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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

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  
 zero  fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

*[Handwritten signature]*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*W. King - No Rec.*  
*Joe Joseph - No Rec.*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*[Handwritten signature]*  
\_\_\_\_\_

Chairman signature and recommendation

Committee Backup attached

COMMITTEE SUBSTITUTE FOR HOUSE BILL 223 (FINANCE) AMENDED

INDEX

1. SECTIONAL ANALYSIS
2. FISCAL NOTES
3. HOUSE RESEARCH ON COURT FINES
4. LOAN PROGRAMS IN DEFAULT

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 CSHE 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.

FISCAL NOTE

REQUEST:

Revision Date: 1/27/88  
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
<b>OPERATING</b>						
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	-	-	-	-	-	-
<b>TOTAL OPERATING</b>	-	157.2	121.6	121.6	121.6	121.6
<b>CAPITAL</b>	-	-	-	-	-	-
<b>REVENUE</b>	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER (PFD)	-	157.2	121.6	121.6	121.6	121.6
<b>TOTAL</b>	-	157.2	121.6	121.6	121.6	121.6

POSITIONS:

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

ANALYSIS: See attached.

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

Phone: 465-2323  
Date: 1/27/88

Approved by Commissioner: [Signature]  
Agency: Revenue

Date: 1/27/88

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  
1/27/88

Assumptions:

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

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

Program Summary:

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

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

1. Positions:

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

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

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

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

Total Personal Services \$56.7

2. Other Costs:

a) Travel: None.

b) Contractual:

Printing \$5.1

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

Postage 28.0

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

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

TOTAL Contractual \$83.1

c) Equipment

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

Purchase 3 Wang 4230 workstations  
for data capture = 7.2

Purchase 1 Wang VS-100 IOP = 3.6

TOTAL Equipment \$15.6

d) Supplies: \$1.8

TOTAL COST \$157.2

Suggested Amendments:

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

Attachments: None.

STATE OF ALASKA 1988 LEGISLATIVE SESSION  
FISCAL NOTE

**REQUEST:** \_\_\_\_\_

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

Bill Version: CS HB 223  
 Publish Date: 2-1-88

Agency Affected: Alaska Court System  
 BRU: Trial Courts

Components:

<b>EXPENDITURES/REVENUES:</b>		(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	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .	

<b>FUNDING:</b>		(Thousands of Dollars)					
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	

<b>POSITIONS:</b>		(Thousands of Dollars)					
Full-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .	
Part-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .	
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .	

**ANALYSIS:** (Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by: *Jan Strandberg* General Counsel Phone: 264-8215  
 Division: Alaska Court System Date: 2-4-88

Approved by: *Stephanie Cole, for -* Arthur H. Snowden, II, Administrative Director Date: 2-4-88  
 Agency: Alaska Court System

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

ALASKA COURT SYSTEM  
CSHB 223 - 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:

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Date: January 11, 1988  
Richard Grace/Berg Schnaible  
 Approved by Commissioner: Attorney General Date: January 12, 1988  
 Agency: Department of Law

Distribution (by preparer):

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

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: 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)

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.

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: 1/22/88

Distribution (by preparer):

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

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 223 (SA)

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.

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)

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.



ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

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

March 16, 1987

MEMORANDUM

TO: Representative Swack Swackhammer

ATTN: Tom Wright

FROM: Penelope Weyhrauch  
Legislative Analyst

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

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

Fees and Fines

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

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

### Collection Efforts

According to Ms. Forsythe, very little is done by the Court System to collect outstanding fines and attorney fees owed to the State. There is no collection agency within the judicial branch, nor does the Alaska Court System believe that the collection of outstanding balances is a judicial function. The Court System believes that collection should be done by the executive branch and has emphasized that in letters to the Attorney General's office (Attachment B). In regard to collection efforts by the Court System, Arthur Snowden, Administrative Director of the Court System, wrote "The Supreme Court has indicated that it is unwise if not unconstitutional as a violation of the doctrine of separation of powers for the court to combine judicial and executive functions."<sup>1</sup> 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.<sup>2</sup> 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."<sup>3</sup>

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

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

<sup>3</sup>Alaska 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.<sup>4</sup> 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.<sup>5</sup>

- **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.

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

<sup>5</sup>Conference 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.<sup>6</sup> 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.<sup>7</sup> 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.

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<sup>6</sup>Susan 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).

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

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.<sup>8</sup> 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.<sup>9</sup>

\* \* \*

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

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<sup>8</sup>This statute is not a part of the civil execution process.

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

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



## Alaska Court System

State of Alaska

303 "K" STREET  
ANCHORAGE ALASKA  
99501

ARTHUR H. SNOWDEN II  
ADMINISTRATIVE DIRECTOR

(907) 274 8611

April 3, 1986

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

Dear Hal:

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

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

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

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

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

Sincerely,

/s/

Arthur H. Snowden, II  
Administrative Director

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

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	.000.00
CHILD CARE FACILITY REVOLVING LOAN FUND	,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 DEFAULT

237,514,447.00