

CSHB

223

SENATE COMMITTEE REPORT

FURTHER

4/14/88

DATE TURNED INTO OFFICE 5/8/88

Mr. President:

FINANCE

Committee considered cshb 223 (FIN) am

remedies for the collection of debt owed to state agencies and courts involving permanent fund dividends, to assignments of dividends, and to the exemption for dividends; amending Alaska Rule of Civil Procedure ⁶⁹ and ^{efd} recommended

replace with _____ CS _____) same title
 or adopt _____ CS _____) new title

attached amendment(s) and

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted _____

Committee attached or adopted fiscal note(s)

new updated or previous
DOR zero fiscal impact (DOE)

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Signature]
Paul Frank

[Signature]
[Signature] NO REC
[Signature]

[Signature] NO REC
Chairman signature and recommendation

Committee Backup attached

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 6,072 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 auxillary 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,
RB, @ \$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.

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSHB 223(FIN)
PUBLISH DATE: HOUSE 2/8/88

FISCAL NOTE

REQUEST:

Revision Date: 2-4-88
Title: Re: Permanent Fund Dividend
Sponsor: Swackhammer and Larson
Requestor: House Finance

Agency Affected: Education
BRU: Postsecondary Education/
Student Loan Corporation
Components: Student Loan Fund

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		43.0	44.1	45.1	46.8	48.2
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		43.0	44.1	45.1	46.8	48.2
CAPITAL	N.A.	(430.0)	(441.2)	(454.0)	(468.0)	(482.0)
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER	N.A.	(473.0)	(485.3)	(499.4)	(514.8)	(530.2)
TOTAL		(473.0)	(485.3)	(499.4)	(514.8)	(530.2)

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

See Attached

Prepared by: Kerry D. Romesburg, Executive Director Phone: 465-2854
Division: Alaska Commission on Postsecondary Education Date: 2-4-88

Approved by Commissioner: _____ Date: _____
Agency: _____

Distribution (by preparer):

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

CSHB 223 (FIN)

ANALYSIS OF FISCAL IMPACTA. Assumptions

1. 1987-88 experience in attachment of permanent fund dividends for defaulted student loan accounts peaked, at least for the next few years. A number of the 5,038 individuals, whose PFD was attached, will simply not apply again in 1988-89.
2. The \$100 exemption from claim provided in HB 223 will not encourage those whose PFD's were attached in 1987-88 to apply in 1988-89. For the most part, individuals will not be aware of the new \$100 exemption.

B. Projections

1. The number of PFD attachments for FY89 - 93 are estimated to be:

<u>Year</u>	<u>Attachments</u>
FY88	5,038 (actual)
FY89	4,300
FY90	4,412
FY91	4,540
FY92	4,680
FY93	4,820

2. Since the Postsecondary Commission already has access to PFD attachment, there is no revenue gain to our agency. Rather, we collect \$100 less per successful attachment. Hence, the fiscal note is negative, i.e., lost revenue.

C. Comments

1. The "lost" revenue, that is, PFD funds not received assumes we would attach the entire PFD. This figure may be high, since a number of attachments are not in an amount equal to the entire dividend.
2. Contractual costs are to be paid through interagency transfer to the Department of Revenue for a processing and administration fee.

Original sponsors: Swackhammer and Larson

1 IN THE HOUSE BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 223 (Finance) am
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 that portion of debts listed under
7 AS 43.23.065(b) for which payments are at least 90 days overdue
8 [AS 14.43.120(i)]. Notwithstanding AS 09.35, execution on a claim to
9 satisfy that portion of a debt listed under AS 43.23.065(b) for which
10 payments are at least 90 days overdue may be [AS 14.43.120(i) IS]
11 accomplished by delivering a [CERTIFIED] claim to the department
12 containing the following information:

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

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

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

20 (4) a statement that

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

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

1 the agency or court [COMMISSION].

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

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

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

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

11 (4) [(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 or court [ALASKA COMMISSION ON POSTSECONDARY EDUCATION] unless
15 the agency or court [COMMISSION] releases the claim or the individual
16 requests a hearing on the validity of the claim from the agency or
17 court making the claim within 45 [30] days after the date the notice
18 is sent by the department.

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

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

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

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

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

23 * Sec. 9. AS 43.23.065(c) is repealed.

24 * Sec. 10. This Act takes effect April 1, 1989.

HOUSE COMMITTEE REPORT

(21)

Date referred: 1/18/88

FURTHER REFERRALS:

DATE: 2-5-88

The Finance Committee has considered HB 223

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

RECOMMENDS:

- replace with CS HR 223 (FIN) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____



ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact 2/5/88 - LABOR same as previous fiscal note published 1/18/88
- zero fiscal note 2/4/88 - Post Sec. Ed
- zero with analysis 1/22/88 Comm. same as previous zero fiscal note published _____
- 2/4/88 Court

SIGNING DO PASS:

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

SIGNING OTHER RECOMMENDATIONS:

[Signature] N.R.

[Signature] No Rec

[Signature] No Rec

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]
Chairman's signature

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSHB 223 (Fin)
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to remedies for the collection of debt..."
Sponsor: Swackhammer & Larson
Requestor: House Rules

Agency Affected: Labor
BRU: Employment Security
Components: Unemployment Insurance

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, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Wally J. Roman, Director
Division: Employment Security Phone: 465-2719
Date: 2/10/88

Approved by Commissioner: Jim Sampson Date: 2/10/88
Agency: Labor

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



CSHB 223 (Fin) rec'd SFC 4/14/88

This FN was not transmitted w/bill to Senate, hence S(SA) did not address.

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSHB 223 (Fin)
PUBLISH DATE: HOUSE 1/18/88

FISCAL NOTE This FN should travel with/bill; passed House.

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)

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EQUIPMENT	-	15.6	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	157.2	121.6	121.6	121.6	121.6
CAPITAL	-	-	-	-	-	-
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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:

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 - b) The Child Support Enforcement Division currently serves approximately 6,012 attachments. This is an almost 50% increase over 1986.
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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.

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)

*Call Cheryl's
atten to this FN.*

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:

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 - 1) The name and address of the agency.
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 - 3) The amount of the claim.
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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
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60,000 notices of claim.

Postage 28.0

Includes postage for claim
notices and bulk shipment of
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Data Processing Chargeback from 50.0
Department of Administration
estimated 50.0 in FY89, including
development; 30.0 in years
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TOTAL Contractual \$83.1

c) Equipment

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to provide access to the PFD
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TOTAL Equipment \$15.6

d) Supplies: \$1.8

TOTAL COST

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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: _____
Title: An Act relating to remedies for the collection of debt involving PFD's...
Sponsor: Reps. Swackhammer & Larson
Requestor: House Finance

Agency Affected: Commerce & Econ. Dev.
BRU: Occupational Licensing

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
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, Mgnt. Analyst
Division: Occupational Licensing

Phone: 465-2144
Date: January 21, 1988

Approved by Commissioner: J. Anthony Smith
Agency: Commerce and Economic Development

Date: 1/24/88

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

RECEIVED
JAN 26 1988

CONTINUATION of FISCAL NOTE ANALYSIS

No. 7

HOUSE 2/8/88

For Bill/Resolution No. CSHB 223(FIN)

The Division of Occupational Licensing experienced approximately 3% of NSF checks submitted annually for licensing fees during FY 86 and FY 87. At that rate, 3% of the projected FY 88 revenue will total \$55,388.52.

CSHB 223 will allow the division to recover funds for NSF checks through filing a claim against an individual's permanent fund dividend check, after all other attempts to recover the funds are unsuccessful. The impact of the bill should discourage future non-compliance with attempts to recover funds.

STATE OF ALASKA 1988 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST:

Bill Version: CSHB 223(FIN)
Publish Date: HOUSE 2/8/88

Revision Date: 2-4-88
Title: An act relating to permanent fund dividends
Sponsor: Swackhammer, Larson
Requestor: Finance

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

EXPENDITURES/REVENUES:		(Thousands of Dollars)				
	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
OPERATING						
Personal Services
Travel
Contractual
Supplies
Equipment
Land & Structures
Grants & Claims
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL
REVENUE

FUNDING:		(Thousands of Dollars)				
	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:						
	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
Full-time
Part-time
Temporary

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by: *Jan Strandberg* General Counsel
Division: Alaska Court System

Phone: 264-8215
Date: 2-4-88

Approved by: *Stephanie Cole, for -* Arthur H. Snowden, II, Administrative Director
Agency: Alaska Court System

Date: 2-4-88

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

No. 3

CSHB 223(FIN)
HOUSE 2/8/88

ALASKA COURT SYSTEM

- FISCAL ANALYSIS

The court system anticipates that the Department of Law will use this bill's procedures to collect court-ordered fines and restitution and that the receipts will be returned to the general fund or to the affected victims after deducting the proposed administrative fee. The court system assumes that the fiscal impact of the fee will be offset by the decreased number of writs of execution that must be processed by the clerks of court for state agencies.

FISCAL NOTE

REQUEST:

NEW REVISED

Revision Date: 2/10/88
Title: "An Act relating to remedies for the collection of debt..."
Sponsor: Swackhammer & Larson
Requestor: House Rules

Agency Affected: Labor
BRU: Employment Security
Components: Unemployment Insurance

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, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Joe Sinton, Director Phone: 465-2719
Division: Employment Security Date: 2/10/88

Approved by Commissioner: Jim Sampson Date: 2/10/88
Agency: Labor

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

Analysis of Fiscal Note
For CSHB 223 (Fin)

CSHB 223(FIN)
HOUSE 2/11/83

NEW REVISED

This bill would require Departments making a claim against an individual's permanent fund dividend to pay the Department of Revenue the administrative costs associated with that claim. This would be an additional procedure the Department of Labor could use in order to collect Unemployment Insurance benefit overpayments and delinquent employer contributions. The Department anticipates no overall additional cost to the Unemployment Insurance program as a result of this new procedure. Savings associated with the new procedures would be used within the program to pay the Department of Revenue the approximately \$10 per claim in administrative costs. The collections from the attached dividends would be deposited in the Unemployment Insurance trust fund, which is used to pay the U.I. benefits. The estimated number of claims attached would be as follows:

	<u>1989</u>	<u>1990</u>	<u>1991</u>	<u>1992</u>	<u>1993</u>
Total Claims	3200	3700	4200	4500	4500

Assumptions:

1. An effective date of April 1, 1989.



HB 223

Alaska Court System

State of Alaska

303 "M." 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

LOAN PROGRAM

INDIRECT LENDERS (BOND SALES)

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

DIRECT LENDERS (APPROPRIATIONS)

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

TOTAL LOANS IN DEFAULT237,514,447.00



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

HB 223

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.

COMMITTEE SUBSTITUTE FOR HOUSE BILL 223 (FINANCE) AM

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. THE ORIGINAL INTENT OF HOUSE BILL 223 WAS TO ADDRESS THIS ISSUE AND INCLUDE STATUTORY LANGUAGE THAT WOULD ALLOW THE COURTS TO COLLECT THOSE MONIES VIA THE PERMANENT FUND DIVIDEND PROGRAM. THE PROBLEM OF COLLECTING OVERDUE FINES IS NOT UNIQUE TO THIS STATE. ACCORDING TO THE HOUSE RESEARCH AGENCY, OTHER STATES HAVE HAD LITTLE SUCCESS IN COLLECTIONS. WITH OUR PERMANENT FUND DIVIDEND PROGRAM, ALASKA HAS A MECHANISM IN PLACE TO ALLEVIATE THE COLLECTION PROBLEM. 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.

HERE IS A SECTIONAL ANALYSIS OF CSHB 223 (FINANCE) AM:

SECTION ONE-AMENDS THE STATUTES THAT SET OUT TYPES OF PROPERTY THAT MAY NOT BE TAKEN TO SATISFY A DEBT BY INCLUDING A REFERENCE TO THE STATUTE EXEMPTING A PORTION OF A PERMANENT FUND DIVIDEND.

SECTION TWO-ADDS A CROSS REFERENCE IN THE PROVISION CONTAINING THE LIQUID ASSETS EXEMPTION TO THE PERMANENT FUND DIVIDEND EXEMPTION. UNDER SECTION 4 OF THIS BILL, THE EXEMPTION FOR A DIVIDEND IS LIMITED TO \$100, REGARDLESS OF WHETHER ADDITIONAL AMOUNTS MIGHT OTHERWISE QUALIFY FOR EXEMPTION UNDER THE \$700 LIQUID ASSETS PROVISION.

SECTION THREE-ADDS A CROSS REFERENCE IN THE PROVISION PERMITTING CREDITORS IN CERTAIN CASES TO LEVY AGAINST EXEMPTED PROPERTY, SO THAT IT IS CLEAR THAT EVEN IN THESE SPECIAL CASES, THE EXEMPTION PROVIDED FOR UNDER SECTION FOUR OF THIS BILL REMAINS VALID.

SECTION FOUR-CHANGES THE PERMANENT FUND DIVIDEND EXEMPTION FROM FIFTY PER CENT TO ONE HUNDRED DOLLARS. PROVIDES THAT NO OTHER EXEMPTION APPLIES. REQUIRES THE COMMISSIONER OF REVENUE TO PROVIDE THE CASE NAME AND NUMBER WITH A DIVIDEND DELIVERED TO THE COURT BY THE DEPARTMENT. THE BILL ALLOWS THE CHILD SUPPORT ENFORCEMENT DIVISION TO CLAIM AN ENTIRE DIVIDEND CHECK RATHER THAN EXEMPTING ONE HUNDRED DOLLARS FOR THIS AGENCY. IT IS ESTIMATED THAT C.S.E.D. WOULD LOSE APPROXIMATELY \$600,000 IN REVENUE AND OVER \$70,000 IN FEDERAL FUNDS IF THE ONE HUNDRED DOLLAR EXEMPTION WAS IN EFFECT FOR THAT AGENCY.

SECTION FIVE-ADDS A COURT ORDERED FINE AND A DEBT OWED TO THE STATE COURT TO THE LIST OF CLAIMS THAT HAVE PRIORITY OVER THE OTHER CLAIMS ON A DIVIDEND. DELETES THE PROVISION THAT AN EXEMPTION IS NOT AVAILABLE FOR CERTAIN CLAIMS.

SECTION SIX-AMENDS THE PROVISION PROVIDING FOR SIMPLIFIED EXECUTION PROCEDURES FOR CLAIMS ON DEFAULTED SCHOLARSHIP LOANS TO INCLUDE OTHER

PRIORITY CLAIMS. REQUIRES THE DEBT TO BE AT LEAST 90 DAYS OVERDUE BEFORE THE SIMPLIFIED PROCEDURE APPLIES. REQUIRES A STATEMENT OF THE BASIS FOR THE CLAIM AND THE DATE THE CLAIM BECAME DUE AS PART OF THE EXECUTION PROCEDURE. IF REQUESTED, REQUIRES THE AGENCY OR COURT MAKING THE CLAIM TO AFFORD THE INDIVIDUAL A HEARING ON THE VALIDITY OF THE CLAIM AND NOTICE OF APPEAL RIGHTS. THIS ENSURES THAT AN INDIVIDUAL HAS BEEN PROVIDED AN OPPORTUNITY FOR A HEARING ON THE VALIDITY OF THE CLAIM.

SECTION SEVEN-THIS APPLIES TO THE DEPARTMENT'S COSTS OF PROCESSING THE CLAIMS. RATHER THAN HAVING THE PERMANENT FUND DIVIDEND FUND BEAR THE COSTS OF CLAIMS MADE BY OTHER AGENCIES, THE COSTS WOULD BE ASSESSED TO THE CLAIMANTS. 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.

SECTION EIGHT-PROVIDES NOTICE OF A COURT RULE CHANGE.

SECTION NINE-REPEALS A SUBSECTION, THE CONTENTS OF WHICH HAVE BEEN INCLUDED IN THE REORGANIZED SUBSECTION SET OUT IN SECTION FIVE OF THE BILL.

SECTION TEN-THE EFFECTIVE DATE WOULD BE APRIL 1, 1989, RATHER THAN IMMEDIATELY. THIS WOULD ALLOW THE DEPARTMENT OF REVENUE ADEQUATE TIME TO PROCESS ALL PERMANENT FUND DIVIDEND CHECKS FOR 1988.

HOUSE BILL 223 IS SPECIFICALLY DESIGNED TO RECOUP THOSE FUNDS OWED TO STATE AGENCIES AND THE COURT SYSTEM THROUGH A LESS INVOLVED, MORE COST EFFICIENT METHOD AS COMPARED TO THE PROCESS THAT IS CURRENTLY IN USE.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

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

CSHB 223

Basic Public Policy Issues

(1) This legislation establishes a "quick-take" procedure for collecting state debts owned by an individual through the expeditious claiming of all but \$100 of the person's Permanent Fund Dividend. (The Child Support Enforcement Division alone could still claim all of the dividend).

The effect of this bill is to treat Permanent Fund Dividends differently from other property. This procedure for attachment of dividends would not be available for claiming other property such as longevity bonuses. In fact, these forms of property as well as a few others are completely exempt from virtually any claim, even under the normal claims process through court proceedings. (AS 09.38.15 and AS 09.38.065.)

The Legislature may wish to consider whether longevity bonuses, for example, should remain totally exempt from nearly all claims. Like Permanent Fund Dividends, longevity bonuses are also distributed by the state without regard to income or wealth. Additionally, the Legislature may wish to establish the same process of claims for longevity bonuses which this bill will create for Permanent Fund Dividends.

(2) This legislation would allow all state agencies and state courts to make claims on Permanent Fund Dividends through a "quick-take" procedure. Some agencies may choose to use this expeditious procedure, and some may not. Some agencies who have a large number of large debts may not use the process, believing that it would not be worthwhile to collect a small portion of a large debt. This could result in unfairness, as low-income Alaskans may turn out to be much more likely to have their dividends claimed to satisfy state debts than other Alaskans are.

Solutions to this problem include:

(a) requiring all state agencies and state courts to use either the "quick-take", claims procedure or the normal court process to claim dividends of debtors within a two-year period of the debt becoming overdue or entering into default; or

(b) including legislative intent language to the effects of (a); or
(c) requiring all state agencies and state courts to report to the legislature annually on their debt collection efforts, including reports of their attachments of all forms of property. The reports would include explanations of any decisions not to use the expeditious claims procedure.

(3) The Permanent Fund Dividend creates the visible link between each Alaskan and the Permanent Fund. Establishing this abbreviated procedure for the government to seize the dividend could weaken that link.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Malone", written in a cursive style.

Hugh Malone
Commissioner of Revenue

HM:CG:m11

MEMORANDUM

State of Alaska

Department of Law

TO: Hugh Malone
Commissioner
Department of Revenue

DATE: February 3, 1988

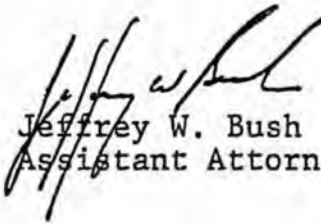
FILE NO.:

TEL. NO.: 465-3600

SUBJECT: Your memorandum concerning
CSHB 223

RECEIVED
ALASKA DEPARTMENT OF REVENUE

FEB 03 1988

FROM: 
Jeffrey W. Bush
Assistant Attorney General

OFFICE OF THE COMMISSIONER

The Department of Law has some concerns with respect to your memorandum that outlines basic public policy issues concerning CSHB 223. Your undated memorandum was distributed to the House Finance Subcommittee on February 2, 1988. Specifically, our comments are directed to your policy issue (2), in which you express a concern that certain agencies may use the process outlined in the bill while others may not, resulting in some form of unfairness. The Department of Law will necessarily be responsible, either directly or indirectly (by advising agencies), for a significant percentage of these collections. Please be assured that this department will utilize whatever collection procedures are available to maximize the state's return, regardless of the size of the outstanding debt, subject only to availability of personnel.

Our primary concern with your memorandum is with respect to the proposed alternative solutions to the problem you surmise. First, you propose mandating that all state agencies and courts choose between either this procedure or standard execution procedures for claims on permanent fund dividends. This proposal fails to take into consideration the fact that in certain cases where the debt is small (e.g., a \$10 parking fine), an agency must be able to decide that it is not worth the administrative trouble to go through any collection procedures whatsoever. Mandating collection in such a case is simply poor administration. Also, many agencies are facing personnel shortages, and as a result, a particular agency may be able to enforce some of its claims through the expedited procedure and not others. For example, the Department of Law performs collections in countless types of cases, including civil and criminal attorney's fees awards, court fines, loan collections, civil judgments, and tax collections. Different attorneys work in different areas of the law, each with varied and constantly changing work loads and different amounts of time available to devote to collection activities. Office files may be closed now and reopened later when collection again becomes possible. Given available resources, we cannot commit ourselves to filing a claim in every case. The department must have the flexibility to choose the appropriate execution procedures to utilize on a case-by-case basis.

Hugh Malone, Commissioner
Department of Revenue

February 3, 1988
Page 2

With respect to your third proposed solution, requiring all state agencies and courts to report to the legislature annually on their debt collection efforts, we believe this is unrealistic for the Department of Law, given the diversity and scope of our cases and our collection efforts.

Please contact me if you wish to discuss this matter further.

JWB:nb

cc w/enc: Bob Evans
Legislative Section
Office of the Governor

Art Peterson
Legislation Section
AGO

Ron Lorensen
Deputy Attorney General
AGO

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

DEPARTMENT OF REVENUE
ADMINISTRATIVE SERVICES

APR 03 1987

Carol
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4/13/87 *Carol*
4/13/87 *Carol*

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
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415 225

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

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

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

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

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

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

April 2, 1987
Page 4

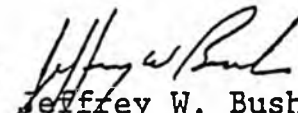
If this is the drafter's intent, we would recommend that these two sentences be moved to a separate subsection.

We hope this answers your questions.

Sincerely,

GRACE BERG SCHAIBLE
ACTING ATTORNEY GENERAL

By:


Jeffrey W. Bush
Assistant Attorney General

JWB:lb

cc: ✓ Ervin Jones, Director
- Administrative Services
Department of Revenue

Arthur H. Peterson, AAG
Department of Law

Chapter 38. Alaska Exemptions Act.

Section

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

Section

115. Adjustment of dollar amounts

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).

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.

(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. Baugh Constr. & Eng'g Co., Sup. Ct. Op.

No. 3083 (File Nos. S-699, S-831), (1986).

P.2d

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.

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

Supplement

§ 09.38.050

CODE OF CIVIL PROCEDURE

§ 09.38.115

(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 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; am § 36 ch 6 SLA 1984)

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

Sec. 09.38.050. Increased exemption amount.

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

Sec. 09.38.065. Claims enforceable against exempt property.

NOTES TO DECISIONS

Execution on limited entry permit. — Expressions of legislative intent in combination with the clear provisions of the 1982 Exemptions Act are persuasive evidence that the legislature meant what it said in permitting a parent with past

due child support claims to execute against an otherwise exempt limited entry permit. *Anderson v. Anderson*, Sup. Ct. Op. No. 3172 (File No. S-1320), P.2d (1987).

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

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

value specified under subsection (b) of this section, see AS 34.15.140(b).

NOTES TO DECISIONS

Prior law. — For cases construing former statutes, see *Seagreen v. Wendler*, 5 Alaska 715 (1917); *Wendler v. Brennehan*, 7 Alaska 13 (1923); *Williams v. Thompson*, 7 Alaska 601 (1927); *In re*

Bocash, 10 Alaska 206 (1942); *Dalton v. Interior Credit Bureau, Inc.*, Sup. Ct. Op. No. 2158 (File No. 4265), 615 P.2d 631 (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 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 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.

NOTES TO DECISIONS

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. 2781), 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. 151 (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. 2196), 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;

Sec. 43.23.055. Duties of the department. The department shall

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

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

(3) adopt regulations under the Administrative Procedure Act (AS 44.62) that establish procedures and time limits for an individual upon emancipation or upon reaching majority to apply for permanent fund dividends not received during minority because the parent, guardian, or other authorized representative did not apply on behalf of the individual; and

(4) assist residents of the state, particularly in rural areas, who because of language, disability, or inaccessibility to public transportation need assistance to establish eligibility and to apply for permanent fund dividends. (§ 1 ch 102 SLA 1982; am § 2 ch 55 SLA 1983; am § 3 ch 43 SLA 1984)

Revisor's notes. — Section 11, ch. 99, SLA 1985, amends this section. The amendment is effective if § 1, ch. 99, SLA 1985 is repealed (see § 25, ch. 99, SLA 1985). If the amendment becomes law, the section will read: "The department shall

"(1) annually make payments to individuals who elect to receive cash under AS 43.23.005(d);

"(2) adopt regulations under the Administrative Procedure Act (AS 44.62) that establish procedures and time limits for claiming a permanent fund dividend or for electing an annuity credit; the department shall set the time limit for applications for permanent fund dividends so that the number of eligible applicants is determined by October 1 of the year for which the dividend is declared and permanent fund dividends for a year are paid before April 30 of the year following that year;

"(3) adopt regulations under the Admin-

istrative Procedure Act (AS 44.62) that establish procedures and time limits for an individual upon emancipation or upon reaching majority to apply for permanent fund dividends not credited or received during minority because the parent, guardian, or other authorized representative did not apply on behalf of the individual;

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

"(5) provide the commissioner of administration with information necessary to maintain individual annuity account records and administer the annuity program."

Effect of amendments. — The 1984 amendment substituted "October" for "December" in paragraph (2).

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 § 1 ch 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 in-

dividual 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."

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 § 1, ch. 99, SLA 1985 is repealed, rewrote subsection (a) and added subsections (b) and (c).

The 1986 amendment rewrote this section.

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

SECTIONAL ANALYSIS CSHB 223 (FIN) AM

SECTION ONE-AMENDS THE STATUTES THAT SET OUT TYPES OF PROPERTY THAT MAY NOT BE TAKEN TO SATISFY A DEBT BY INCLUDING A REFERENCE TO THE STATUTE EXEMPTING A PORTION OF A PERMANENT FUND DIVIDEND.

SECTION TWO-ADDS A CROSS REFERENCE IN THE PROVISION CONTAINING THE LIQUID ASSETS EXEMPTION TO THE PERMANENT FUND DIVIDEND EXEMPTION. UNDER SECTION 4 OF THIS BILL, THE EXEMPTION FOR A DIVIDEND IS LIMITED TO \$100, REGARDLESS OF WHETHER ADDITIONAL AMOUNTS MIGHT OTHERWISE QUALIFY FOR EXEMPTION UNDER THE \$700 LIQUID ASSETS PROVISION.

SECTION THREE-ADDS A CROSS REFERENCE IN THE PROVISION PERMITTING CREDITORS IN CERTAIN CASES TO LEVY AGAINST EXEMPTED PROPERTY, SO THAT IT IS CLEAR THAT EVEN IN THESE SPECIAL CASES, THE EXEMPTION PROVIDED FOR UNDER SECTION FOUR OF THIS BILL REMAINS VALID.

SECTION FOUR-CHANGES THE PERMANENT FUND DIVIDEND EXEMPTION FROM FIFTY PER CENT TO ONE HUNDRED DOLLARS. PROVIDES THAT NO OTHER EXEMPTION APPLIES. REQUIRES THE COMMISSIONER OF REVENUE TO PROVIDE THE CASE NAME AND NUMBER WITH A DIVIDEND DELIVERED TO THE COURT BY THE DEPARTMENT. THE BILL ALLOWS THE CHILD SUPPORT ENFORCEMENT DIVISION TO CLAIM AN ENTIRE DIVIDEND CHECK RATHER THAN EXEMPTING ONE HUNDRED DOLLARS FOR THIS AGENCY. IT IS ESTIMATED THAT C.S.E.D. WOULD LOSE APPROXIMATELY \$600,000 IN REVENUE AND OVER \$70,000 IN FEDERAL FUNDS IF THE ONE HUNDRED DOLLAR EXEMPTION WAS IN EFFECT FOR THAT AGENCY.

SECTION FIVE-ADDS A COURT ORDERED FINE AND A DEBT OWED TO THE STATE COURT TO THE LIST OF CLAIMS THAT HAVE PRIORITY OVER THE OTHER CLAIMS ON A DIVIDEND. DELETES THE PROVISION THAT AN EXEMPTION IS NOT AVAILABLE FOR CERTAIN CLAIMS.

SECTION SIX-AMENDS THE PROVISION PROVIDING FOR SIMPLIFIED EXECUTION PROCEDURES FOR CLAIMS ON DEFAULTED SCHOLARSHIP LOANS TO INCLUDE OTHER PRIORITY CLAIMS. REQUIRES THE DEBT TO BE AT LEAST 90 DAYS OVERDUE BEFORE THE SIMPLIFIED PROCEDURE APPLIES. REQUIRES A STATEMENT OF THE BASIS FOR THE CLAIM AND THE DATE THE CLAIM BECAME DUE AS PART OF THE EXECUTION PROCEDURE. IF REQUESTED, REQUIRES THE AGENCY OR COURT MAKING THE CLAIM TO AFFORD THE INDIVIDUAL A HEARING ON THE VALIDITY OF THE CLAIM AND NOTICE OF APPEAL RIGHTS. THIS ENSURES THAT AN INDIVIDUAL HAS BEEN PROVIDED AN OPPORTUNITY FOR A HEARING ON THE VALIDITY OF THE CLAIM.

SECTION SEVEN-THIS APPLIES TO THE DEPARTMENT'S COSTS OF PROCESSING THE CLAIMS. RATHER THAN HAVING THE PERMANENT FUND DIVIDEND FUND BEAR THE COSTS OF CLAIMS MADE BY OTHER AGENCIES, THE COSTS WOULD BE ASSESSED TO THE CLAIMANTS. 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.

SECTION EIGHT-PROVIDES NOTICE OF A COURT RULE CHANGE.

SECTION NINE-REPEALS A SUBSECTION, THE CONTENTS OF WHICH HAVE BEEN INCLUDED IN THE REORGANIZED SUBSECTION SET OUT IN SECTION FIVE OF THE BILL.

SECTION TEN-THE EFFECTIVE DATE WOULD BE APRIL 1, 1989, RATHER THAN IMMEDIATELY. THIS WOULD ALLOW THE DEPARTMENT OF REVENUE ADEQUATE TIME TO PROCESS ALL PERMANENT FUND DIVIDEND CHECKS FOR 1988.

SENATE COMMITTEE REPORT

FURTHER FINANCE

DATE TURNED INTO OFFICE 4-19-88

2/16/88

Mr. President:

State Affairs Committee considered CSHB 223 (FIN) am

remedies for the collection of debt owed to state agencies and courts involving permanent fund dividends, to assignments of dividends, and to the exemption for dividends; amending Alaska Rule of Civil Procedure and recommended 69; and providing for an effective date

[] replace with CS [] same title
[] or adopt CS [] new title

[] attached amendment(s) and

[X] do pass

[] do not pass

[] no recommendation

[] individual recommendations

[] further referral to

[] letter of intent adopted

Committee [X] attached or [] adopted fiscal note(s)

[] new [] updated or [X] previous
[] zero [X] fiscal impact NO

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Handwritten signatures under MEMBERS SIGNING DO PASS

Handwritten notes under OTHER RECOMMENDATIONS: 2/14. King - no rec. 2/14. Joseph - no Rec

Chairman signature and recommendation

[] Committee Backup attached