rules. Finally, the proposed Act fails to take into account the needs of municipalities, which should also have an opportunity to use these expedited procedures.

I recognize that an argument can be made that I should sign this bill and work on correcting its infirmities next session. However, I believe that that strategy might not result in passage of corrective legislation. I believe that it would be better to veto this bill and have the Departments of Law and Revenue work closely with the legislature next session to pass a cost-effective and constitutional bill.

Sincerely,



Steve Cowper
Governor

COMMITTEE SUBSTITUTE for HOUSE BILL 223 (STATE AFFAIRS)

CS for HOUSE BILL 223 (State Affairs)
INDEX

- SECTION 1: HOUSE BILL 223
- SECTION 2: SECTIONAL ANALYSIS
- SECTION 3: FISCAL NOTES
- SECTION 4: OUTSTANDING COURT FINES RESEARCH
- SECTION 5: STATE LOANS STATISTICS, DELINQUENCY AND
DEFAULT
- SECTION 6: CURRENT STATUTES

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____ Bill Version: CS HB 223 (State Affairs)
 Publish Date: _____
 Revision Date: 5-5-87 Agency Affected: Alaska Court System
 Title: An act relating to permanent BRU: Trial Courts
 fund dividends
 Sponsor: Swackhammer, Larson Components:
 Requestor: Rep. Swackhammer

EXPENDITURES/REVENUES: (Thousands of Dollars)						
	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
Personal Services	81.3	81.3	81.3	81.3	81.3
Travel
Contractual
Supplies
Equipment	9.2	. . . .	. . . .	. . . .	. . . .
Land & Structures
Grants & Claims
TOTAL OPERATING	0.0	90.5	81.3	81.3	81.3	81.3
CAPITAL
REVENUE	See analysis	. . . .	. . . .	. . . .	. . . .

FUNDING: (Thousands of Dollars)						
	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
General Funds	0.0	90.5	81.3	81.3	81.3	81.3
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	90.5	81.3	81.3	81.3	81.3

POSITIONS:						
	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
Full-time	1.0	1.0	1.0	1.0	1.0
Part-time	3.0	3.0	3.0	3.0	3.0
Temporary

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by: Robert G. Fisher, Fiscal Officer Phone: 264-8215
 Division: Alaska Court System Date: 5-5-87
 Approved by: *Stephanie J. Cole* Stephanie J. Cole, Deputy Director Date: 5-5-87
 Agency: Alaska Court System

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management & Budget
 Impacted Agency(ies)
 Senate Secretary

FISCAL ANALYSIS
CSHB 223 (STATE AFFAIRS)

The court system's fiscal note is based on work requirements attributable to issuing writ of execution. Based on information provided by the Anchorage trial court, it is assumed that fines are due in approximately 1/6 of criminal cases charged under state law (not including traffic infractions). The clerical work require to process a writ of execution will include physical review of the file, cross-checking against various monitoring lists maintained by the clerk's office including those for outstanding warrants, and bookkeeping. All of this work must be completed with a high level of accuracy, since execution on a dividend for a defendant who has already paid the fine could result in costly litigation. The supervisor of the criminal division of the Anchorage clerk's office estimates that approximately three hours will be required to issue a writ of execution and arrange for delivery to the Department of Revenue, as well as to account for the dividend when it is received. Substantial time will also be expended reviewing old files to determine if a writ of execution should be issued to obtain a current dividend.

Although additional clerical positions would be required to perform this function, at an ongoing cost of \$81,300, the state will break even on this expenditure if an average of \$38 is collected from the dividend for each outstanding fine. A review of court records indicates an average fine of \$400 so it appears the work required to issue a writ of execution will be offset by revenue.

ALASKA COURT SYSTEM

CS HB 223 (State Affairs) - FISCAL ANALYSIS

Personal Services:	Salary	Benefits	Total
Court Clerk II, Range 10B, Anchorage, PFT - 12 months	\$22,836	\$8,290	\$31,126
Court Clerk II, Range 10B, Fairbanks, PPT - 6 months	12,870	4,468	17,338
Court Clerk II, Range 10B, Kenai, PPT - 6 months	12,120	4,301	16,421
Court Clerk II, Range 10B, Palmer, PPT - 6 months	12,120	4,301	16,421

Total Personal Services			81,306
Equipment: (one time cost)			
Desk, chair, filing cabinet, and typewriter for each new employee			9,232

Total First Year Cost			\$90,538
			=====

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST _____

Bill Version: HB 223

Publish Date: _____

Revision Date: _____

Agency Affected: Revenue

Title: An act relating to permanent fund dividends

BRU: Administrative Services

Sponsor: Swackhammer, Larson

Components: _____

Requestor: State Affairs

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES	-	208.6	105.9	105.9	105.9	105.9
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	83.1	63.1	63.1	63.1	63.1
SUPPLIES	-	1.8	1.8	1.8	1.8	1.8
EQUIPMENT	-	15.6	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	309.1	170.8	170.8	170.8	170.8
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	309.1	170.8	170.8	170.8	170.8
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	309.1	170.8	170.8	170.8	170.8

POSITIONS:

FULL-TIME	-	5	3	3	3	3
PART-TIME	-	4	4	4	4	4
TEMPORARY	-	-	-	-	-	-

ANALYSIS: Attach a separate page if necessary

(See attached)

Prepared By: Ervin B. Jones
Division: Administrative Services

Phone: 465-2313
Date: 4/13/87

Approved by Commissioner: [Signature]
Agency: Revenue

Date: 4/19/87

Distribution (by Agency preparing fiscal note):

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

Department of Revenue
Administrative Services Division
Fiscal Note Analysis
HB 223
4/13/87

Assumptions:

- 1) Since a claim under the proposed subsection AS 43.23.005 would be infinitely easier for state agencies, municipalities and the courts to use, those entities would use this mechanism exclusively. It is impossible to estimate the number of such claims the Department of Revenue might receive. However, the following will give some idea of the volume.
 - a) The Postsecondary Education Commission recently testified at hearings for HB 133 that they were able to get only 800 of their 2,000 attachments through the courts. Were that true for all "agencies," we could expect a 250% increase over the current number of attachments by state agencies.
 - b) The City-Borough of Juneau has 3,500 delinquent accounts for such things as property taxes, sales tax, utilities, harbor fees, hospital bills, etc.
 - c) The Anchorage Telephone/Utility has 5,800 "real problem cases."
 - d) Between Anchorage and Juneau, there are over 22,000 outstanding traffic tickets.
 - e) The court system of Alaska processes approximately 25,000 criminal cases, alone, a percentage of which result in fines.
 - f) The Child Support Enforcement Division currently serves approximately 4,500 attachments.
 - g) All other state agencies combined file approximately 2,000 attachments. It is fairly easy to envision 60,000 claims being filed under Section 1 of HB 223.
- 2) I would assume and hope that this bill would not effect the 1987 dividend distribution. Assuming that the bill became law in mid-May it would be impossible to get everything in place, and complete the printing, programming, staff recruitment and training necessary to implement the bill before the filing deadline of June 30.
- 3) It is assumed that the several legal questions raised by the Attorney General and Legal Services are resolved and that the bill as drafted is passed into law. Please see Attorney General memo of 4/2/87, file no. 663-87-0446.

Program Summary:

The department's responsibilities under this bill would be as follows:

- a) Forms Printing: The Department of Revenue would print an auxiliary Permanent Fund Dividend "Claim by Government Agency" to be distributed to all agencies identified in the definition of agency. The "PFD Claim form" would require of the agency:
 - 1) The name and address
 - 2) The full name, address and birthdate of the obligee.
 - 3) The amount of the claim.
 - 4) A statement of the basis of the claim. (Some consistent, short form of reasons would have to be worked out with the many "agencies." The data capture of a free form reason would be very expensive.)
 - 5) A statement by an officer of the agency of the basis for its belief that the individual is eligible to receive a dividend for that year. This statement would need to include an affirmation that the individual obligee was known to have physically resided in Alaska for the full eligibility period, that the individual was still a resident of Alaska and most importantly, a statement of the basis for belief by the agency that the individual obligee has the intent to remain a resident.
 - 6) If applicable, a case number.
- b) Systems/Programming Changes: The entire dividend system is premised upon processing applications voluntarily filed by applicants claiming to be residents. The bill will require many changes, including the recognition of a new category of "claim form," the identification and denial of competing applications from the obligees, allocating dividend payments to multiple claimants, notification of obligees of claim(s) filed and reconciliation of all amounts paid. I envision this as a fairly major change to the existing PFD system which will require additional programming staff and computer resources.
- c) Claims filed under Section 1 will have to be microfilmed, reviewed for completeness, and data captured. Notice of acceptance or non-availability of funds will be sent to the claimant.
- d) Incomplete claims will result in request letters.
- e) All claims based on an agency's belief that the obligee is eligible will be reviewed by the Enforcement Division for residency. All claims will be matched against the PFD application file. Competing PFD applications will be denied with statutory appeal rights being extended, and hearings provided. Information from competing applications will be used to help verify residency, and when there is no competing application, Enforcement may contact obligees directly to obtain information.
- f) Agencies which are part of the Alaska State Accounting System will be paid through the system with supporting information provided. Municipalities and the court system will be paid by check.

Questions:

- 1) As noted in Mr. Bush's 4/2/87 memo, it is unclear as to what the Department of Revenue is supposed to do with the residual of a Permanent Fund Dividend if a claim is for less than the full amount. Do we pay the individual, as with normal attachments? What is the obligee never filed on his own behalf?
- 2) Does a claim, regardless of the face amount, constitute an application for an "eligible individual" for purposes of calculating the value of the dividend?
- 3) If a claim under Section 1 is the only application filed on behalf of an individual, is it subject to attachment? Is the balance, after AS 43.23.065(b) claims, assignments and attachments are paid, subject to normal attachment?

1. Positions:

3 PFT Accounting Clerk I, R8,
@ \$2,221.64/Mo each including
salary and benefits for
12 months = \$79.9

These positions will assist the existing Accounting Clerk II in the processing of the existing attachments and assignments. This also involves correspondence with the many competing garnishors.

2 PPT Data Processing Clerk I,
R8, @ \$2,221.64/Mo each including
salary and benefits for 3 months = 13.3

These positions will perform the data capture necessary on the claims to enable the department to comply with the provisions of Sec. 1

2 PFT Analyst/Programmer IV, R19,
@ \$4,281/Mo each including
salary and benefits for 12 months = 102.7

This would be a one-time cost for FY88 development. The maintenance of the system changes will be accomplished by the existing staff.

2 PPT Document Processor I, R7,
@ \$2,117.76/Mo each including
salary and benefits for 3 months = 12.7

These positions will assist in
the denials of approximately
60,000 applicants and the
resulting appeals.

Total Personal Services \$208.6

2. Other Costs:

a) Travel: None.

b) Contractual:

Printing \$5.1

Includes printing costs associated
with 75,000 claim forms, 60,000
denial notices, and 60,000 notices
of appeal rights, and 60,000
notices of claim.

Postage 28.0

Includes postage for denial notices,
claim notices and bulk shipment of
claim forms to agencies.

Data Processing Chargeback from 50.0
Department of Administration
estimated 50.0 in FY88, including
development; 30.0 in years
thereafter.

TOTAL Contractual \$83.1

c) Equipment

Purchase 3 Wang 4250 workstations
to provide access to the PFD
System for the accounting staff = \$7.2

Purchase 2 Wang 4230 workstations
for data capture = 4.8

Purchase 1 Wang VS-100 IOP = 3.6

TOTAL Equipment \$15.6

d) Supplies: \$1.8

TOTAL COST \$309.1

Suggested Amendments:

As suggested in Mr. Jeffrey Bush's AG's memo, file no. 663-87-0446.

Attachments: None.

CS for HB 223 (State Affairs)
SECTIONAL ANALYSIS

SECTION 1: A provision is added so that it is clear that \$100 is exempted from levy, execution, garnishment, attachment or any other remedy for the collection of the debt. A creditor seizing the non-exempt portion of the dividend is not required to serve a notice of levy. A writ of execution may be served on the Commissioner of Revenue by certified mail.

SECTION 2: The claims or voluntary assignments of dividends in payment or partial payment are given a priority to include court ordered fines and agencies to include state courts and municipalities.

SECTION 3: This new material exempts debts listed under (b) from AS 09.38, which deals with exemptions in general. Before payment from an individual 's Permanent Fund Dividend is made to a creditor, the Commissioner provides the individual with notification of the claim and amount claimed, a statement of the basis for the claim, and, if applicable, identification of the case under which the claim has been made.

SECTION 4: This repeals current statute AS 43.23.065(c).

SECTION 5: This act takes effect immediately.



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

March 16, 1987

MEMORANDUM

TO: Representative Swack Swackhammer

ATTN: Tom Wright

FROM: Penelope Weyhrauch
Legislative Analyst

RE: Outstanding Court Fines: Attaching Permanent Fund Dividends
Research Request 87.187

You asked for information on the collection of fees and fines levied by the Alaska Court System, and the amount of fees and fines that are presently outstanding. You were interested in the Alaska Court System's collection efforts, particularly the procedures and problems in attaching a debtor's Permanent Fund Dividend (PFD) to pay fines levied by a judicial officer.

Fees and Fines

There are no outstanding filing fees owed to the Alaska Court System because fees are always paid at the time of filing a legal document. Fees are assessed of everyone and are standard--that is, everyone pays the same amount when filing a particular document. Attorney fees could be assessed against a party in a lawsuit, but these fees would generally be payable to the other party and not to the court. However, in a criminal case, a court will appoint an attorney for those who are financially unable to obtain one, but may require that a defendant pay a portion of the attorney's fees.

A fine is a penalty, the amount of which is set on an individual basis by a judicial officer. Karla Forsythe, Staff Counsel for the Alaska Court System, said that there are no centralized records on how much is owed to the State in outstanding fines. She said that each court in the state has its own records, only some of which are computerized. In April 1986, the Court System estimated that over \$6 million was owed for outstanding fines, court appointed attorney fees, and restitution to private parties (Attachment A). Ms. Forsythe said that specific amounts outstanding in each of these categories is not available. She also said that the total amount outstanding has probably increased during the past year.

Collection Efforts

According to Ms. Forsythe, very little is done by the Court System to collect outstanding fines and attorney fees owed to the State. There is no collection agency within the judicial branch, nor does the Alaska Court System believe that the collection of outstanding balances is a judicial function. The Court System believes that collection should be done by the executive branch and has emphasized that in letters to the Attorney General's office (Attachment B). In regard to collection efforts by the Court System, Arthur Snowden, Administrative Director of the Court System, wrote "The Supreme Court has indicated that it is unwise if not unconstitutional as a violation of the doctrine of separation of powers for the court to combine judicial and executive functions."¹ According to Ms. Forsythe, the Attorney General's office has not responded to the Court System's request for executive branch action. Patrick Conheady, Assistant Attorney General, agreed that the collection of fines is an executive branch function.

Bob Fisher, Fiscal Officer for the Court System, was not aware of the collection efforts that had been made by the courts, since that information is not centralized. He suggested that I contact the clerks of the larger Alaska courts. Susan Paterson, Clerk of the Court in Fairbanks, said that over \$8,000 was collected from the assignment of PFDs by defendants with outstanding court fines. (The assignment is the voluntary signing over of an individual's right to a PFD.) David Haas, Clerk of the Court in Juneau, said that no efforts for the collection of outstanding court fines have been made by the Juneau office. I was unable to reach the clerk of the Anchorage court.

Attaching Permanent Fund Dividends

The Department of Revenue is responsible for issuing PFDs. According to Mike McGee, Chief of PFD Operations in the department, State agencies can garnish 100 percent of an individual's PFD if the individual has a debt to the State.² Child support obligations have the highest priority for garnishment. Court-ordered restitution and probation fees are second in priority and all other attachments are applied on a "first come, first served basis."³

¹Letter to Hal Brown, Attorney General, from Arthur Snowden, Administrative Director, Alaska Court System, July 17, 1985.

²Federal agencies may garnish 100 percent of an individual's PFD. All other creditors can garnish only 50 percent of an individual's PFD.

³Alaska Statutes 43.23.065 (Attachment C).

According to Mr. McGee, the garnishment of an individual's PFD is initiated by the Department of Revenue when a court order or an administrative levy is received from a State agency.⁴ An administrative levy occurs when an agency makes an administrative decision that a person has a monetary obligation to the agency. The agency presents a list of persons with obligations to the Department of Revenue and the department matches this with a list of persons receiving PFDs. The dividends of persons with obligations to State agencies are then garnished. For example, the Child Support Enforcement Division of the Department of Revenue routinely uses administrative levies to garnish PFDs of persons who are found to be delinquent in child support payments.

Individuals who do not apply for PFDs have no claim to a dividend and therefore, a State agency to which individuals owe money cannot garnish their PFDs. Mr. McGee said that for a garnishment to occur, a name must match exactly the name under which a person applied for a PFD. If the agency sends a name for garnishment that does not have a match in the PFD listing, the PFD will not be garnished.

Ms. Forsythe and Susan Miller, Manager of Special Projects at the Alaska Court System, said that there are several reasons that the Court System has not been more aggressive in garnishing PFDs for the payment of outstanding fines.⁵

- **Responsibility for Collection.** The Court System maintains that the collection of fines is a function of the executive branch and not the judicial system.

- **Court Authority for Garnishment.** According to Ms. Miller, because no statute gives a judicial officer specific authority to garnish an individual's PFD, some judges do not believe that they have the authority to do so. Each judge in the Court System makes his/her own decision regarding the limits of his/her authority if there is no specific legal guideline. Ms. Miller said that it was her opinion that under the common law, courts have the authority to use civil execution procedures to collect fines. Ms. Forsythe said that the legislature could set clear authority for the courts to attach PFDs.

⁴For the purposes of this memorandum, "attaching" and "garnishing" are used interchangeably.

⁵Conference Call, Karla Forsythe and Susan Miller of the Alaska Court System, March 11, 1987.

Attaching Property for the Collection of Criminal Fines. Several attorneys with the Court System with whom I spoke mentioned that they were not sure about the legality of attaching property for outstanding fines levied in a criminal case.⁶ Attaching property has always been associated with civil judgments and imprisonment has been associated with criminal judgments. Patrick Conheady, with the Department of Law, however, believes that AS 12.55.025 (f) establishes clear authority for the garnishing of a defendant's PFD for the payment of an outstanding fine. This statute states that "...a sentence that the defendant pay money, either as a fine or in restitution or both, constitutes a lien in the same manner as a judgment for money entered in a civil action." (Attachment E).

The Civil Execution Process is available for individuals and State agencies who have won a civil judgment against an individual and are attempting to attach property as payment. Alaska courts are required to adhere to the same process as individuals to attach a person's property.⁷ According to Ms. Forsythe, the civil execution process--AS 09.35 and AS 09.38--provides protection to debtors by providing notice and substantial time frame requirements so that debtors are assured notice and time to respond to attachment.

While protecting the debtor, this process would require paperwork, time and manpower of the courts. Many courts do not have the staff or the time to engage in the process. Ms. Forsythe said that the legislature could address this by allowing the court to pursue the attachment of an individual's PFD in an abbreviated process. She suggests that attachment could be as simple as notice to the debtor in the form of a letter. Ms. Forsythe also said that the Court System has been looking into the possibility of using the relatively simple administrative levy process to garnish PFDs, rather than the complex civil execution process.

Exemptions to the Attachment of Property are included in the civil execution process and are available to debtors. According to Ms. Forsythe, there has been confusion over whether the exemption of liquid assets in AS 09.38.030(b) (Attachment F), applies to PFDs or not. This exemption allows an individual to retain cash and other liquid assets of at least \$700 per month. Thus, an individual's PFD could be exempt from attachment if this statute applies.

⁶Susan Patterson, Clerk of the Court in Fairbanks, said that some people believe that AS 12.55.051 limits the penalty for the nonpayment of outstanding court fines to imprisonment (Attachment D).

⁷This process is detailed in Attachment G, "Execution Procedure for Judgment Creditors", Alaska Court System Handbook, July 1986, pp. 10 - 16.

Representative Sw .hammer
March 16, 1987
Page 5

Ms. Forsythe said that some people argue that AS 09.38.030(b) does not apply to PFDs because AS 43.23.065 (Attachment C) provides the only statutory exemption for the attachment of PFDs.⁸ Alaska Statute 43.23.065 exempts one-half of a person's PFD from attachment except for child support, court-ordered restitution, and debts owed to State agencies. An outstanding fine is considered a debt to the State and, in that situation, an individual's PFD would not be included in the partial exemption provided by AS 43.23.065.⁹

* * *

I hope this information is useful to you. If you would like us to research the collection of court fines in other states, we would be happy to do so. If you have any questions or would like additional information, please contact our agency.

Attachment

⁸This statute is not a part of the civil execution process.

⁹Ms. Forsythe said that the legislature could aid the Court System in the collection of PFDs for outstanding fines by clarifying these statutes. She suggested legislation which states that the liquid assets exemption in AS 09.38.030(b) does not apply to PFDs, and a clarification as to whether or not AS 43.23.065 is the sole statutory exemption relating to PFDs.

ATTACHMENT A
Letter from Arthur Snowden to Attorney General Brown
April 3, 1986



Alaska Court System

State of Alaska

303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274 8611

April 3, 1986

Harold M. Brown, Attorney General
Department of Law
P. O. Box K
Juneau AK 99811

Dear Hal:

Although I have not yet received your response to my July 17, 1985 letter requesting that the Department of Law assume its statutory responsibility for collection of monies due to the state on court judgments, I have asked each judicial district to compile case history information about monies due.

Each judicial district was recently asked to provide my office with a statement of all outstanding amounts due to the state from court orders for fines and payment for court-appointed attorneys, and for restitution due to private parties. Preliminary figures for the total of these three categories are as follows:

First district - \$1.5 million
Second district - \$ 23,500
Third district - \$3.4 million
Fourth district - \$1.1 million

The accounting information received in my office must be checked against actual court records before we can assure accuracy in each individual case. We are prepared to pull files and verify amounts due in each case we will be turning over to your office for collection. Please let me know your plans in this regard, so that I can plan for an orderly reporting process.

Thank you for your help and cooperation. Please contact me if you have any questions.

Sincerely,

/s/

Arthur H. Snowden, II
Administrative Director

cc: Chief Justice Rabinowitz
Presiding Judges
Area Court Administrators
Stephanie Cole
Karla Forsythe
Bob Fisher

ATTACHMENT B
Letter from Arthur Snowden to Attonery General Brown
July 17, 1985
and to Attorney General Schaible
February 18, 1987



Alaska Court System

State of Alaska

303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR M. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274-8511

July 17, 1985

Hal Brown
Attorney General
Pouch K
Juneau AK 99811

Dear Hal:

At the request of former Commissioner of Administration Lisa Rudd, the administrative office of the Alaska Court System is reviewing indigency guidelines. One area of concern is the current lack of effort by the Department of Law to collect from defendants the costs of representation which the court has ordered them to pay.

Under AS 18.85.120, persons receiving services of court-appointed counsel shall affirm their indigency and execute waivers authorizing release of income information. At the conclusion of all services by the public defender, the court shall upon request release all non-incriminating information to the attorney general. Under AS 18.85.150, the attorney general may then bring an action on behalf of the state to recover payment.

It is my understanding that the Department of Law is undertaking no effort at the present time to recoup the state's expenses in these cases. Although trial courts from time to time have engaged in preliminary collection efforts such as sending reminder letters to defendants, collection of costs is an executive branch function. The Supreme Court has indicated that it is unwise if not unconstitutional as a violation of the doctrine of separation of powers for the court to combine judicial and executive functions (see Public Defender Agency v. Superior Court Third Judicial District, 534 P.2d 947 (1975)).

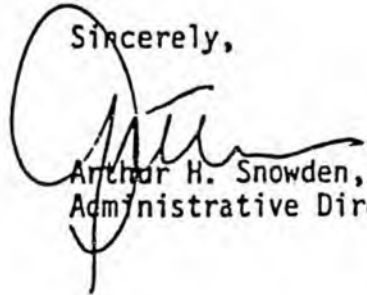
I recognize that collection efforts, including litigation, are not cost effective unless the court has ordered repayment of a substantial sum of money for which there is a realistic change of repayment. Approximately \$277,000 in court-ordered costs are outstanding in Anchorage alone for 1984 with over 5400 Anchorage cases since 1979 in which uncollected costs are outstanding.

July 17, 1985
Page 2

I propose that the Department of Law assume its statutory responsibility for collection in these cases, and that the Department consider entering into a contract with a collection agency for a fixed percentage of the total amount to be collected.

I would appreciate it if you could review the possibility of entering into such an agreement, and let me know your views.

Sincerely,



Arthur H. Snowden, II
Administrative Director

KF/k1

cc: Stephanie Cole
Karla Forsythe



RECEIVED
FEB 19 1987

Office of Administrative Director
Alaska Court System

Alaska Court System

State of Alaska

303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274-8511

February 18, 1987

Grace Berg Schaible
Attorney General
Department of Law
P. O. Box K
Juneau, Alaska 99811

Dear Ms. Schaible:

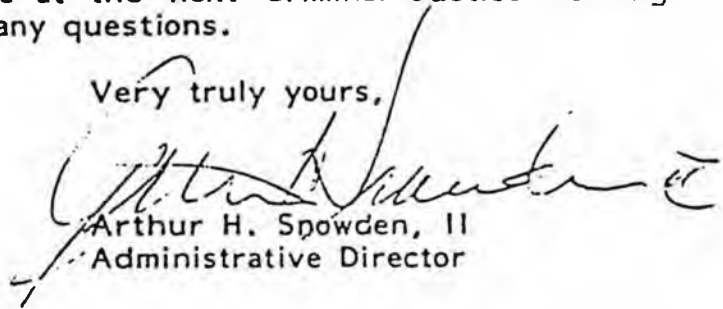
On a number of occasions, I wrote and talked to former Attorney General Hal Brown about the problem of collection of monies due to the State of Alaska. With regard to the court system, these monies consist of amounts due for unpaid fines and payments for court-appointed attorneys.

Although Mr. Brown did not appear to dispute the propriety of the Department of Law making such a collection effort, he was emphatic that he lacked the manpower resources to mount such an effort. I have noted the proposed budget cuts that your department is likely to suffer in the upcoming fiscal year, and it is easy to see that even fewer resources will be available for such secondary functions as debt collection.

However, I have in the past suggested that the state consider contracting, on a "percentage collected" basis, with a private sector collection agency to attempt to collect monies for all debts owed the state.

I hope that we can discuss this issue at the next Criminal Justice Working Group. Please contact me if you have any questions.

Very truly yours,


Arthur H. Snowden, II
Administrative Director

AHS:bs

cc: Stephanie J. Cole, Deputy Administrative Director
Karla L. Forsythe, Staff Counsel



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

KARLA L. FORSYTHE
General Counsel

303 K Street
Anchorage, AK 99501

July 8, 1986

Hal Brown
Attorney General
Pouch K
Juneau, AK 99811

Dear Mr. Brown:

On July 17, 1985, Art Snowden wrote to you proposing that the Department of Law assume its statutory responsibility for collecting fines, and, further, that the department consider entering into a contract with a collection agency for a fixed percentage of the total amount to be collected. On April 3, 1986, Mr. Snowden forwarded preliminary figures for outstanding fines and restitution, indicating a state-wide total of over \$6 million (copies of letters attached). To date, the department has not forwarded a response.

The court system again requests that you look into this matter, and advise Mr. Snowden of your plans.

Sincerely,

Karla L. Forsythe
General Counsel

cc: Arthur H. Snowden, II
Stephanie Cole

ATTACHMENT C
ALASKA STATUTE SUPPLEMENT 43.23.065

provision, see § 22, ch. 99, SLA 1985 in amendment substituted "October" for the Temporary and Special Acts. "December" in paragraph (2).
 Effect of amendments. — The 1984

Sec. 43.23.065. Exemption of permanent fund dividends. (a) Except as provided in (b) of this section, 50 percent of the annual permanent fund dividend payable to an individual is exempt from levy, execution, garnishment, attachment, or any other remedy for the collection of debt. This exemption applies to an eligible individual's permanent fund dividend both before and after payment is made to the individual.

(b) An exemption is not available under this section for permanent fund dividends taken to satisfy

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

(2) court ordered restitution under AS 12.55.045 — 12.55.051 or 12.55.100;

(3) a court ordered probation fee under AS 12.55.105; or

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

(c) Claims listed in (b) of this section have priority in the order listed over other claims on a permanent fund dividend. (§ 1 ch 102 SLA 1982; am § 1 ch 157 SLA 1984; am § 57 SLA 1985; am § 67 ch 138 SLA 1986)

Revisor's notes. — Sections 12 and 13, ch. 99, SLA 1985, amend this section and add new (b) and (c). The amendments are effective if § 1, ch. 99, SLA 1985 is repealed (see § 25, ch. 99, SLA 1985). If the amendments become law, the section will read: "(a) Fifty percent of a cash permanent fund dividend payment is exempt from levy, execution, garnishment, attachment, or any other remedy for the collection of debt. This exemption applies to an eligible individual's permanent fund dividend both before and after payment is made to the individual. An exemption is not available under this section for cash permanent fund dividend payments taken to satisfy (1) child support obligations required by court order or decision of the child support enforcement agency under AS 47.23.140 — 47.23.220; (2) a debt owed by an eligible individual to an agency of the state, unless the debt is contested and an appeal is pending, or the time limit for filing an appeal has not expired; or (3) court ordered restitution under AS

12.55.045 — 12.55.051 or 12.55.100. A child support obligation under (1) of this section has priority over a debt owed to an agency of the state, and a permanent fund dividend may not be taken to satisfy a debt under (2) of this section until any portion of the dividend necessary to satisfy a child support obligation has been taken.

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

"(c) The courts of this state may, as a condition of any civil judgment or restitution order under AS 12.55.045 — 12.55.051 or 12.55.100, require the defendant to take the defendant's permanent fund dividend in cash."

Section 22, ch. 99, SLA 1985 provides for an advisory vote to be held at the general election in 1986. For the text of that

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ATTACHMENT D
Code of Criminal Procedure 12.55.051

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§ 12.55.050

CODE OF CRIMINAL PROCEDURE

§ 12.55.051

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actual loss to the victim is appropriate, even though the loss exceeds the maximum property-value figure which defines the lesser offense. *Fee v. State*, Ct. App. Op. No. 187 (File No. 6951), 656 P.2d 1202 (1982).

Amount of restitution held proper. — The trial court did not err in ordering \$300,000 restitution upon conviction of embezzlement by an employee and theft in the first degree even though it would be impossible for the defendant to pay such a large amount, due to the difficulty in predicting at that point what amount of restitution was reasonable for defendant to pay. *Karr v. State*, Ct. App. Op. No. 230 (File No. 7011), 660 P.2d 450 (1983).

Enforcement of restitution under AS 12.55.051. — AS 12.55.051(a) prescribes specific method for dealing with

enforcement of court orders requiring payment of fines or restitution, regardless of whether such orders are directly imposed as part of original sentence, under AS 12.55.045, or indirectly imposed as a condition of probation, under AS 12.55.100; thus it was error to revoke appellant's probation in spite of finding that her failure to pay restitution, a condition of her probation, was willful. *Lominac v. Municipality of Anchorage*, Ct. App. Op. No. 220 (File No. 5960), 658 P.2d 792 (1983).

Quoted in *Whittlesey v. State*, Sup. Ct. Op. No. 2231 (File No. 5155), 626 P.2d 1066 (1980).

Stated in *Dorris v. State*, Ct. App. Op. No. 192 (File No. 5947), 656 P.2d 578 (1982).

Sec. 12.55.050. Increased punishment for persons convicted of more than one felony. [Repealed, § 21 ch 166 SLA 1978. For sentences of imprisonment for felonies, see AS 12.55.125.]

Sec. 12.55.051. Enforcement of fines and restitution. (a) If the defendant defaults in the payment of a fine or any installment or of restitution or any installment, the court may order the defendant to show cause why the defendant should not be sentenced to imprisonment for nonpayment. If the court finds by a preponderance of the evidence that the default was attributable to an intentional refusal or failure to make a good faith effort to pay the fine or restitution, the court may order the defendant imprisoned until the order of the court is satisfied. A term of imprisonment imposed under this section may not exceed one day for each \$50 of the unpaid portion of the fine or restitution or one year, whichever is shorter. Credit shall be given toward satisfaction of the order of the court for every day a person is incarcerated for nonpayment of a fine or restitution.

(b) When a fine or restitution is imposed on an organization, the person authorized to make disbursements from the assets of the organization shall pay the fine or restitution from those assets. A person required to pay a fine or restitution under this subsection who intentionally refuses or fails to make a good faith effort to pay is punishable under (a) of this section.

(c) Pursuant to a petition filed by a defendant who has been sentenced to pay a fine or restitution or an installment, the court, upon a finding of inability to pay, may order modification of the fine or restitution, subject to conditions the court finds appropriate. (§ 12 ch 166 SLA 1978)

ATTACHMENT E
Code of Criminal Procedure 12.55.025

- (1) the financial, emotional, and medical effects of the offense on the victim;
- (2) the need of the victim for restitution; and
- (3) any other information required by the court. (§ 1 ch 154 SLA 1984)

Cross references. — For effect of this SLA 1984 in the Temporary and Special section on Cr. R. 32(d)(2), see § 12, ch. 154, Acts.

Sec. 12.55.025. Sentencing procedures. (a) When imposing a sentence for conviction of a felony offense or a sentence of imprisonment exceeding 90 days or upon a conviction of a violation of AS 04, a regulation adopted under AS 04, or an ordinance adopted in conformity with AS 04.21.010, the court shall prepare, as a part of the record, a sentencing report which includes the following:

- (1) a verbatim record of the sentencing hearing and any other in-court sentencing procedures;
- (2) findings on material issues of fact and on factual questions required to be determined as a prerequisite to the selection of the sentence imposed;
- (3) a clear statement of the terms of the sentence imposed;
- (4) any recommendations as to the place of confinement or the manner of treatment; and
- (5) in the case of a conviction for a felony offense, information assessing
 - (A) the financial, emotional, and medical effects of the offense on the victim;
 - (B) the need of the victim for restitution; and
 - (C) any other information required by the court.

(b) The sentencing report required under (a) of this section shall be furnished within 30 days after imposition of sentence to the Department of Law, the defendant, the Department of Corrections, the state Board of Parole if the defendant will be eligible for parole, and to the Alcoholic Beverage Control Board if the defendant is to be sentenced for a conviction of a violation of AS 04, a regulation adopted under AS 04, or an ordinance adopted under AS 04.21.010.

(c) Except as provided in (d) and (e) of this section, when a defendant is sentenced to imprisonment, the term of confinement commences on the date of imposition of sentence. A defendant shall receive credit for time spent in custody pending trial, sentencing, or appeal, if the detention was in connection with the offense for which sentence was imposed. A defendant may not receive credit for more than the actual time spent in custody pending trial, sentencing, or appeal. The time during which a defendant is voluntarily absent from official detention after the defendant has been sentenced may not be credited toward service of the sentence.

(d) A sentence of imprisonment shall be stayed if an appeal is taken and the defendant is admitted to bail. If an appeal is taken and the defendant is not admitted to bail, the Department of Corrections shall designate the facility in which the defendant shall be detained pending appeal or admission to bail.

(e) Except as provided in (g) of this section, if the defendant has been convicted of two or more crimes, sentences of imprisonment shall run consecutively. If the defendant is imprisoned upon a previous judgment of conviction for a crime, the judgment shall provide that the imprisonment commences at the expiration of the term imposed by the previous judgment.

(f) A sentence that the defendant pay money, either as a fine or in restitution or both, constitutes a lien in the same manner as a judgment for money entered in a civil action. Nothing in this section limits the authority of the court to otherwise enforce payment of a fine or restitution.

(g) If the defendant has been convicted of two or more crimes before the judgment on either has been entered, any sentences of imprisonment may run concurrently if

- (1) the crimes violate similar societal interests;
 - (2) the crimes are part of a single, continuous criminal episode;
 - (3) there was not a substantial change in the objective of the criminal episode, including a change in the parties to the crime, the property or type of property right offended, or the persons offended;
 - (4) the crimes were not committed while the defendant attempted to escape or avoid detection or apprehension after the commission of another crime;
 - (5) the sentence is not for a violation of AS 11.41.100 — 11.41.470;
- or

(6) the sentence is not for a violation of AS 11.41.500 — 11.41.530 that results in physical injury or serious physical injury as those terms are defined in AS 11.81.900. (§ 12 ch 166 SLA 1978; §§ 7, 8 ch 131 SLA 1980; am §§ 24, 25 ch 143 SLA 1982; am E.O. No. 55, §§ 6, 7 (1984); am § 2 ch 154 SLA 1984)

Revisor's notes. — AS 12.55.025(e) was amended by § 24, ch. 143, SLA 1982 and purportedly repealed by § 42, ch. 143, SLA 1982. The repeal in § 42 was apparently a drafting error. See House Journal Supplement No. 10, dated June 1, 1982, page 18.

Effect of amendments. — The 1980 amendment substituted "90" for "180" following "exceeding" near the beginning of subsection (a), inserted "or upon a conviction of a violation of AS 04, a regulation adopted under AS 04, or an ordinance adopted in conformity with AS 04 21 010"

following "days" near the middle of subsection (a), and rewrote subsection (b).

Sections 24 and 25, ch. 143, SLA 1982, rewrote subsection (e) and added subsection (g).

The first 1984 amendment substituted "Department of Corrections" for "division of corrections" in subsection (b) and "Corrections" for "Health and Social Services" in the second sentence in subsection (d).

The second 1984 amendment, in subsection (a), inserted "for conviction of a felony offense or a sentence" in the introductory paragraph, added "any" to the beginning

ATTACHMENT F
Chapter 38, Alaska Exemptions Act

Chapter 38. Alaska Exemptions Act.

Section	Section
10 Homestead exemption	75 Special procedures relating to limited value exemptions
15 Property exempt without limitation	80 Procedures applicable to a levy on property of an individual
20 Exemptions of personal property subject to value limitations	85 Contents of notice
25 Exemption of unmaturred life insurance and annuity contracts	90 Assertion of rights by another
30 Exemption of earnings and liquid assets	95 Judicial relief
35 Continuing lien on wages	100 Debtor's property owned with another
40 Priorities between continuing liens	105 Waiver of exemption
45 Effective date of continuing lien	110 Federal requirements
50 Increased exemption amount	115 Adjustment of dollar amounts
55 Bankruptcy proceedings	120 Protection of property of residents and nonresidents
60 Tracing exempt property	500 Definitions
65 Claims enforceable against exempt property	510 Short title
70 Limitation on enforcement of certain security interests in exempt goods	

Reviser's notes. — Several sections in this chapter were redrafted in 1982 to remove personal pronouns in conformity with AS 01.05.031(c).

Cross references. — For general provisions concerning execution, see AS 09.35 and Civ. R. 69, for legislative intent, see § 1 ch 62 SLA 1982; for transition provisions, see § 15 ch 62 SLA 1982.

Collateral references. — 31 Am. Jur. 2d, Exemptions, § 1 et seq.

35 C.J.S. Exemptions, § 1 et seq.

Joint bank account as subject to attachment, garnishment, or execution by creditor of one of the joint depositors, 11 ALR3d 1465.

Family allowance from decedent's estate

as exempt from attachment, garnishment, execution, and foreclosure, 27 ALR3d 863.

What is "necessary" furniture entitled to exemption from seizure for debt, 41 ALR3d 607.

Injury to credit standing, reputation, solvency, or profit potential as elements of damage resulting from wrongful execution against business property, 65 ALR3d 911.

Employee retirement pension benefits as exempt from garnishment, attachment, levy, execution, or similar proceedings, 93 ALR3d 711.

Choice of law as to exemption of property from execution, 100 ALR3d 1235.

Sec. 09.38.010. Homestead exemption. (a) An individual is entitled to an exemption as a homestead of the individual's interest in property in this state used as the principal residence of that individual or the dependents of that individual, but the value of the homestead exemption may not exceed \$27,000.

(b) If property owned by the entirety or in common is used by one or more individual owners or their dependents as their principal residence, each owner is entitled to a homestead exemption of that owner's interest in the property as provided in (a) of this section. The aggregate value of multiple homestead exemptions allowable with respect to a single living unit may not exceed \$27,000. If there are multiple owners of property exempt as a homestead, the value of the exemption of each

individual owner may not exceed that individual owner's pro rata portion of \$27,000.

(c) If property that includes a homestead is sold under an execution the sale becomes effective upon confirmation by order of the court. The court shall enter the order of confirmation unless, within 60 days after the sale, the individual repurchases the property under this section or the court extends the time for confirmation upon the filing of a timely motion by a party in interest. The individual may repurchase property including that individual's homestead, at a sale on execution before confirmation by paying into court the costs of the sale plus the lesser of either (1) the difference between the highest bid and the amount of the exemption in the property, or (2) the amount of the creditor's claim. If the individual does not exercise the repurchase right under this subsection, the clerk of the court shall first remit an amount determined to be exempt to the individual from the proceeds of sale and then balance less the cost of the sale to the creditor. For the purpose of collecting an amount remaining unpaid on a judgment after repurchase of property by an individual under this subsection, the creditor or the creditor's assignee may not make another levy on the property repurchased.

(d) Upon entry of the order of confirmation under (c) of this section and expiration of the time period for repurchase, the clerk may execute a deed to the property and when delivered it shall be sufficient to convey all title of the individual in the premises sold to the purchaser at the sale. (§ 2 ch 62 SLA 1982)

Cross references. — For provisions value specified under subsection (b) of this section, see AS 34.16.14(k).

exempting homestead held by tenants by the entirety from execution on debts to the

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Prior law. — For cases construing former statutes, see *Seagreen v. Wendler*, 5 Alaska 715 (1917); *Wendler v. Breneman*, 7 Alaska 13 (1923); *Williams v. Thompson*, 7 Alaska 601 (1927); *In re* Bocaah, 10 Alaska 206 (1942); *Dalton Interior Credit Bureau, Inc. v. Sup Ct C. No. 2158* (File No. 4265), 615 P.2d 6 (1980).

Sec. 09.38.015. Property exempt without limitation. (a) An individual is entitled to exemption of the following property:

- (1) a burial plot for the individual and the individual's family;
- (2) health aids reasonably necessary to enable the individual or dependent to work or to sustain health;
- (3) benefits paid or payable for medical, surgical, or hospital care to the extent they are or will be used to pay for the care;
- (4) an award under AS 18.67 (Violent Crimes Compensation Board) or a crime victim's reparations Act of another jurisdiction;

(7) compensation or benefits paid or payable and exempt under federal law.

(7) liquor licenses granted under AS 04.

(8) limited entry permits granted under AS 16.43, except as provided in that chapter.

(b) The right to benefits held by the state on behalf of an individual which may become payable by reason of disability, unemployment or illness, amounts held in the teachers' or public employees' retirement system, and child support collections made by the child support enforcement agency are exempt.

(c) Property of the state, a general law or home rule municipality, the Alaska State Housing Authority, the Alaska Municipal Bond Bank Authority, or other state public corporation is exempt.

(d) Real property held by a cemetery association established under AS 10.30 for the purpose of a cemetery and not exceeding 80 acres is exempt. (§ 2 ch 62 SLA 1982)

Cross references. — For the applicability of the exemptions from execution in income assignment orders for child support, see AS 09 65 132(g), for provisions exempting teachers' retirement salaries and certain other amounts from garnishment, execution or levy, see AS 14.25.200, for provisions exempting unemployment compensation benefits from levy to enforce collection of a debt, see AS 23.20.405(e), for provisions exempting workers' compensation benefits from levy

to enforce the collection of a debt, see AS 23.30.160(b); for provisions exempting amounts held in the public employee pension fund and public employee retirement benefits from levy to enforce the collection of a debt, see AS 39.35.500(b), for provisions exempting longevity bonuses from levy to enforce collection of a debt, see AS 47.45.120(b); for applicability of the exemptions from execution in proceedings to enforce payment of child support, see AS 47.23.250.

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Legislative intent as to liquor licenses. — Former AS 09.35.087 (see now (a)(7) of this section) indicated an overall legislative intent that one general creditor of a liquor license holder should not be allowed to place himself in a preferred position over other general creditors. *C.Y., Inc. v. Brown*, Sup. Ct. Op. No. 1569 (File No. 27A), 574 P.2d 1274 (1978).

Liquor licenses not exempted from coverage under Article 9 of the

Uniform Commercial Code (AS 45.09). — See *Gibson v. Alaska ABC Bd.*, 377 F. Supp. 161 (D. Alaska 1974), decided under former AS 09.35.087.

As to immunity of real property of University of Alaska from lien attachment or foreclosure, see *University of Alaska v. Simpson Bldg. Supply Co.*, Sup. Ct. Op. No. 1113 (File No. 2198), 530 P.2d 1317 (1975), decided under former AS 09.35.080.

Sec. 09.38.020. Exemptions of personal property subject to value limitations. (a) An individual is entitled to an exemption in property not to exceed an aggregate value of \$1,500 chosen by the individual from the following categories of property:

(1) household goods and wearing apparel reasonably necessary for one household;

dependent, books and musical instruments; and

(3) family portraits and heirlooms of particular sentimental value to the individual.

(b) An individual is entitled to exemption of jewelry, not exceeding \$500 in aggregate value, if held for the personal use of the individual or a dependent.

(c) An individual is entitled to exemption, not exceeding \$1,400 aggregate value, of implements, professional books, and tools of trade.

(d) An individual is entitled to the exemption of pets to the extent of a value not exceeding \$500.

(e) An individual is entitled to an exemption of one motor vehicle the extent of a value not exceeding \$1,500 if the full value of the motor vehicle does not exceed \$10,000. (§ 2 ch 62 SLA 1982)

NOTES TO DECISIONS

Editor's notes. — *Gutterman v. First Nat'l Bank*, Sup. Ct. Op. No. 1876 (File No. 3996), 597 P.2d 969 (1979), was decided under former AS 09.35.080.

Liberal construction. — Exemption laws are remedial in character and should be liberally construed in favor of the debtor. *Gutterman v. First Nat'l Bank*, Sup. Ct. Op. No. 1876 (File No. 3996), 597 P.2d 969 (1979).

Exemption statute should not be interpreted in a way which completely eliminates a debtor's exemption rights in an item of property within an exempt category because that item's value exceeds the statutory allowance. *Gutterman v. First Nat'l Bank*, Sup. Ct. Op. No. 1876 (File No.

3996), 597 P.2d 969 (1979)

Purpose of personal and household property exemptions. — Personal and household property exemptions are designed to ensure that debtors will have necessary items for living in reasonable comfort and for earning a living. *Gutterman v. First Nat'l Bank*, Sup. Ct. Op. No. 1876 (File No. 3996), 597 P.2d 969 (1979).

The proceeds of exempt property are exempt to the debtor for a reasonable time, to enable him to invest the money in other exempt property. *Gutterman v. First Nat'l Bank*, Sup. Ct. Op. No. 1876 (File No. 3996), 597 P.2d 969 (1979).

Sec. 09.38.025. Exemption of unmatured life insurance annuity contracts. (a) Except as provided in this section, an individual is entitled to exemption of unmatured life insurance and annuity contracts owned by the individual. If the contracts have accrued dividends and loan values available to the individual aggregating more than \$5,000, a creditor may obtain a court order requiring the individual debtor to pay the creditor, and authorizing the creditor on the debtor's behalf to obtain payment of, the amount of the accrued dividends and loan values in excess of \$5,000 or the amount of the creditor claim, whichever is less.

(b) A judgment creditor or other claimant of an insurer may not levy upon any of the assets or securities held in this state as a deposit for the protection of the insurer's policyholders or policyholders and creditors. Deposits under AS 21.09.270 may be levied upon if provided

the order of the director of insurance, Department of Commerce and Economic Development, under which the deposit is made. (§ 2 ch 62 SLA 1982)

Sec. 09.38.030. Exemption of earnings and liquid assets. (a) Except as provided in (b) and (c) of this section and AS 09.38.050, an individual debtor is entitled to an exemption of the individual debtor's weekly net earnings not to exceed \$175. The weekly net earnings of an individual are determined by subtracting from the weekly gross earnings all sums required by law or court order to be withheld. The weekly net earnings of an individual paid on a monthly basis are determined by subtracting from the monthly gross earnings of the individual all sums required by law or court order to be withheld and dividing the remainder by 4.3. The weekly net earnings of an individual paid on a semi-monthly basis are determined by subtracting from the semi-monthly gross earnings all sums required by law or court order to be withheld and dividing the remainder by 2.17.

(b) An individual who does not receive earnings either weekly, semi-monthly or monthly is entitled to a maximum exemption for the aggregate value of cash and other liquid assets available in any month of \$700, except as provided in AS 09.38.050. The term "liquid assets" includes deposits, securities, notes, drafts, accrued vacation pay, refunds, prepayments, and receivables.

(c) A creditor may levy upon earnings exempt under (a) and (b) of this section if the creditor's claim is

(1) enforceable against exempt property under AS 09.38.065(a)(1); or

(2) enforceable under an order of a court of bankruptcy under chapter XIII of the Bankruptcy Act (11 U.S.C., sec. 1301 et seq.).

(d) If the individual debtor is a nonresident, the limitations on garnishment imposed under 15 U.S.C. 1673 apply.

(e) The following property, unless exempt without limitation under AS 09.38.015, upon receipt by and while it is in the possession of the individual, shall be treated as earnings, income, cash, or other liquid assets under this section:

(1) benefits paid by reason of disability, illness, or unemployment;

(2) money or property received for alimony or separate maintenance;

(3) proceeds of insurance, a judgment, or a settlement, or other rights accruing as a result of bodily injury of the individual or of the wrongful death or bodily injury of another individual of whom the individual was or is a dependent;

(4) proceeds or benefits paid or payable on the death of an insured, if the individual was the spouse or a dependent of the insured; and

(5) amounts paid under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract, providing benefits by reason of age, illness, disability, or length of service. (§ 2 ch 62 SLA 1982)

Cross references. — For federal provisions placing limitations on garnishment of wages, see 15 U.S.C. § 1673, for provisions exempting permanent fund dividends from execution, see AS 43.23.065.

Editor's notes. — This section must be read with 15 U.S.C. § 1673, which limits garnishments of wages and preempts this section wherever it would permit garnishment in excess of federal limitations. See notes from November 15, 1982, Op. Att'y Gen. under heading "Opinions of attorney general," below.

Opinions of attorney general. — This section is incompatible in many respects with 15 U.S.C. § 1673, which places limits on garnishment of wages, and as a result,

where state law would permit garnishment of wages in excess of that permitted by federal law, the state law must give way and federal limitations applied. November 15, 1982, Op. A. Gen.

The preemption by 15 U.S.C. § 1673 limited. Under the provisions of 15 U.S.C. §§ 1673(c) and 1677 as interpreted by various state courts, when a state law conflicts with the federal garnishment provisions, each garnishment must be analyzed on a case-by-case basis, and a consideration of both the federal and state formulas, whichever results in the lesser amount garnished should be applied. November 15, 1982, Op. Att'y Gen.

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Prior law. — For case construing prior income exemption statute, see *Miller v. Monrean*, Sup. Ct. Op. No. 871 (File 1490), 507 P.2d 771 (1973).

Sec. 09.38.035. Continuing lien on wages. (a) In the case of garnishment of earnings, when the garnishee's answer reflects that the defendant is employed by the garnishee, the judgment or balance due as reflected on the writ of garnishment shall become a lien on earnings due at the time of service of the writ to the extent that they are exempt from garnishment, and that lien shall continue as to subsequent nonexempt earnings until the total subject to the lien equals the amount stated on the writ of garnishment, except that the lien on subsequent earnings shall terminate sooner if the employment relationship is terminated, if the underlying judgment is vacated, modified, or satisfied in full, or if the writ is dismissed.

(b) A garnishee shall pay into court all nonexempt earnings of the defendant subject to the continuing lien under (a) of this section. Accrued interest on the judgment or balance due as reflected on the writ of attachment may be garnished under a supplemental writ of garnishment after the principal amount stated on the original writ of garnishment has been paid. (§ 2 ch 62 SLA 1982)

Sec. 09.38.040. Priorities between continuing liens. A lien obtained under AS 09.38.035 has priority over any subsequent garnishment lien or wage assignment. A writ creating a continuing lien served upon an employer while a continuing lien imposed by a previous writ is still in effect shall be answered by the employer with a statement that the employer is holding no funds and with a further statement stating when all previous liens are expected to terminate. The subsequent writ has full effect from the termination of all priorities or until it is otherwise terminated under AS 09.38.035. However, a subsequent writ is not effective if a writ in the same cause of action is pending at the time of service of garnishment. (§ 2 ch 62 SLA 1982)

Sec. 09.38.046. Effective date of continuing lien. The effective date of a writ creating a continuing lien is the date of service upon the garnishee. However, if there are, on that date, liens by virtue of previous writs, the effective date is the date all previous writs terminate (§ 2 ch 62 SLA 1982)

Sec. 09.38.050. Increased exemption amount. (a) An individual debtor who is in possession of money that was obtained as payment for an injury or disability may request the court to order an increase in the exemption amounts under AS 09.38.030. The individual debtor shall submit affidavits or offer testimony in support of the request as required by the court. The court shall determine the exemption amount after consideration of the individual's responsibilities and all the present and anticipated property and income of the individual, including that which is exempt.

(b) The exemption amounts under AS 09.38.030 may be increased when the individual submits an affidavit, under penalty of perjury, stating that the individual's earnings alone support the individual's household, by so doing, the maximum part of the individual's aggregate disposable earnings for any week subject to execution may not exceed the amount by which the individual's disposable earnings for that week exceed \$275, or, if the individual is claiming an exemption for cash or other liquid assets under AS 09.38.030(b), a maximum amount of \$1,100 available in any month is exempt. (§ 2 ch 62 SLA 1982)

Sec. 09.38.055. Bankruptcy proceedings. In a proceeding under the Bankruptcy Act (11 U.S.C.) only the exemptions under AS 09.38.010, 09.38.015(a), 09.38.020, 09.38.025 and 09.38.030 apply. (§ 2 ch 62 SLA 1982)

Sec. 09.38.060. Tracing exempt property. (a) If property or a part of it, that could have been claimed as an exempt homestead under AS 09.38.010, a burial plot under AS 09.38.015(a)(1), a health aid under AS 09.38.015(a)(2), or personal property subject to a value limitation under AS 09.38.020(a)(1), or (2) or 09.38.020(c), has been taken or sold by condemnation, or has been lost, damaged, or destroyed and the owner has been indemnified for it, the individual is entitled to an exemption of proceeds that are traceable for 12 months after the proceeds are received. An individual is entitled to an exemption of proceeds from the voluntary sale of an exempt homestead under AS 09.38.010 that are traceable for six months after the proceeds are received. The exemption of proceeds under this subsection does not entitle the individual to claim an aggregate exemption in excess of the value limitation otherwise allowable under AS 09.38.010 or 09.38.020.

(b) Money or other property and proceeds exempt under this chapter are traceable under this section by application of the principle of first-in first-out, last-in first-out, or any other reasonable basis for

tracing selected by the individual claiming the exemption. (19 2 ch SLA 1982)

Sec. 09.38.065. Claims enforceable against exempt property (a) Notwithstanding other provisions of this chapter,

(1) a creditor may make a levy against exempt property of any kind to enforce a claim for

(A) child support;
(B) unpaid earnings of up to one month's compensation or full-time equivalent of one month's compensation for personal service of an employee; or

(C) state or local taxes; and

(2) a creditor may make a levy against exempt property to enforce a claim for

(A) the purchase price of the property or a loan made for the express purpose of enabling an individual to purchase the property and used that purpose;

(B) labor or materials furnished to make, repair, improve, preserve, store, or transport the property; and

(C) a special assessment imposed to defray costs of a public improvement benefiting the property.

(b) Except as provided in AS 09.38.070 limiting the enforcement of certain security interests, this chapter does not affect any statutory lien or security interest in exempt property.

(c) A creditor having a claim enforceable under (a) of this section against exempt property, before, at the time of, or a reasonable time after making a levy on property of an individual, shall serve on the individual a notice of the levy and of the basis for the creditor's right to make a levy on exempt property. (§ 2 ch 62 SLA 1982)

Sec. 09.38.070. Limitation on enforcement of certain security interests in exempt goods. (a) This section applies to a security interest, except a purchase-money security interest, or a security interest in a motor vehicle, in an item of goods (1) possessed by an individual being used by that individual or a dependent, and (3) exempt under 09.38.020(a) — (d).

(b) Unless the individual, after receiving written notice of the individual's rights under this section, voluntarily surrenders to the secured creditor possession of an item of goods to which this section applies, the creditor may not take possession of the item or otherwise enforce a security interest according to its terms without an order or process of court.

(c) The court may order or authorize process respecting any item of goods to which this section applies only after a hearing, upon notice to the individual of the hearing and of the individual's rights at it. The notice shall be as directed by the court. The order or authorization shall prescribe appropriate conditions as to payments upon the debt secured

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or otherwise. The court may not order or authorize process respecting the item if it finds upon the hearing both that the individual lacks the means to pay all or part of the debt secured and that continued possession or use of the item is necessary to avoid undue hardship for the individual or a dependent.

(d) The court, upon application of the creditor or the individual and notice to the other and after a hearing and finding of changed circumstances, may vacate or modify an order or authorization under this section. (§ 2 ch 62 SLA 1982)

Sec. 09.38.075. Special procedures relating to limited value exemptions. (a) Unless a creditor is seeking collection of a claim enforceable against exempt property under AS 09.38.065, the creditor may obtain a levy on an individual's property of a kind listed in AS 09.38.020 only by complying with this section. Before levy, the creditor shall file with the court out of which the process issues

(1) an affidavit stating that the creditor has reason to believe the individual has property of a kind listed in AS 09.38.020 that is not exempt, identifying the property, setting out facts constituting the basis for believing the property is not exempt; and

(2) a request for an order by the court notifying the individual

(A) of the creditor's claim of a right to levy on the property identified as nonexempt,

(B) of the individual's right to contest the creditor's claim of a right to levy by filing with the clerk of the court, on or before a date fixed by the court, but not exceeding 15 days after the issuance of the order, a written objection to the proposed levy and a statement of the grounds for the objection and of the right to describe the property in lieu of setting its value,

(C) of the possible consequences of failure to respond to the notice as provided in (c) of this section, and

(D) of the information required by AS 09.38.085(a).

(b) Notice of an order issued in accordance with a request under (a) of this section, together with the creditor's affidavit, shall be served on the individual. The order shall restrain the individual from removing, encumbering, damaging, or disposing of any property of the kind listed in AS 09.38.020 for 30 days after receipt of the order, unless the court reduces, extends, or otherwise modifies the restraining order during the 30-day period.

(c) If exemption of property identified in a notice served on an individual under (b) of this section depends on its value, the individual may describe the property in the responsive statement and indicate the amount of any indebtedness chargeable against it. If the individual, within the time allowed by the order of the court, fails to respond to a notice served under (b) of this section that the creditor believes the debtor has nonexempt property of a kind listed under AS 09.38.020, the court may order the individual to appear and disclose the description,

location, and value, of the individual's property. If the individual fails to appear and disclose the information specified in the order, the individual waives objection to the creditor's levy on property of that kind.

(d) Except to the extent the procedure is prescribed by this section, AS 09.38.080(e) governs a proceeding for the determination of a claim in respect to a claim to exemption of property under AS 09.38.020.

(e) Costs incurred in making, or proposing to make, a levy on property of a kind listed in AS 09.38.020 shall be paid out of the proceeds of a sale of property of that kind. If the proceeds of a sale of the property are insufficient to cover the costs incurred in proceedings commenced under this section, the creditor shall pay the costs and may not recover them from the individual, notwithstanding any agreement of the parties to the contrary.

(f) The burden of proving the validity of an exemption by preponderance of the evidence, is upon the individual claiming the exemption. (§ 2 ch 62 SLA 1982)

Sec. 09.38.080. Procedures applicable to a levy on property of an individual. (a) Except in a proceeding under AS 09.38.065, a creditor shall comply with this section in obtaining a levy on property of an individual. In a proceeding to levy on personal property of a kind listed in AS 09.38.020, a creditor shall comply with this section and AS 09.38.075.

(b) Before, at the time of, or within three days after levy against property of an individual, the creditor shall file with the court from which the process issued an affidavit stating that the creditor has reason to believe the individual has property that is not exempt, identifying the property, and stating facts constituting the basis for that belief.

(c) Before, at the time of, or within three days after levy, the creditor shall serve on the individual a notice under AS 09.38.085, including a copy of the affidavit filed under (b) of this section.

(d) A bid for property that is less than the amount of the exempt value is not acceptable at a sale of property under a levy. If indebtedness secured by a valid lien is chargeable against the proceeds of the sale, the bid must exceed the amount of the indebtedness secured plus the amount of the exempt value. If a sufficient bid is not received, the officer shall file a notation of the fact with the clerk of the court and return the property to the individual. The costs incurred during levy, offering the property for sale, and returning the property shall be assessed against the creditor and are not recoverable from the individual, notwithstanding any agreement of the parties to the contrary.

(e) If any question arises as to the rights of an individual entitled to an exemption under this chapter, an interested person may file with the clerk of the court from which the process issued a statement of the claim of exemptions and the question raised. The statement shall be referred to the court as soon as practicable thereafter. The court shall

order that notice of a hearing be given. After hearing the matter, the court shall make findings and issue an appropriate order. The court may award to the prevailing party costs of a proceeding under this subsection.

(f) An objection to levy on the ground that the property seized is exempt must be filed with the clerk of the court within 15 days after the levy. The burden of proving the validity of an exemption by a preponderance of the evidence is upon the individual claiming the exemption. Failure to file a timely objection may be held to be a waiver of a claim to exemption in the property, unless for cause shown the court excuses the failure. (§ 2 ch 62 SLA 1982)

Sec. 09.38.085. Contents of notice. (a) The notice required by AS 09.38.075(b) and 09.38.080(c) shall include the following information:

(1) the amount and date of the judgment to be enforced by levy and sale or other mode of appropriating the individual's property;

(2) the name and address of the clerk of the court with whom objections must be filed;

(3) the name and address of the creditor and of the creditor's attorney, if any;

(4) a copy of the affidavit filed under AS 09.38.080(b);

(5) a summary statement in lay terminology of the exemptions provided by the laws of this state;

(6) a summary statement in lay terminology of the procedures for claiming exemptions, objecting to a levy on exempt property, changing venue, and exercising the right to repurchase homestead property from a sale before its confirmation; and

(7) a statement in lay terminology of the rights of persons other than the individual as provided in AS 09.38.090.

(b) The supreme court may prescribe forms to be used by creditors, debtors and court officers under this chapter.

(c) A notice substantially complying with this section is effective even though the notice contains errors if those errors do not result in substantial prejudice to the rights of the individual debtor or of the dependents of the individual debtor. (§ 2 ch 62 SLA 1982)

Revisor's notes. — Subsection (c) was enacted as the second sentence of (b), but was redesignated in 1982.

Sec. 09.38.090. Assertion of rights by another. If an individual fails to select property entitled to be claimed as exempt or to object to a levy on the property or to assert any other right under this chapter, the spouse or a dependent of the individual or any other person authorized by law may make the claim or objection or assert the rights provided by this chapter. (§ 2 ch 62 SLA 1982)

Sec. 09.38.095. Judicial relief. (a) An individual or the spouse, dependent of the individual, or any other person authorized by law is entitled to injunctive relief, damages, or both, against a creditor or other person to prevent or redress a violation of this chapter as provided in the Alaska Rules of Civil Procedure. A court may award costs and reasonable attorney fees to a party entitled to injunctive relief, damages.

(b) For cause shown the court may relieve a person from the consequences of failing to take timely action to assert rights under this chapter. (§ 2 ch 62 SLA 1982)

Sec. 09.38.100. Debtor's property owned with another. (a) If an individual and another own property in this state as tenants in common or tenants by the entirety, a creditor of the individual, subject to the individual's right to claim an exemption under this chapter, may obtain a levy on and sale of the interest of the individual in the property. A creditor who has obtained a levy, or a purchaser who has purchased the individual's interest at the sale, may have the property partitioned or the individual's interest severed.

(b) A partner's right in specific partnership property is exempt except on a claim against the partnership. If partnership property attached for a partnership debt, the partners or any of them or their representatives of a deceased partner may not claim an exemption in that property under this chapter. (§ 2 ch 62 SLA 1982)

Cross references. — For provisions relating to the right of a tenant making homestead held by tenants for the entirety liable for the debts of either tenant after partition of tenancy, see AS 34.15.140.

Sec. 09.38.105. Waiver of exemption. A waiver of exemption executed in favor of an unsecured creditor before levy on an individual's property is unenforceable, but a valid security interest may be given in exempt property. (§ 2 ch 62 SLA 1982)

Sec. 09.38.110. Federal requirements. If a federal department or agency issues a formal ruling that a provision of this chapter relating to public assistance will cause a state plan for the delivery of services or benefits to be out of conformity with federal requirements, the section will not apply to the extent that it causes the program to be out of conformity with federal requirements. (§ 2 ch 62 SLA 1982)

Sec. 09.38.115. Adjustment of dollar amounts. (a) The dollar amounts in this chapter change, as provided in this section, according to and to the extent of changes in the Consumer Price Index for Urban Consumers for the Anchorage Metropolitan Area compiled by the Bureau of Labor Statistics, United States Department of Labor (index). The index for January of the year in which this section becomes effective is the reference base index.

(b) The dollar amounts change on July 1 of each even-numbered year if the percentage of change, calculated to the nearest whole percentage point, between the index for December of the preceding year and the reference base index, is 10 percent or more, but

(1) the portion of the percentage change in the index in excess of a multiple of 10 percent is disregarded and the dollar amounts change only in multiples of 10 percent of the amounts appearing in this chapter on the effective date of this chapter; and

(2) the dollar amounts do not change if the amounts required by this section are those currently in effect as a result of earlier application of this section.

(c) If the index is revised, the percentage of change is calculated on the basis of the revised index. If a revision of the index changes the reference base index, a revised reference base index is determined by multiplying the reference base index applicable by the rebasing factor furnished by the United States Bureau of Labor Statistics. If the index is superseded, the index referred to in this section is the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for Alaskan consumers.

(d) The Department of Labor shall adopt a regulation announcing

(1) on or before April 30 of each year in which dollar amounts are to change, the changes in dollar amounts required by (b) of this section; and

(2) promptly after the changes occur, changes in the index required by (c) of this section, including, if applicable, the numerical equivalent of the reference base index under a revised reference base index and the designation or title of any index superseding the index.

(e) The Department of Labor shall also provide notification of a change in exemption amounts required under (c) of this section to the clerks of court in each judicial district of the state. (§ 2 ch 62 SLA 1982)

Sec. 09.38.120. Protection of property of residents and nonresidents. (a) Residents of this state are entitled to the exemptions provided under this chapter. Nonresidents are entitled to the exemptions provided by the law of the jurisdiction of their residence.

(b) The term "resident" means an individual who is physically present in the state and who intends to maintain a permanent home in Alaska. (§ 2 ch 62 SLA 1982)

Sec. 09.38.500. Definitions. In this chapter, unless the context otherwise requires,

(1) "burial plot" means a parcel of real estate used for burial of human remains and which is located within an area designated for cemetery purposes by the state or a general law or home rule municipality,

(2) "debt" means a legally enforceable monetary obligation or liability of an individual, whether arising out of contract, tort, or otherwise;

(3) "dependent" means an individual who derives support primarily from another individual;

(4) "earnings" means money received by an individual for personal services and denominated as wages, salary, commissions, or other

(5) "exempt" means protected, and "exemption" means protection from subjection to process or a proceeding to collect an unsecured

(6) "household goods" includes those items that make a residence habitable according to modern standards;

(7) "judicial lien" means a lien on property obtained by judgment, levy, sequestration, or other legal or equitable process or procedure instituted for the purpose of collecting an unsecured debt.

(8) "levy" means the seizure of property under a writ of attachment, garnishment, execution, or any similar legal or equitable process issued for the purpose of collecting an unsecured debt.

(9) "lien" means a security interest, or a judicial, statutory, or common-law lien, or any other interest in property securing payment of a debt or performance of an obligation;

(10) "principal residence" means the actual dwelling place of an individual or dependents of the individual and includes real personal property;

(11) "security interest" means an interest in property created by contract to secure payment or performance of an obligation;

(12) "serve notice" means to give the person to be served a written personal notice in the same manner a summons in a civil action is served, or to mail the notice to the person's last known address by first-class mail and by using a form of mail requiring a signed receipt;

(13) "statutory lien" means a lien arising by force of a statute in specified circumstances or conditions, but does not include a security interest;

(14) "value" means fair market value of an individual's interest in property, exclusive of liens of record;

(15) "wearing apparel" means clothing and garments intended and adapted to be worn on the person to protect the person against the elements or to provide personal comfort or decency, or serve as ornament to the person but does not include jewelry. (§ 2 ch 62 SLA 1982)

Revisor's notes. — Enacted as AS 09.38.125. Renumbered in 1982.

Sec. 09.38.510. Short title. This chapter may be cited as the Alaska Exemptions Act. (§ 2 ch 62 SLA 1982)

Revisor's notes. — Enacted as AS 09.38.130. Renumbered in 1982.



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

March 19, 1987

MEMORANDUM

TO: Representative C. E. Swackhammer

ATTN: Tom Wright

FROM: Penelope Weyhrauch *[Signature]*
Legislative Analyst

RE: Outstanding Court Fines: Attaching Permanent Fund Dividends
Research Request 87.187 (Supplemental Information)

I have received additional information on the collection of outstanding court fines by the courts in Juneau and Anchorage, which might be of interest to you. Dave Haas, Clerk of the Court in Juneau, said that about \$5,000 was collected in 1986 by the assignment of PFDs for the payment of outstanding fines. Goldeen Goodfellow, Clerk of the Court in Anchorage, said that the Anchorage court does not have the manpower to pursue the collection of outstanding fines. The court can issue warrants for the arrest of individuals with outstanding fines, although this practice has not been followed in the last year or two.



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

March 23, 1987

MEMORANDUM

TO: Representative C. E. Swackhammer

ATTN: Tom Wright

FROM: Penelope Weyhrauch
Legislative Analyst *PW*

RE: Outstanding Court Fines: The Collection Process in Other States
Research Request 87.204

You asked for information on the collection of outstanding fines owed to court systems in other states. In researching your request, I contacted the National Center for State Courts and the states of Arizona, California, Colorado, Idaho, Oregon, Utah, Washington and Wyoming.¹

The collection of outstanding court fines is considered a judicial function in Arizona, Oregon, Washington and Wyoming. In Colorado, the attorney general's office has a collection unit which handles the collection of some outstanding court fines. In California, Idaho and Utah, each county or jurisdiction is responsible for the collection of outstanding fines; collection practices vary from jurisdiction to jurisdiction.

In Arizona, failing to pay a fine levied by the court can result in imprisonment. Allen Hellman, Director of the Court Services Division, said that a recently enacted statute authorizes courts to use the contempt power to imprison those who refuse to pay outstanding fines. Mr. Hellman said that the constitutionality of this statute has not yet been tested. Courts in Arizona have also recently been provided with garnishment authority as a collection measure, although Mr. Hellman said that the garnishment process is very complex, with many due process safeguards built in to protect debtors. Several counties in Arizona tried using private agencies to collect fines but found that the amount of fines collected did not warrant their use.

¹-----
The National Center for State Courts may be sending me some information on the collection of outstanding court fines. I will share this information with you if, and when, it is received.

In Colorado, \$7 million is owed to the court system in attorney fees and outstanding fines. Collection efforts are made both through the courts and through the executive branch. The collection of attorney fees levied against a defendant on probation is the responsibility of the probation department. If a defendant receives a fine, he/she is immediately required to visit a "collection clerk." The clerk demands that the defendant fill out a lengthy questionnaire regarding his/her assets and agree to a payment plan. James Thomas, Court Administrator in Colorado, said that many defendants pay fines on the spot to avoid filling out questionnaires. Defendants are allowed to use Mastercard and Visa to pay fines.

The attorney general's office has a collection unit which charges the court system 25 percent of each fine collected. Mr. Thomas said that this agency is no more successful than a collection agency. He said that the use of collection clerks is more expensive but also more successful than the attorney general's office.

In Oregon, \$8 to \$10 million is currently owed to the court system in outstanding fines. John Radford, with the court system, said that the court system is not doing very well in its collection efforts because there is no comprehensive collection policy for the courts to follow. He said that nothing happens to the vast majority of people who do not pay their court fines. Because of overcrowding in Oregon's jails and prisons, people know that they will not go to jail and this encourages them to avoid paying their fines.

Mr. Radford said that the court system turns some outstanding fines over to the Department of Revenue to garnish tax returns. He also said that the courts are trying to pursue collection more aggressively and are considering hiring collection agencies. He said that collection agencies use methods to collect that the court system would not conceive of using; primarily because of the strict due process requirements which also make collection a lengthy and complex process.

In Washington, \$10 million is currently owed to the court system in outstanding fines. Susan Curtright, Court Specialist, said that the collection of fines is currently a hot issue in the Washington legislature. She said that courts want to share the responsibility for collection with the police and other agencies, but that the legislature believes it is a judicial responsibility. Ms. Curtright said that some courts are more aggressive than others in pursuing collection. Some courts have initiated the

Representative Swac hammer

March 23, 1987

Page 3

use of collection agencies, while others have installed telephone systems which automatically, and repeatedly, contact debtors to remind them of their obligations. Some courts also allow debtors to pay their fines by using credit cards. These methods have all added to the success of the court system's collection efforts.

In Wyoming, the accrual and collection of outstanding fines does not appear to be a problem. Robert Duncan, Court Administrator, estimated that less than one million dollars is owed to the state in outstanding fines. He said that the greatest problem in Wyoming in regard to the collection of outstanding fines is collecting them from nonresidents. Mr. Duncan estimated that 60 percent of Wyoming's outstanding court fines are owed by nonresidents. Courts in Wyoming have the authority to issue a warrant for the arrest of someone who does not respond to a letter sent by the court in regard to the outstanding fine. This brings the debtor before the court to make arrangements for paying the fine.

I hope this information is useful to you. If you have any questions or would like additional information, please contact our agency.

SUMMARY OF DEFAULT LOANS
STATE LOAN PROGRAMS
FOURTH QUARTER, FY 87

	LOAN PROGRAM
<u>INDIRECT LENDERS (BOND SALES)</u>	
AK HOUSING FINANCE CORP (ALL PROGRAMS)	129,345,072.00
AK INDUSTRIAL DEVELOPMENT AUTHORITY	
AIDA PURCHASED	23,769,309.00
APPROPRIATED TO AIDA	2,585,041.00
AK MEDICAL FACILITY AUTHORITY	.00
AK MUNICIPAL BOND BANK	.00
 <u>DIRECT LENDERS (APPROPRIATIONS)</u>	
AGRICULTURAL REVOLVING LOAN FUND	4,792,353.00
ALASKA POWER AUTHORITY	
POWER PROJECT FUND	.00
RURAL ELECT. REVOLVING LOAN FUND	.00
ALASKA RESOURCES CORPORATION	7,718,760.00
ALTERNATE TECH. REVOLVING LOAN FUND	474,000.00
BULK FUEL REVOLVING LOAN FUND	4,000.00
CHILD CARE FACILITY REVOLVING LOAN FUND	184,000.00
COMMERCIAL FISHING REVOLVING LOAN FUND	3,104,000.00
FISHERIES ENHANCEMENT REVOLV. LOAN FUND	1,553,900.00
GRAIN RESERVE LOAN FUND	33,802.00
HISTORICAL DISTRICT REVOLVING LOAN FUND	.00
HOUSING ASSISTANCE LOAN FUND	4,875,346.00
MED. MALPRACTICE LIABILITY LOAN FUND	.00
MINING LOAN FUND	3,877,000.00
POWER DEVELOPMENT REVOLVING LOAN FUND	.00
RESIDENTIAL ENERGY CONSERVATION FUND	118,000.00
SCHOLARSHIP REVOLVING LOAN FUND	49,275,864.00
SMALL BUSINESS REVOLVING LOAN FUND	4,343,000.00
TEACHER SCHOLARSHIP LOAN FUND	.00
TOURISM REVOLVING LOAN FUND	108,000.00
VETERANS REVOLVING LOAN FUND	1,353,000.00
WATER RESOURCES REVOLVING LOAN FUND	.00
<hr/>	
<u>TOTAL LOANS IN DEFAULT</u>	<u>237,514,447.00</u>

LEGISLATIVE - CLERK
00002 ALL. SECTION 50 43.23.085

43.23.085 DOCUMENT# 1 OF 1

CHAPTER = 43.23
SECTION = 43.23.085
TITLE = 43
HEADINGS TITLE 43.
REVENUE AND TAXATION.
CHAPTER 23.
PERMANENT FUND DIVIDENDS.

CITATION SEC. 43.23.085.

CATCH LINE

EXEMPTION OF PERMANENT FUND DIVIDENDS.

TEXT

(A) EXCEPT AS PROVIDED IN (B) OF THIS SECTION, 50 PERCENT OF THE ANNUAL PERMANENT FUND DIVIDEND PAYABLE TO AN INDIVIDUAL IS EXEMPT FROM LEVY, EXECUTION, GARNISHMENT, ATTACHMENT, OR ANY OTHER REMEDY FOR THE COLLECTION OF DEBT. THIS EXEMPTION APPLIES TO AN ELIGIBLE INDIVIDUAL'S PERMANENT FUND DIVIDEND BOTH BEFORE AND AFTER PAYMENT IS MADE TO THE INDIVIDUAL.

(B) AN EXEMPTION IS NOT AVAILABLE UNDER THIS SECTION FOR PERMANENT FUND DIVIDENDS TAKEN TO SATISFY

(1) CHILD SUPPORT OBLIGATIONS REQUIRED BY COURT ORDER OR DECISION OF THE CHILD SUPPORT ENFORCEMENT AGENCY UNDER AS 47.23.140 - 47.23.220;

(2) COURT ORDERED RESTITUTION UNDER AS 12.55.045 - 12.55.051 OR 12.55.100;

(3) A COURT ORDERED PROBATION FEE UNDER AS 12.55.105;
OR

(4) A DEBT OWED BY AN ELIGIBLE INDIVIDUAL TO AN AGENCY OF THE STATE, UNLESS THE DEBT IS CONTESTED AND AN APPEAL IS PENDING, OR THE TIME LIMIT FOR FILING AN APPEAL HAS NOT EXPIRED.

(C) CLAIMS LISTED IN (B) OF THIS SECTION HAVE PRIORITY IN THE ORDER LISTED OVER OTHER CLAIMS ON A PERMANENT FUND DIVIDEND.

HISTORY (SEC. 1 CH 102 SLA 1982; AM SEC. 1 CH 157 SLA 1984; AM SEC. 1 CH. 57 SLA 1985; AM SEC. 67 CH 138 SLA 1986)

ANNOTATIONS

CROSS REFERENCES FOR PROPERTY EXEMPT FROM EXECUTION GENERALLY, SEE AS 09.38.

REVISOR'S NOTES SECTIONS 12 AND 13, CH. 99, SLA 1985, AMEND THIS SECTION AND ADD NEW (B) AND (C). THE AMENDMENTS ARE EFFECTIVE IF &SEC 1, CH. 99, SLA 1985 IS REPEALED (SEE &SEC 25, CH. 99, SLA 1985). IF THE AMENDMENTS BECOME LAW, THE SECTION WILL READ: "(A) FIFTY PERCENT OF A CASH PERMANENT FUND DIVIDEND PAYMENT IS EXEMPT FROM LEVY, EXECUTION, GARNISHMENT, ATTACHMENT, OR ANY OTHER REMEDY FOR THE COLLECTION OF DEBT. THIS EXEMPTION APPLIES TO AN ELIGIBLE INDIVIDUAL'S PERMANENT FUND DIVIDEND BOTH BEFORE AND AFTER PAYMENT IS MADE TO THE INDIVIDUAL. AN EXEMPTION IS NOT AVAILABLE UNDER THIS SECTION FOR CASH PERMANENT FUND DIVIDEND PAYMENTS TAKEN TO SATISFY (1) CHILD SUPPORT OBLIGATIONS REQUIRED BY COURT ORDER OR DECISION OF THE CHILD SUPPORT ENFORCEMENT AGENCY UNDER AS 47.23.140 -47.23.220; (2) A DEBT OWED BY AN ELIGIBLE INDIVIDUAL TO AN AGENCY OF THE STATE, UNLESS THE DEBT IS CONTESTED AND AN APPEAL IS PENDING, OR THE TIME LIMIT FOR FILING

AN APPEAL HAS NOT BEEN FILED. OF THE COURT ORDER RESTITUTION UNDER AS 12.55.045 - 12.55.051 OR 12.55.100. A CHILD SUPPORT OBLIGATION UNDER (1) OF THIS SECTION HAS PRIORITY OVER A DEBT OWED TO AN AGENCY OF THE STATE, AND A PERMANENT FUND DIVIDEND MAY NOT BE TAKEN TO SATISFY A DEBT UNDER (2) OF THIS SECTION UNTIL ANY PORTION OF THE DIVIDEND NECESSARY TO SATISFY A CHILD SUPPORT OBLIGATION HAS BEEN TAKEN.

*(B) THE DEPARTMENT SHALL REQUIRE AN INDIVIDUAL TO TAKE 100 PERCENT OF THE PERMANENT FUND DIVIDEND IN CASH IF THE DEPARTMENT RECEIVES A LEVY, EXECUTION, GARNISHMENT, ATTACHMENT OR OTHER LEGAL REMEDY FOR THE COLLECTION OF A PAST DUE DEBT DESCRIBED IN (A)(1) OR (2) OF THIS SECTION.

(C) THE COURTS OF THIS STATE MAY, AS A CONDITION OF ANY CIVIL JUDGMENT OR RESTITUTION ORDER UNDER AS 12.55.045 - 12.55.051 OR 12.55.100, REQUIRE THE DEFENDANT TO TAKE THE DEFENDANT'S PERMANENT FUND DIVIDEND IN CASH.

SECTION 22, CH. 99, SLA 1985 PROVIDES FOR AN ADVISORY VOTE TO BE HELD AT THE GENERAL ELECTION IN 1986. FOR THE TEXT OF THAT PROVISION, SEE &SEC 22, CH. 99, SLA 1985 IN THE TEMPORARY AND SPECIAL ACTS.

AMENDMENT NOTES

EFFECT OF AMENDMENTS THE 1984 AMENDMENT ADDED THE LAST SENTENCE AND, IN THE NEXT-TO-LAST SENTENCE, SUBSTITUTED "AN EXEMPTION IS NOT" FOR "NO EXEMPTION IS," INSERTED "(1)," AND ADDED THE LANGUAGE BEGINNING WITH "(2) A DEBT" AT THE END OF THE SENTENCE. SECTION 2, CH. 157, SLA 1984 LIMITS THE APPLICATION OF THE 1984 AMENDMENT TO DIVIDENDS ISSUED FOR 1984 AND SUBSEQUENT YEARS.

THE FIRST 1985 AMENDMENT ADDED "OR (3) COURT ORDERED RESTITUTION UNDER AS 12.55.045 - 12.55.051 OR 12.55.100" AT THE END OF THE NEXT-TO-LAST SENTENCE AND IN THE LAST SENTENCE INSERTED "OR COURT ORDERED RESTITUTION" AND "AND COURT ORDERED RESTITUTION."

THE SECOND 1985 AMENDMENT, EFFECTIVE IF &SEC 1, CH. 99, SLA 1985 IS REPEALED, REWROTE SUBSECTION (A) AND ADDED SUBSECTIONS (B) AND (C).

THE 1986 AMENDMENT, EFFECTIVE JULY 1, 1986, REWROTE THIS SECTION.

00601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

FISCAL NOTE

REQUEST: _____

Revision Date: _____
Title: An act relating to collection of debt involving permanent fund dividends
Sponsor: Judiciary
Requestor: House Judiciary Committee

Agency Affected: Revenue
BRU: Permanent Fund Dividend

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
OPERATING						
PERSONAL SERVICES	-	82.0	82.0	82.0	82.0	82.0
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	83.1	63.1	63.1	63.1	63.1
SUPPLIES	-	1.8	1.8	1.8	1.8	1.8
EQUIPMENT	-	20.4	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	187.3	139.9	139.9	139.9	139.9
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER (PFD)	-	187.3	139.9	139.9	139.9	139.9
TOTAL	-	187.3	139.9	139.9	139.9	139.9

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	7	7	7	7	7
TEMPORARY	-	-	-	-	-	-

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Ervin B. Jones
Division: Permanent Fund Dividend

Phone: 465-2323

Date: 1/12/88

Approved by Commissioner: _____
Agency: Revenue

Date: 1/13/88

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Department of Revenue
Permanent Fund Dividend Division
Fiscal Note Analysis
CSHB 223
1/12/88

Assumptions:

- 1) Since a claim under the proposed section 3 would be infinitely easier for state agencies, municipalities and the courts to use, those entities would use this mechanism exclusively. It is impossible to estimate the number of such claims the Department of Revenue might receive. However, the following will give some idea of the volume.
 - a) In 1986, the Postsecondary Education Commission was able to get only 800 of their 2,000 attachments through the courts and served on the Department of Revenue. In 1987, under provisions similar to the proposal in this bill, the Commission was able to serve 5,038 certified claims on the Department of Revenue, a 500% increase.
 - b) The Child Support Enforcement Division currently serves approximately 6,012 attachments. This is an almost 50% increase over 1986.
 - c) The City-Borough of Juneau has 3,500 delinquent accounts for such things as property taxes, sales tax, utilities, harbor fees, hospital bills, etc.
 - d) The Anchorage Telephone/Utility has 8,226 "real problem cases."
 - e) Between Anchorage and Juneau, there are over 22,000 outstanding traffic tickets.
 - f) The court system of Alaska processes approximately 25,000 criminal cases, alone, a percentage of which result in fines.
 - g) Under the present system, private parties account for 8,820 claims each year. Given that the cost of service will stay the same and that the amount of recovery has gone from a potential \$400 to a potential \$700, the number of private party services will increase dramatically.
 - h) In 1987, the department experienced 37,393 claims on Permanent Fund Dividends, almost twice as many as in 1986 and four times as many as in 1985. Even without the passage of this bill, we expect at least 50,000 claims in 1988. With the passage of this bill, the total numbers could easily reach 100,000.
- 2) I would assume and hope that this bill would not effect the 1988 dividend distribution. Assuming that the bill became law in mid-May it would be impossible to get everything in place, and complete the printing, programming, staff recruitment and training necessary to implement the bill before the filing deadline of June 30. By that time, the department has already received thousands of claims and assignments, made under the expectation that they will be processed under the current law. It is arguably not fair to take an applicant's dividend (except \$100) when the applicant filed under a law which provided for a 50% exclusion.

If the provisions of this bill are intended to take effect in mid-stream, a new analysis of costs will have to be done to include the cost of dealing with a very irate public.

Program Summary:

The department's responsibilities under this bill would be as follows:

- a) Forms Printing: The Department of Revenue would print an auxiliary Permanent Fund Dividend "Claim by Government Agency" to be distributed to all agencies identified in the definition of agency. The "PFD Claim form" would require of the agency:
 - 1) The name and address of the agency.
 - 2) The full name, address and birthdate of the obligee.
 - 3) The amount of the claim.
 - 4) A statement of the basis of the claim. (Some consistent, short form of reasons would have to be worked out with the many "agencies." The data capture of a free form reason would be very expensive.)
 - 6) If applicable, a case name and number.
- b) Systems/Programming Changes: The bill will require many changes, including the recognition of a new category of "claim form."
- c) Individual, private claims will continue to be processed one at a time, with unique problems. Claims from state agencies and perhaps some municipalities will be automated to some extent. The court system and many municipalities will not be prepared to provide automated services of claim; via tape matches, and so the claims will be served and processed the same as private claims.
- d) Agencies which are part of the Alaska State Accounting System will be paid through the system with supporting information provided. Municipalities and the court system will be paid by check.
- e) The department currently receives thousands of contacts from debtors whose dividends have been attached, despite our best efforts to steer their complaints, appeals, etc. to the creditor who served the attachment. At the point when 50,000 - 60,000 Alaskan families are being affected by this expedited process, the number of such contacts, and the number of contacts with the Legislature, the Governor's Office and the Ombudsman is definitely going to increase.

1. Positions:

3 PPT Accounting Clerk I, R8,
@ \$2,270.18/Mo each including
salary and benefits for
8 months = \$54.8

These positions will assist the existing Accounting Clerk II in the processing of the existing attachments and assignments.

This also involves correspondence and telephone contact with the many competing garnishors.

4 PPT Data Processing Clerk I,
R8, @ \$2,270.18/Mo each including
salary and benefits for 3 months = 27.2

These positions will perform the
data capture necessary on the
claims to enable the department to
comply with the provisions of
the bill.

Total Personal Services \$82.0

2. Other Costs:

a) Travel: None.

b) Contractual:

Printing \$5.1

Includes printing costs associated
with 75,000 claim forms, 60,000
notices of appeal rights, and
60,000 notices of claim.

Postage 28.0

Includes postage for claim
notices and bulk shipment of
claim forms to agencies.

Data Processing Chargeback from 50.0
Department of Administration
estimated 50.0 in FY89, including
development; 30.0 in years
thereafter.

TOTAL Contractual \$83.1

c) Equipment

Purchase 3 Wang 4250 workstations
to provide access to the PFD
System for the accounting staff = \$7.2

Purchase 4 Wang 4230 workstations
for data capture = 9.6

Purchase 1 Wang VS-100 IOP = 3.6

TOTAL Equipment \$20.4

d) Supplies: \$1.8

TOTAL COST \$187.3

Suggested Amendments:

It is impractical for the Department of Revenue to be sending thousands of notices of claim and appeal rights to applicants, on behalf of other agencies. The notices and all further contact should be by the creditor agency, not Revenue. We will need to work with the concerned agencies and the committee staff to effect this change.

Attachments: None.

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Law
 Title: ...relating to...the collection of BRU: Legal Services
debt involving permanent fund dividends...
 Sponsor: House Judiciary Committee Components: Operations
 Requestor: House Judiciary Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, ELLIAMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-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)

Please see attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: January 12, 1988
Richard Grace Berg Schaible
 Approved by Commissioner: Attorney General Date: January 12, 1988
 Agency: Department of Law

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill Resolution No. CSHB 223 (S.S.)

This bill expands and simplifies the procedures whereby permanent fund dividends may be attached to satisfy debts owed to the state and extends the procedures to municipalities. The bill provides for an agency hearing process when claims against an individual's permanent fund dividend are contested. The bill further provides for an appeal process from hearing decisions. These changes have the effect of amending Alaska Rule of Civil Procedure 69 by authorizing agencies of the state, state courts, and municipalities to execute on permanent fund dividends without using the execution procedures provided in that rule. This substitution of agency execution procedures in place of formal court procedures will greatly enhance the state's ability to collect debts owed to it, including unpaid fines owed to the state courts that totalled \$1,150,000 for the two-year period ending January 1, 1987. Moreover, adoption of the bill will also assist the efforts of the collections unit, proposed in the Department of Law's FY 1989 budget request, to collect debts owed to the state in a cost effective manner.

It is estimated that in any given year between 6,000 and 8,000 individual dividends are subject to attachment. Of this number, up to 1,000 claims are expected to be contested. Under the provisions of the bill, contested claims hearings would be handled at the agency level and would not involve the Department of Law. However, it is anticipated that about thirty to fifty hearings will result in appeals involving Department of Law attorneys and paraprofessionals. Because of the simplified execution procedures provided by this bill, only two to three hours of the department's staff time will be required for each appeal. This minimal increase in staff time, estimated at 150 hours annually, does not warrant fiscal note costs.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HB 223
Publish Date:

REQUEST: _____

Revision Date:
Title: An act relating to permanent
fund dividends
Sponsor: Swackhammer, Larson
Requestor:

Agency Affected: Alaska Court System
BRU: Trial Courts
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)						
	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
Personal Services	112.4	112.4	112.4	112.4	112.4
Travel
Contractual
Supplies
Equipment	13.8	. . . .	. . . .	. . . .	. . . .
Land & Structures
Grants & Claims
TOTAL OPERATING	0.0	126.2	112.4	112.4	112.4	112.4
CAPITAL
REVENUE	See analysis		. . . .	. . . .	. . . .

FUNDING: (Thousands of Dollars)						
	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
General Funds	0.0	126.2	112.4	112.4	112.4	112.4
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	126.2	112.4	112.4	112.4	112.4

POSITIONS:						
	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
Full-time	1.0	1.0	1.0	1.0	1.0
Part-time	5.0	5.0	5.0	5.0	5.0
Temporary

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by: Robert G. Fisher, Fiscal Officer Phone: 264-8215
Division: Alaska Court System Date: 4-9-87
Approved by: *Arthur H. Snowden II* Administrative Director Date: 4-9-87
Agency: Alaska Court System

- Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management & Budget
Impacted Agency(ies)
Senate Secretary

ALASKA COURT SYSTEM

HB 223 - FISCAL ANALYSIS

Personal Services:	Salary	Benefits	Total
Court Clerk II, Range 10B, Anchorage, PPT - 12 months	\$22,836	\$8,290	\$31,126
Court Clerk II, Range 10B, Fairbanks, PPT - 6 months	12,870	4,468	17,338
Court Clerk II, Range 10B, Juneau, PPT - 6 months	11,418	4,145	15,563
Court Clerk II, Range 10B, Kenai, PPT - 6 months	12,120	4,301	16,421
Court Clerk II, Range 10B, Ketchikan, PPT - 6 months	11,418	4,145	15,563
Court Clerk II, Range 10B, Palmer, PPT - 6 months	12,120	4,301	16,421

Total Personal Services			112,432
Equipment: (one time cost)			
Desk, chair, filing cabinet, and typewriter for each new employee			13,848

Total First Year Cost			\$126,280
			=====

ALASKA COURT SYSTEM
HB 223 - FISCAL ANALYSIS

Court	Estimated Number of New State Cases with Fines Due	Estimated Number of Court Applications for Dividends	Estimated Number of Court Writs of Execution on Dividends	Estimated Personnel Hours for Applications	Estimated Personnel Hours for Writs	Estimated Total Personnel Hours
Anchorage	517	129	388	129	1,164	1,293
Fairbanks	467	117	350	117	1,050	1,167
Juneau	208	75	224	75	672	747
Ketchikan	228	57	171	57	513	570
Kenai	350	88	263	88	789	877
Palmer	324	81	243	81	729	810

ALASKA COURT SYSTEM

CS HB 223 (State Affairs) - FISCAL ANALYSIS

Personal Services:	Salary	Benefits	Total
Court Clerk II, Range 10B, Anchorage, PPT - 12 months	\$22,836	\$8,290	\$31,126
Court Clerk II, Range 10B, Fairbanks, PPT - 6 months	12,870	4,468	17,338
Court Clerk II, Range 10B, Kenai, PPT - 6 months	12,120	4,301	16,421
Court Clerk II, Range 10B, Palmer, PPT - 6 months	12,120	4,301	16,421

Total Personal Services			81,306
Equipment: (one time cost)			
Desk, chair, filing cabinet, and typewriter for each new employee			9,232

Total First Year Cost			\$90,538
			=====

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST
 Revision Date: April 14, 1987
 Title: An act relating to permanent fund dividends; and providing for an effective date
 Sponsor: Swackhammer and Larson
 Requestor: House State Affairs

Bill Version: HB 223
 Publish Date: _____
 Agency Affected: Revenue
 BRU: Permanent Fund Dividend
 Components: Enforcement

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES	-	-	498.0	498.0	498.0	498.0
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	41.6	41.6	41.6	41.6
SUPPLIES	-	-	3.5	3.5	3.5	3.5
EQUIPMENT	-	-	117.1	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	660.2	543.1	543.1	543.1
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER (PFD)	-	-	660.2	543.1	543.1	543.1
TOTAL	-	-	660.2	543.1	543.1	543.1

POSITIONS:

FULL-TIME	-	-	14	14	14	14
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: Please see the attached analysis.

Prepared By: Thomas C. Williams Phone: 465-2366
 Division: Enforcement Division Date: April 14, 1987
 Approved by Commissioner: [Signature] Date: 4/19/87
 Agency: Revenue

Distribution (by Agency preparing fiscal note):

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

ALASKA DEPARTMENT OF REVENUE
ENFORCEMENT DIVISION
FISCAL NOTE ANALYSIS FOR HB 223
April 14, 1987

A. Assumptions

1. Governmental Agencies will apply on behalf of everyone who has an outstanding obligation due to the Agency.
2. Total Agency claims will be in excess of 60,000. Of these, approximately 10% will be for individuals who have not otherwise applied for a permanent fund dividend (non-competing applications).
3. The department will have to investigate all 6,000 of the non-competing applications to determine if the individuals are eligible for a permanent fund dividend.
4. All 54,000 of the competing applicants' applications will have to be denied. The denial will be subject to appeal. At least 10% of those denied will appeal, resulting in at least 5,400 appeals.
5. Each PFD Specialist I will be able to annually resolve 1,000 investigations or 1,000 appeals requiring the following staff increase:

6,000 investigations/1,000 per PFD Specialist I = 6 PFD Specialist I's
5,400 appeals /1,000 per PFD Specialist I = 6 PFD Specialist I's

Total minimum number: 12 PFD Specialist I's

6. The 12 new PFD Specialist I's will require one additional Clerk Typist and one supervisory PFD Specialist III.
7. The effective date in section 6 is changed to correspond to the 1988 PFD program.

ALASKA DEPARTMENT OF REVENUE
 ENFORCEMENT DIVISION
FISCAL NOTE ANALYSIS FOR HB 223
 April 14, 1987

B. Computations

	<u>Amount</u> <u>(In thousands)</u>
<u>Personal Services</u>	
1 PFD Specialist III (range 18, @ 50.4/year)	\$ 50.4
12 PFD Specialists I (range 13, @ 35.0/year)	420.0
1 Clerk Typist III (range 08, @ 27.6/year)	<u>27.6</u>
<u>Total Personal Services</u>	<u>498.0</u>
<u>Contractual Services</u>	
Long distance telephone charges, postage, printing, etc.	40.0
Space lease cost (776 sq. ft. @ 2.03/sq. ft.)	<u>1.6</u>
<u>Total Contractual</u>	<u>41.6</u>
<u>Commodities</u>	
Miscellaneous office supplies (14 employees @ \$250/year)	<u>3.5</u>
<u>Total Commodities</u>	<u>3.5</u>
<u>Equipment (FY89 only)</u>	
14 Workstations for Support Personnel @ \$5,273.73	73.8
14 Swivel-Tilt Chairs with arms @ \$640.81	9.0
2 File cabinets (5 drawer legal w/lock) @ \$341.35	.7
14 12 digit Desk Calculators (printing) @ \$135.03	1.9
6 IBM Computer Terminals @ \$1,200.00	7.2
2 IBM 3287 Printers @ \$3,700.00	7.4
2 WANG Computer Terminals @ \$4,900.00	9.8
1 WANG Printer @ \$2,500.00	2.5
14 Telephones @ \$343.00	<u>4.8</u>
<u>Total Equipment</u>	<u>117.1</u>
<u>Total Required Budget</u>	<u>\$660.2</u>

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

C

REQUEST _____

Bill Version: HB 223
Publish Date: _____

Revision Date: _____
Title: An act relating to permanent fund dividends
Sponsor: Swackhammer, Larson
Requestor: State Affairs

Agency Affected: Revenue
BRU: Administrative Services
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES	-	208.6	105.9	105.9	105.9	105.9
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	83.1	63.1	63.1	63.1	63.1
SUPPLIES	-	1.8	1.8	1.8	1.8	1.8
EQUIPMENT	-	15.6	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	309.1	170.8	170.8	170.8	170.8
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	309.1	170.8	170.8	170.8	170.8
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	309.1	170.8	170.8	170.8	170.8

POSITIONS:

FULL-TIME	-	5	3	3	3	3
PART-TIME	-	4	4	4	4	4
TEMPORARY	-	-	-	-	-	-

ANALYSIS: Attach a separate page if necessary

(See attached)

Prepared By: Ervin E. Jones
Division: Administrative Services

Phone: 465-2313
Date: 4/13/87

Approved by Commissioner: [Signature]
Agency: Revenue

Date: 4/19/87

Distribution (by Agency preparing fiscal note):

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

Department of Revenue
Administrative Services Division
Fiscal Note Analysis
HB 223
4/13/87

Assumptions:

- 1) Since a claim under the proposed subsection AS 43.23.005 would be infinitely easier for state agencies, municipalities and the courts to use, those entities would use this mechanism exclusively. It is impossible to estimate the number of such claims the Department of Revenue might receive. However, the following will give some idea of the volume.
 - a) The Postsecondary Education Commission recently testified at hearings for HB 133 that they were able to get only 800 of their 2,000 attachments through the courts. Were that true for all "agencies," we could expect a 250% increase over the current number of attachments by state agencies.
 - b) The City-Borough of Juneau has 3,500 delinquent accounts for such things as property taxes, sales tax, utilities, harbor fees, hospital bills, etc.
 - c) The Anchorage Telephone/Utility has 5,800 "real problem cases."
 - d) Between Anchorage and Juneau, there are over 22,000 outstanding traffic tickets.
 - e) The court system of Alaska processes approximately 25,000 criminal cases, alone, a percentage of which result in fines.
 - f) The Child Support Enforcement Division currently serves approximately 4,500 attachments.
 - g) All other state agencies combined file approximately 2,000 attachments. It is fairly easy to envision 60,000 claims being filed under Section 1 of HB 223.
- 2) I would assume and hope that this bill would not effect the 1987 dividend distribution. Assuming that the bill became law in mid-May it would be impossible to get everything in place, and complete the printing, programming, staff recruitment and training necessary to implement the bill before the filing deadline of June 30.
- 3) It is assumed that the several legal questions raised by the Attorney General and Legal Services are resolved and that the bill as drafted is passed into law. Please see Attorney General memo of 4/2/87, file no. 663-87-0446.

Program Summary:

The department's responsibilities under this bill would be as follows:

- a) Forms Printing: The Department of Revenue would print an auxiliary Permanent Fund Dividend "Claim by Government Agency" to be distributed to all agencies identified in the definition of agency. The "PFD Claim form" would require of the agency:
 - 1) The name and address
 - 2) The full name, address and birthdate of the obligee.
 - 3) The amount of the claim.
 - 4) A statement of the basis of the claim. (Some consistent, short form of reasons would have to be worked out with the many "agencies." The data capture of a free form reason would be very expensive.)
 - 5) A statement by an officer of the agency of the basis for its belief that the individual is eligible to receive a dividend for that year. This statement would need to include an affirmation that the individual obligee was known to have physically resided in Alaska for the full eligibility period, that the individual was still a resident of Alaska and most importantly, a statement of the basis for belief by the agency that the individual obligee has the intent to remain a resident.
 - 6) If applicable, a case number.
- b) Systems/Programming Changes: The entire dividend system is premised upon processing applications voluntarily filed by applicants claiming to be residents. The bill will require many changes, including the recognition of a new category of "claim form," the identification and denial of competing applications from the obligees, allocating dividend payments to multiple claimants, notification of obligees of claim(s) filed and reconciliation of all amounts paid. I envision this as a fairly major change to the existing PFD system which will require additional programming staff and computer resources.
- c) Claims filed under Section 1 will have to be microfilmed, reviewed for completeness, and data captured. Notice of acceptance or non-availability of funds will be sent to the claimant.
- d) Incomplete claims will result in request letters.
- e) All claims based on an agency's belief that the obligee is eligible will be reviewed by the Enforcement Division for residency. All claims will be matched against the PFD application file. Competing PFD applications will be denied with statutory appeal rights being extended, and hearings provided. Information from competing applications will be used to help verify residency, and when there is no competing application, Enforcement may contact obligees directly to obtain information.
- f) Agencies which are part of the Alaska State Accounting System will be paid through the system with supporting information provided. Municipalities and the court system will be paid by check.

Questions:

- 1) As noted in Mr. Bush's 4/2/87 memo, it is unclear as to what the Department of Revenue is supposed to do with the residual of a Permanent Fund Dividend if a claim is for less than the full amount. Do we pay the individual, as with normal attachments? What is the obligee never fil on his own behalf?
- 2) Does a claim, regardless of the face amount, constitute an application for an "eligible individual" for purposes of calculating the value of the dividend?
- 3) If a claim under Section 1 is the only application filed on behalf of an individual, is it subject to attachment? Is the balance, after AS 43.23.065(b) claims, assignments and attachments are paid, subject to normal attachment?

1. Positions:

3 PFT Accounting Clerk I, R8,
@ \$2,221.64/Mo each including
salary and benefits for
12 months = \$79.9

These positions will assist the existing Accounting Clerk II in the processing of the existing attachments and assignments. This also involves correspondence with the many competing garnishors.

2 PPT Data Processing Clerk I,
R8, @ \$2,221.64/Mo each including
salary and benefits for 3 months = 13.3

These positions will perform the data capture necessary on the claims to enable the department to comply with the provisions of Sec. 1

2 PFT Analyst/Programmer IV, R19,
@ \$4,281/Mo each including
salary and benefits for 12 months = 102.7

This would be a one-time cost for FY88 development. The maintenance of the system changes will be accomplished by the existing staff.

2 PPT Document Processor I, R7,
@ \$2,117.76/Mo each including
salary and benefits for 3 months = 12.7

These positions will assist in
the denials of approximately
60,000 applicants and the
resulting appeals.

Total Personal Services \$208.6

2. Other Costs:

a) Travel: None.

b) Contractual:

Printing \$5.1

Includes printing costs associated
with 75,000 claim forms, 60,000
denial notices, and 60,000 notices
of appeal rights, and 60,000
notices of claim.

Postage 28.0

Includes postage for denial notices,
claim notices and bulk shipment of
claim forms to agencies.

Data Processing Chargeback from 50.0
Department of Administration
estimated 50.0 in FY88, including
development; 30.0 in years
thereafter.

TOTAL Contractual \$83.1

c) Equipment

Purchase 3 Wang 4250 workstations
to provide access to the PFD
System for the accounting staff = \$7.2

Purchase 2 Wang 4230 workstations
for data capture = 4.8

Purchase 1 Wang VS-100 ICP = 3.6

TOTAL Equipment \$15.6

d) Supplies: \$1.8

TOTAL COST

\$309.1

Suggested Amendments:

As suggested in Mr. Jeffrey Bush's AG's memo, file no. 663-87-0446.

Attachments: None.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: SB 227 / HB 223
Publish Date: 4/1/87

REQUEST: _____

Revision Date: 4/13/87
Title: An Act relating to claims of state agencies to permanent fund dividends.
Sponsor: Senators Uehling and Faiks
Requestor: Senator Uehling

Agency Affected: Commerce & Economic Dev.
BRU: Occupational Licensing
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

(See Attached)

Prepared by: Jennifer Strickler, Management Analyst
Division: Occupational Licensing
Approved by Commissioner: J. Anthony Smith
Agency: Commerce and Economic Development

Phone: 465-2144
Date: 4/13/87
Date: _____

Distribution (by preparer):

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

HOUSE COMMITTEE REPORT

(7)
Date referred: 3/27/87

FURTHER REFERRALS: Judiciary
Finance

DATE: 5-4-87

The State Affairs Committee has considered HB 223

"An Act relating to permanent fund dividends; and providing for an effective date."

RECOMMENDS:

- replace with CS HB 223 (SA) 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):

- ² fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- ¹ zero with analysis

SIGNING DO PASS:

Derek Douley
D.D. [Signature]

SIGNING OTHER RECOMMENDATIONS:

Terry Martin - No Rec.
Cly Davidson No Rec
Lynn Hoffman No Rec
Mr. Palmer No Rec

[Signature]
 Chairman's signature