

SB

310

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 2-3-88 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: HESS
FINANCE

**FISCAL NOTE(S) ATTACHED **
IN ACCORDANCE WITH AS 24.08.035
(see below)

5/19/87

DATE TURNED INTO OFFICE 2/11/88

Mr. President:

STATE AFFAIRS Committee considered SB 310

contributions from permanent fund dividends to the University of
Alaska Foundation; efd.

and recommended:

replace with CS SB 310 (SA) same title
 attached amendment(s) and new title

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted and attached

** Committee attached or adopted fiscal note(s)
 zero fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Rich Kelly

Doc Jones

Sen. Steve Adams
Chairman signature and recommendation

Committee Backup Attached

Alaska State Legislature



SENATOR
ARLISS STURGULEWSKI

Chairman, Senate Community and Regional Affairs Committee
Vice Chairman, Senate Judiciary Committee
Member, Senate Resources Committee

2957 SHELDON JACKSON STREET
ANCHORAGE, ALASKA 99508

While in Juneau
P. O. BOX 5
JUNEAU, ALASKA 99811
(907) 465-3818

MEMORANDUM

Senate

09 February 1988

TO: Senator Mitch Abood
Chairman, Senate State Affairs Committee

FROM: Senator Arliss Sturgulewski

RE: Senate Bill 310

I appreciate your scheduling a hearing for Senate Bill 310. As you know, the University of Alaska Foundation is the non-profit fund-raising arm of the University of Alaska. It was established in 1974 to solicit donations, and to hold and manage them for the exclusive benefit of the University of Alaska. In cooperation with the University development officers on the campuses, the Foundation raises funds for the University through a variety of activities including special events, fund drives, contributions from major donors, establishment of support associations, and innovative fundraising ideas.

The goals of the University Foundation are to develop increased income from existing assets through improved management of the Foundation's revenue streams and to develop a targeted fund-raising effort among private individuals and companies.

This fund-raising for the University through private channels is important not only to provide funds for the University but it is an important tool to enable the citizens of the state of Alaska to become informed about the University, its educational mission and relationship to the community and its financial needs.

During the past two years, state appropriations to the University have decreased by nearly 30%. In the wake this budget reduction and the resulting reorganization of the University, Alaskans need to be given an opportunity to financially support it. Private contributions will help establish secure endowments to support the development of program initiatives and enhancements for which the budget levels of the next few years will not allow.

FISCAL NOTE

REQUEST

Revision Date: _____
Title: Contributions from PFDs to
University of Alaska Foundation
Sponsor: Sturgulewski, Fahrenkamp
Requestor: Senate State Affairs

Agency Affected: Revenue
BRU: Permanent Fund Dividend Operations
Components: Permanent Fund Dividend
Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
OPERATING						
PERSONAL SERVICES	-	21.2	11.2	11.2	11.2	11.2
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	11.0	11.0	11.0	11.0	11.0
SUPPLIES	-	0.2	0.2	0.2	0.2	0.2
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	32.4	22.4	22.4	22.4	22.4
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	32.4	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	22.4	22.4	22.4	22.4
TOTAL	-	32.4	22.4	22.4	22.4	22.4

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	3	2	2	2	2
TEMPORARY	-	-	-	-	-	-

ANALYSIS: See attached.

Prepared By: Ervin Jones
Division: Permanent Fund Dividend Division

Phone: 465-2323
Date: February 10, 1988

Approved by Commissioner: [Signature]
Agency: Revenue

Date: 2/10/88

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
SB 310
February 10, 1988

Assumptions:

- 1) The bill will take effect for the 1989 permanent fund dividend year and application. The 1988 dividend application has already been printed.
- 2) There are currently 17 bills which if signed into law, would result in some form of "check-off" on the 1989 dividend application. The Department of Revenue has no insight as to which, and how many, of these bills will become law. This fiscal note, and all related fiscal notes, is prepared on the assumption that the subject bill is the only bill of this nature which will become law. The passage of multiple bills with varying formulas (\$5, \$25, half of dividend, all or part of dividend, etc.) will inevitably have a compounding effect. Whereas there may be savings in some areas, there will be increased costs in others.
- 3) All FY89 costs of administering this law will be borne by the general fund, since no funds will be available to the trust account until October 1, 1989. Funding for administrative costs in FY90 and thereafter will be taken from the trust account as appropriated by the legislature.
- 4) The incremental cost of computer resources will result in a chargeback by the Department of Administration.
- 5) Whereas the cost of programming changes will be a one-time cost, the cost of document review, data capture, data processing chargeback, and the extra page in the dividend application will be continuing.
- 6) Contributions will only be honored to the extent of available funds. Garnishments and assignments will take precedence in the order established by statute. Contributions will then be honored in the order listed on the form schedule, which will be in the order they become law.

Program Summary:

The provision of a new contribution decision on the dividend application will cause additional administrative cost in several areas:

- a) An additional page added to each application, a schedule of contribution decisions.
- b) The computer system will need to be changed to account for the change in the program, to establish new accounting controls and to provide for the transfer of funds to the trust account (see Attachment A).

- c) Each of approximately 540,000 PFD applications will need to be visually reviewed and coded as to decision on the contribution decision. Each application will be data captured with additional attention and keystrokes expended on each positive decision.
- d) The accounting for the trust account will be performed by existing staff.

1. Positions

1 PPT Analyst/Programmer V, R21
 @ \$4,991.72/Mo including salary
 and benefits for 2 months = \$10.0

PCN 04-1125 would be funded for an additional two months, in accordance with Attachment A. Ongoing maintenance of new programs would be accomplished by existing staff.

1 PPT Document Processor I, R7
 @ \$2,212.37/Mo, including salary and
 benefits for 3 months = \$6.6

This position would assist in the manual review and coding of 540,000 applications for the new contribution decision. This position represents the equivalent of the additional time and effort.

1 PPT Data Processing Clerk I, R8,
 @ \$2,317.81/Mo, including salary and
 benefits for 2 months = \$4.6

This position would assist in the data capture of the additional contribution decisions. The position represents the equivalent value of the additional time and effort.

TOTAL Personal Services \$21.2

2. Other Expenditures:

a) Travel: None.

b) Contractual:

Data Processing Chargeback \$5.0
 Add additional page to PFD
 booklet \$6.0

c) Supplies: \$0.2

d) Equipment: Use existing equipment 0.0

TOTAL COST \$32.4

3. Funding: General Fund.

4. Section Cost Analysis: N/A.

Computations: N/A.

Economic Impact: N/A.

Impact on Local Government: N/A.

Suggested Amendments:

1. Sec. 2, line 20 is amended as follows:

"*Sec. 2. This act takes effect January 1, 1989 [JULY 1, 1987].

Attachments: Attachment A: "Summary of DP Needs"

Department of Revenue
Administrative Services Division
Fiscal Note Analysis
SB 310
Summary of Data Processing Requirements
February 10, 1988

Wang data entry processing	75.0 hours
Includes:	Data entry Batch lists Corrections Wang to IBM transfer
IBM Update jobs	30.0 hours
Includes:	Edits Batch listings Log sheets
DMS Online programs for lookup and changes	37.5 hours
Nightly Update of Changes	22.5 hours
Warrant Jobs	90.0 hours
Includes:	Printing warrants with different amounts. Include check stub messages. Modify warrant registers as needed for balancing. Create new program(s) for transferring accumulated contributions to the trust account, and to account for the reserve necessary due to returned and cancelled PFD warrants.
Miscellaneous	45.0 hours
Includes:	Setting up test files on IBM Systems testing Administrative functions, i.e. paper work required by Admin. DP to add files and programs to tables.
TOTAL HOURS	300.0 hours

Introduced: 5/19/87
Referred: State Affairs,
Health, Education & Social Services
& Finance

5-1241A

1 IN THE SENATE

BY STURGULEWSKI AND FAHRENKAMP

2

SENATE BILL NO. 310

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to contributions from permanent fund
7 dividends to the University of Alaska Foundation,
8 Inc.; and providing for an effective date."

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

10 * Section 1. AS 43.23 is amended by adding a new section to read:

11 Sec. 43.23.016. CONTRIBUTIONS FROM DIVIDENDS. (a) The depart-
12 ment shall prepare the permanent fund dividend application to allow an
13 applicant to elect to have money subtracted from the dividend check
14 and contributed to the University of Alaska Foundation, Inc.

15 (b) The amount of a contribution elected under (a) of this
16 section is \$5. Contributions shall be deposited in a special trust
17 account and allocated by the department to the University of Alaska
18 Foundation, Inc., except that the department shall use money in the
19 account to pay administrative costs incurred under this section.

20 * Sec. 2. This Act takes effect July 1, 1987.

11/89

(11) "trade or business" includes the engaging in or carrying on of a trade, business, profession, vocation, employment, and rendition of services or commercial activity and includes the performance of the function of a public office. (§ 3 A ch 115 SLA 1949; am § 1 ch 128 SLA 1951; am § 1 ch 5 SLA 1953; am § 12 ch 70 SLA 1975; am § 11 ch 1 SSSLA 1980)

Revisor's notes. — The paragraphs were renumbered in 1983 to achieve alphabetical order.

Effect of amendments. — The 1980 amendment repealed former paragraphs

(4), (7), (13), (14), (16) and (17), which defined "fiduciary," "individual," "domicile," "nonresident," "residence," and "resident," respectively.

Sec. 43.20.350. Short title. This chapter may be cited as the Alaska Net Income Tax Act. (§ 1 ch 115 SLA 1949)

Chapter 21. Oil and Gas Corporate Income Tax.

[Repealed, § 19 ch 166 SLA 1981.]

Chapter 23. Permanent Fund Dividends.

Section

- 05. Eligibility
- 15. Application and proof of eligibility
- 25. Amount of dividend
- 35. Penalties and enforcement
- 45. Dividend fund
- 55. Duties of the department

Section

- 65. Exemption of permanent fund dividends
- 75. Eligibility for public assistance
- 85. Eligibility for state programs
- 95. Definitions

Cross references. — For 1982 permanent fund dividend distribution, see § 19, ch. 102, SLA 1982, in the Temporary and Special Acts.

Editor's notes. — Section 4, ch. 55, SLA 1983, provides: "Notwithstanding sec. 19(e), ch. 102, SLA 1982 and AS 43.23.055 and the regulations adopted under those sections by the Department of Revenue, the time period for an Alaska resident applying for a 1982 permanent fund dividend is extended to October 15, 1983 for applicants who met the six month

residency requirement on October 15, 1982. A 1982 permanent fund dividend paid to an individual who applies during the extended period may not be paid from money appropriated or otherwise allocated for permanent fund dividends for years other than 1982. The Department of Revenue may not pay 1982 dividends to applicants who file during the extended period until after September 1, 1983. The Department of Revenue may adopt regulations to implement this section."

NOTES TO DECISIONS

Statutory scheme of AS 43.23.010 held unconstitutional. — The statutory scheme under AS 43.23.010, by which the state distributes income derived from its natural resources to the adult citizens of

the state in varying amounts, based on the length of each citizen's residence, violates the equal protection rights of newer state citizens. *Zobel v. Williams*, U.S. , 102 S. Ct. 2309, 72 L. Ed. 2d 672 (1982).

The state objectives of creating a financial incentive for individuals to establish and maintain Alaska residence, and assuring prudent management of the Permanent Fund and the state's natural and mineral resources are not rationally related to the distinctions Alaska seeks to make in the dividend program between newer residents and those who have been in the state since 1959. *Zobel v. Williams*, U.S. , 102 S. Ct. 2309, 72 L. Ed. 2d 672 (1982).

Objective to reward citizens for past contributions is not a legitimate state purpose since this reasoning could open the door to state apportionment of other rights, benefits and services according to length of residency and would permit the states to divide citizens into expanding numbers of permanent classes, a result

which would be clearly impermissible. *Zobel v. Williams*, U.S. , 102 S. Ct. 2309, 72 L. Ed. 2d 672 (1982).

This statute does not impose any threshold warning period on those seeking dividend benefits; persons with less than a full year of residency are entitled to share in the distribution. Nor does the statute purport to establish a test of the bona fides of state residence. Instead, the dividend statute creates fixed, permanent distinctions between an ever increasing number of perpetual classes of concededly bona fide residents, based on how long they have been in the state. *Zobel v. Williams*, U.S. , 102 S. Ct. 2309, 72 L. Ed. 2d 672 (1982).

Stated in *Williams v. Zobel*, Sup. Ct. Op. No. 2170 (File Nos. 5400, 5421), 619 P.2d 422 (1980).

Sec. 43.23.005. Eligibility. (a) An individual is eligible to receive one permanent fund dividend each year in an amount to be determined under AS 43.23.025 if the individual applies to the department, and if on the date of application the individual

(1) is a state resident; and

(2) has been a state resident for a period of at least six consecutive months immediately preceding the date of application.

(b) In determining the minimum period of an individual's residency required under (a)(2) of this section, the department may include months of residency both in the current year and in the immediately preceding year.

(c) A parent, guardian, or other authorized representative may claim a permanent fund dividend on behalf of an unemancipated minor or on behalf of an incompetent individual who is eligible to receive a payment under this section. (§ 1 ch 102 SLA 1982)

Sec. 43.23.010. Eligibility for permanent fund dividend. [Repealed, § 22 ch 102 SLA 1982.]

Sec. 43.23.015. Application and proof of eligibility. (a) The commissioner shall adopt regulations under the Administrative Procedure Act (AS 44.62) for determining the eligibility of individuals for permanent fund dividends. The commissioner may require an individual to provide proof of eligibility, and the commissioner may use other information available from other state departments or agencies to determine the eligibility of an individual.

(b) The department shall prescribe and furnish an application form for claiming a permanent fund dividend. The application must contain a statement of eligibility and a certification of residency in substantially the following form:

I certify that

() I am a state resident on the date of this application and I have been a state resident for at least six months immediately preceding the date of this application; or

() (*name*), the individual on whose behalf I am applying, is a state resident and has been a state resident for at least six months immediately preceding the date of this application.

I understand that a false claim of residency to obtain a permanent fund dividend for myself or for another is a criminal offense and that if convicted I will forfeit future permanent fund dividends and that I must repay all permanent fund dividends that have been paid to me. I understand that this penalty is in addition to any criminal penalties imposed.

(signature of individual, parent, guardian, or other authorized representative)

(c) Except as provided in (d) of this section or as may be provided by regulations adopted by the department, an individual must personally sign the application for permanent fund dividends, including the certification of residency required under (b) of this section.

(d) The application and certification of residency of an unemancipated individual under 18 years of age or of an incompetent individual must be signed by the individual's parent, legal guardian, or other authorized representative.

(e) If a public agency claims a permanent fund dividend on behalf of an individual, the public agency shall hold the dividend in trust for the individual. Money held in trust under this subsection shall be invested by the commissioner in accordance with AS 37.10.070.

(f) A minor or an incompetent individual may not maintain a claim against the state or an officer or employee of the state based on the manner in which the parent, guardian, or authorized representative other than a public agency of the state managed or disposed of permanent fund dividends received on behalf of the minor or incompetent individual.

(g) If an individual is aggrieved by a decision of the department determining the individual's eligibility for a permanent fund dividend or the individual's authority to claim a permanent fund dividend on behalf of another, the individual may appeal that decision to the superior court in accordance with AS 44.62.560. An appeal under this section does not entitle the aggrieved individual to a trial de novo. The appeal shall be based on the record of the administrative proceeding from which appeal is taken and the scope of appeal is limited to matters contained in the record of the administrative proceeding.

(h) The penalty and enforcement provisions of AS 43.23.035 apply to an individual who claims a permanent fund dividend on behalf of another. (§ 1 ch 102 SLA 1982)

Sec. 43.23.020. Proof of eligibility. [Repealed, § 22 ch 102 SLA 1982.]

Sec. 43.23.025. Amount of dividend [Effective January 1, 1984]. By December 1 of each year the commissioner shall give public notice of the value of each permanent fund dividend for that year. The commissioner shall determine the value of a permanent fund dividend by

- (1) determining the amount of income of the Alaska permanent fund transferred to the dividend fund under AS 43.23.045(b) during the current year;
- (2) determining the number of individuals eligible to receive a dividend payment for the current year; and
- (3) dividing the amount determined in (1) of this section by the amount determined in (2) of this section. (§ 1 ch 102 SLA 1982; am § 1 ch 55 SLA 1983)

Effect of amendments. — The 1983 amendment, effective January 1, 1984, substituted "December 1" for "September 1" near the beginning of the first sentence. For provisions prior to January 1, 1984, see the editor's note.

Editor's notes. — Prior to January 1, 1984, this section reads: "By September 1 of each year the commissioner shall give public notice of the value of each permanent fund dividend for that year. The commissioner shall determine the value of a permanent fund dividend by

"(1) determining the amount of income of the Alaska permanent fund transferred to the dividend fund under AS 43.23.045(b) during the current year;

"(2) determining the number of individuals eligible to receive a dividend payment for the current year; and

"(3) dividing the amount determined in (1) of this section by the amount determined in (2) of this section."

Sec. 43.23.030. Amount of dividend. [Repealed, § 22 ch 102 SLA 1982.]

Sec. 43.23.035. Penalties and enforcement. (a) In addition to any criminal penalties imposed by state law, if an individual is convicted of a crime in connection with a false statement made in a certification required under AS 43.23.015, and the conviction is not reversed, that individual forfeits all permanent fund dividends paid and is not eligible for a future permanent fund dividend.

(b) If the commissioner determines that a permanent fund dividend should not have been claimed by or paid to an individual, the commissioner may use all collection procedures or remedies available for collection of taxes under this title to recover the payment of a permanent fund dividend that was improperly made. A notice of an improperly paid dividend must be sent to the individual within 10 years after the improper payment. If notice is not sent within the 10-year period, proceedings may not be commenced in court for recovery of the improper payment. (§ 1 ch 102 SLA 1982)

Sec. 43.23.040. Penalties and enforcement. [Repealed, § 22 ch 102 SLA 1982.]

Sec. 43.23.045. Dividend fund. (a) The dividend fund is established as a separate fund in the state treasury. The dividend fund shall be administered by the commissioner and shall be invested by the commissioner in the same manner as provided in AS 37.10.070.

(b) Notwithstanding any contrary provision of law, each year the commissioner shall transfer to the dividend fund 50 percent of the income of the Alaska permanent fund earned during the fiscal year ending on June 30 of the current year and available for distribution.

(c) The department may adopt by regulation a plan that, to the extent permitted by federal law, will allow an individual who elects to participate in the plan to select an optional disbursement of the dividend payment that would have the effect of deferring payment of all or a portion of federal income taxes on the receipt of a permanent fund dividend. (§ 1 ch 102 SLA 1982)

Sec. 43.23.050. Dividend fund established. [Repealed, § 22 ch 102 SLA 1982.]

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

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

(2) [Effective January 1, 1984] 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 December 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)

Effect of amendments. — The 1983 amendment, effective January 1, 1984, substituted "December 1 of the year for which the dividend is declared" for "September 1" and "April 30 of the year following that year" for "December 31 of that year" in paragraph (2). For provisions

prior to January 1, 1984, see the editor's note.

Editor's notes. — Prior to January 1, 1984, paragraph (2) read: "(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 deter-

mined by September 1 and permanent fund dividends for a year are paid before December 31 of that year."

Sec. 43.23.060. Duties of the department. [Repealed, § 22 ch 102 SLA 1982.]

Sec. 43.23.065. Exemption of permanent fund dividends. Fifty 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. No exemption is available under this section for permanent fund dividends taken to satisfy child support obligations required by court order or decision of the child support enforcement agency under AS 47.23.140 — 47.23.220. (§ 1 ch 102 SLA 1982)

Cross references. — For property exempt from execution generally, see AS 09.38.

Sec. 43.23.070. Exemption of permanent fund dividends. [Repealed, § 22 ch 102 SLA 1982.]

Sec. 43.23.075. Eligibility for public assistance. (a) In determining the eligibility of an individual under a public assistance program administered by the Department of Health and Social Services in which eligibility for assistance is based on financial need, the Department of Health and Social Services may not consider a permanent fund dividend as income or resources received by the recipient of public assistance or by a member of the recipient's household unless required to do so by federal law or regulation. The Department of Health and Social Services shall notify all recipients of public assistance of the effects of receiving a permanent fund dividend.

(b) An individual who is denied medical assistance under 42 U.S.C. 1396 — 1396p (Social Security Act, Title XIX) solely because of the receipt of a permanent fund dividend by the individual or by a member of the individual's household is eligible for state-funded medical assistance under the general relief assistance program (AS 47.25.120 — 47.25.300). The individual is entitled to receive, for a period not to exceed four months, the same level of medical assistance as the individual would have received under 42 U.S.C. 1396 — 1396p (Social Security Act, Title XIX) had there been no permanent fund dividend program.

(c) An individual who is denied assistance solely because permanent fund dividends received by the individual or by a member of the individual's household are counted as income or resources under federal

law or regulation is eligible for cash assistance under the general relief assistance program (AS 47.25.120 — 47.25.300). Notwithstanding the limit in AS 47.25.130, the individual is entitled to receive, for a period not to exceed four months, the same amount as the individual would have received under other public assistance programs had there been no permanent fund dividend program. (§ 1 ch 102 SLA 1982)

Sec. 43.23.080. Eligibility for state public assistance payments. [Repealed, § 22 ch 102 SLA 1982.]

Sec. 43.23.085. Eligibility for state programs. No program administered by the state or any of its instrumentalities or municipalities, the eligibility for which is based on financial need, shall consider a permanent fund dividend as income or resources unless required to do so by federal law or regulation. (§ 1 ch 102 SLA 1982)

Sec. 43.23.090. Tax exemption. [Repealed, § 22 ch 102 SLA 1982.]

Sec. 43.23.095. Definitions. In this chapter,

(1) "Alaska permanent fund" means the fund established by art. IX, sec. 15 of the state constitution;

(2) "commissioner" means the commissioner of revenue;

(3) "department" means the Department of Revenue;

(4) "dividend fund" means the fund established by AS 43.23.045;

(5) "individual" means a natural person;

(6) "permanent fund dividend" means a right to receive a payment from the dividend fund;

(7) "state resident" means an individual who is physically present in the state with the intent to remain permanently in the state or, if the individual is not physically present in the state, intends to return to the state and is absent only for any of the following reasons:

(A) vocational, professional, or other specific education for which a comparable program was not reasonably available in the state;

(B) secondary or postsecondary education;

(C) military service;

(D) medical treatment;

(E) service in Congress;

(F) other reasons which the commissioner may establish by regulation; or

(G) service in the Peace Corps;

(8) "year" means a calendar year. (§ 1 ch 102 SLA 1982; am § 3 ch 55 SLA 1983)

Effect of amendments. — The 1983 amendment added paragraph (7)(G).

Sec. 43.23.100. Definitions. [Repealed, § 22 ch 102 SLA 1982.]

§ 43.23.005

REVENUE AND TAXATION

§ 43.23.005

Chapter 23. Permanent Fund Dividends.

Section

- 05. Eligibility
- 25. Amount of dividend
- 45. Dividend fund
- 55. Duties of the department

Section

- 65. Exemption of permanent fund dividends
- 67. Claims of defaulted scholarship loans

Cross references. — For 1982 permanent fund dividend distribution, see § 19, ch. 102, SLA 1982, in the Temporary and Special Acts; for extension of application period for 1982 and 1983 dividends, see § 4, ch. 55, SLA 1983 and § 1, ch. 43, SLA 1984, respectively, in the Temporary and Special Acts.

Opinions of attorney general. — If

the legislature enacts any other distribution program which is consistent with the intent of the permanent fund dividend law (AS 43.23), any appropriation to implement that program will be exempt from the appropriation limit of § 16, art. IX, of the state constitution. 1983 Op. Att'y Gen. No. 01.

NOTES TO DECISIONS

Permanent fund dividend payments were made for "public purpose" within the meaning of Alaska Const., Art. IX, § 6. *Beattie v. United States*, 635 F. Supp. 481 (D. Alaska 1986).

Permanent fund dividend payments subject to federal income tax. — Per-

manent Fund dividend payments are income and, since these payments are not excludable from gross income as "gifts", they are therefore subject to the federal income tax. *Beattie v. United States*, 635 F. Supp. 481 (D. Alaska 1986).

Sec. 43.23.005. Eligibility. (a) An individual is eligible to receive one permanent fund dividend each year in an amount to be determined under AS 43.23.025 if the individual applies to the department, and if

- (1) on the date of application the individual is a state resident; and
- (2) the individual was a state resident for a period of at least six consecutive months immediately preceding April 1 of the current dividend year.

(b) In determining the minimum period of an individual's residency required under (a)(2) of this section, the department may include months of residency both in the current year and in the immediately preceding year.

(c) A parent, guardian, or other authorized representative may claim a permanent fund dividend on behalf of an unemancipated minor or on behalf of an incompetent individual who is eligible to receive a payment under this section. (§ 1 ch 102 SLA 1982; am § 1 ch 57 SLA 1987)

Revisor's notes. — Sections 2 and 3, ch. 99, SLA 1985, amend (c) and (d) of this section respectively. The amendments are effective if § 1, ch. 99, SLA 1985 is repealed (see § 25, ch. 99, SLA 1985). If the amendments become law, the subsections will read: "(c) A parent, guardian, or other authorized representative may claim a permanent fund dividend on behalf of an unemancipated minor or on behalf of an incompetent individual who is eligible to receive a dividend under this section.

"(d) A person who is eligible to receive a permanent fund dividend under this section, or who is authorized to claim a dividend on behalf of another under (c) of this section, may elect to receive the dividend either in cash or as an annuity credit. Alternatively, a person may elect to receive

25 percent, 50 percent, or 75 percent of the dividend in cash and the remainder as an annuity credit. A person who is 65 years of age on or before January 1, 1988 may only receive the permanent fund dividend in cash and may not elect to receive an annuity credit."

Effect of amendments. — The 1987 amendment, effective June 13, 1987, in subsection (a) deleted "on the date of application the individual" at the end of the introductory language, added "on the date of application the individual" at the beginning of paragraph (1), and in paragraph (2) substituted "the individual was" for "has been" and at the end of the paragraph substituted "April 1 of the current dividend year" for "the date of application."

NOTES TO DECISIONS

Stated in *Alaska Oil Co. v. Alaska*, 45 Bankr. 358 (D. Alaska 1985).

Sec. 43.23.015. Application and proof of eligibility.

Revisor's notes. — Sections 4 — 8, ch. 99, SLA 1985, amend (n), (b), (e) and (f) of this section, and add a new (i). 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) The commissioner shall adopt regulations under the Administrative Procedure Act (AS 44.62) establishing the process for determining the eligibility of individuals for permanent fund dividends. The commissioner may require an individual to provide proof of eligibility, and the commissioner may use other information available from other state departments or agencies to determine the eligibility of an individual.

"(b) The department shall prescribe and furnish an application form for claiming a permanent fund dividend. The application must contain a statement of eligibility and a certification of residency in substantially the following form:

I certify that

() I am a state resident on the date of this application and I have been a state resident for at least six months immediately preceding the date of this application; or

() (name), the individual on whose behalf I am applying, is a state resident and

has been a state resident for at least six months immediately preceding the date of this application.

I understand that a false claim of residency to obtain a permanent fund dividend for myself or for another is a criminal offense and that if convicted I will forfeit future permanent fund dividends and that I will lose or must repay all permanent fund dividends that have been credited or paid to me, and any accrued interest in my annuity account. I understand that this penalty is in addition to any criminal penalties imposed.

(signature of individual, parent, guardian, or other authorized representative)

"(e) If a public agency claims a dividend on behalf of an individual under this section, the public agency shall elect 100 percent cash under AS 43.23.005(d) and hold the dividend in trust for the individual. Money held in trust under this subsection shall be invested by the commissioner in accordance with AS 37.10.070.

"(f) A minor or an incompetent individual may not maintain a claim against the state or an officer or employee of the state based either on the manner in which the parent, guardian, or authorized representative other than a public agency of the state managed or disposed of permanent

fund dividends received on behalf of the minor or incompetent, or an election made or not made on that individual's behalf under AS 43.23.005(d).

(i) The permanent fund dividend ap-

plication form shall be prepared to allow an applicant, other than a person who is exempt under AS 47.45.015(b), to elect to receive the dividend either in cash or as an annuity credit."

Sec. 43.23.025. Amount of dividend. By October 1 of each year the commissioner shall give public notice of the value of each permanent fund dividend for that year. The public notice shall contain a statement disclosing the amount by which each individual dividend has been reduced in order to pay the costs of administering the program and the hold harmless provisions of AS 43.23.075. The commissioner shall also include the statement on the stub attached to each individual dividend check. The commissioner shall determine the value of a permanent fund dividend by

(1) determining the total amount available for dividend payments, which equals

(A) the amount of income of the Alaska permanent fund transferred to the dividend fund under AS 43.23.045(b) during the current year;

(B) plus the unexpended and unobligated balances of prior fiscal year appropriations that lapse into the dividend fund under AS 43.23.045(d);

(C) less the amount necessary to pay dividends from the dividend fund in the current year under AS 43.23.055(3);

(D) less the amount necessary to pay dividends from the dividend fund due to eligible applicants who, as determined by the department, filed for a previous year's dividend by the filing deadline but who were not included in a previous year's dividend computation;

(2) determining the number of individuals eligible to receive a dividend payment for the current year; and

(3) dividing the amount determined under (1) of this section by the amount determined under (2) of this section. (§ 1 ch 102 SLA 1982; am § 1 ch 55 SLA 1983; am § 2 ch 43 SLA 1984; am § 2 ch 57 SLA 1987)

Effect of amendments. — The 1984 amendment substituted "October" for "December" in the first sentence in the introductory paragraph.

The 1987 amendment, effective June 13, 1987, added the second and third sentences in the introductory language, in

paragraph (1) inserted "the total amount available for dividend payments, which equals" following "determining," designated some of the existing language as subparagraph (A), and added subparagraphs (B)-(D), and in paragraph (3) substituted "under" for "in" in two places.

NOTES TO DECISIONS

Stated in *Alaska Oil Co. v. Alaska*, 46 Bankr. 358 (D. Alaska 1985).

Sec. 43.23.035. Penalties and enforcement.

Revisor's notes. — Sections 9 and 10, ch. 99, SLA 1985, amend (a) and (b) of this section, and add a new (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) In addition to any criminal penalties imposed by state law, if an individual is convicted of a crime in connection with a false statement made in a certification required under AS 43.23.015, and the conviction is not reversed, that individual forfeits all permanent fund dividends credited or paid, together with any interest credited to that individual's annuity account and is not eligible for a future permanent fund dividend.

"(b) If the commissioner determines that a cash dividend should not have been claimed by or paid to an individual, the commissioner may use all collection pro-

cedures or remedies available for collection of taxes under this title to recover the payment of a permanent fund dividend that was improperly made. A notice of an improperly paid dividend must be sent to the individual within 10 years after the improper payment. If notice is not sent within the 10-year period, proceedings may not be commenced in court for recovery of the improper payment.

"(c) If the commissioner determines that a permanent fund dividend should not have been credited to an individual's annuity account, the commissioner may, after notice and opportunity for hearing, direct the commissioner of administration to debit the individual's annuity account for the amount wrongly credited. If the credit is the fault of the individual, the debit must be made within 10 years. If the credit is the fault of the state, the debt must be made within three years."

Sec. 43.23.045. Dividend fund. (a) The dividend fund is established as a separate fund in the state treasury. The dividend fund shall be administered by the commissioner and shall be invested by the commissioner in the same manner as provided in AS 37.10.070.

(b) Notwithstanding any contrary provision of law, each year the commissioner shall transfer to the dividend fund 50 percent of the income of the Alaska permanent fund earned during the fiscal year ending on June 30 of the current year and available for distribution.

(c) *[Repealed, § 24 ch 99 SLA 1985.]*

(d) Unless specified otherwise in an appropriation act, the unexpended and unobligated balance of an appropriation to implement this chapter lapses into the dividend fund on June 30 of the fiscal year for which the appropriation was made and shall be used in determining the amount of and paying the subsequent year's dividend as provided in AS 43.23.025(1)(B). (§ 1 ch 102 SLA 1982; am § 24 ch 99 SLA 1985; am § 3 ch 57 SLA 1987)

Effect of amendments. — The 1985 amendment repealed subsection (c).

The 1987 amendment, effective June 13, 1987, added subsection (d).

NOTES TO DECISIONS

Stated in *Alaska Oil Co. v. Alaska, 45 Bankr. 358 (D. Alaska 1985)*.

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.

Sec. 43.23.067. Claims of defaulted scholarship loans. (a) AS 09.38 does not apply to permanent fund dividends taken under AS 14.43.120(i). Notwithstanding AS 09.35, execution on a claim under AS 14.43.120(i) is accomplished by delivering a certified claim to the department containing the following information:

(1) the name and social security number of the individual whose dividend is being claimed;

(2) the amount the individual owes on the scholarship loan; and

(3) a statement that

(A) the debt has not been contested, or, if contested, that the issue has been resolved in favor of the Alaska Commission on Postsecondary Education; and

(B) if the debt has been contested and resolved in favor of the Alaska Commission on Postsecondary Education, no appeal is pending, the time limit for filing an appeal has expired, or the appeal has been resolved in favor of the commission.

(b) Upon receipt of a claim under (a) of this section the department shall notify the individual of the claim. The notice shall be sent to the address provided in the individual's permanent fund dividend application and must provide the following information:

(1) the amount of the claim; and

(2) notice that the amount of the permanent fund dividend that does not exceed the amount of the claim shall be paid to the Alaska Commission on Postsecondary Education unless the commission releases the claim or the individual requests a hearing within 30 days after the date the notice is sent by the department.

(c) AS 44.62.330 — 44.62.630 apply to a hearing requested by an individual under (b)(2) of this section. If a request for a hearing is not received by the department within the required time limit, the department shall pay to the Alaska Commission on Postsecondary Education the amount of the permanent fund dividend that does not exceed the amount of the claim. (§ 18 ch 92 SLA 1987)

Effective dates. — Section 20, ch. 92, SLA 1987 provides: "This Act takes effect July 1, 1987."

Sec. 43.23.075. Eligibility for public assistance.

Revisor's notes. — Section 14, 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: "(a) In determining the eligibility of an individual under a public assistance program administered by the Department of Health and Social Services

in which eligibility for assistance is based on financial need, the Department of Health and Social Services may not consider a permanent fund dividend as income or resources received by the recipient of public assistance or by a member of the recipient's household unless required to do so by federal law or regulation. The Department of Health and Social Services

shall notify all recipients of public assistance of the effects of a permanent fund dividend credit or cash payment.

"(b) An individual who is denied medical assistance under 42 U.S.C. 1396 — 1396p (Social Security Act, Title XIX) solely because of the credit or receipt of a permanent fund dividend by the individual or by a member of the individual's household is eligible for state-funded medical assistance under the general relief assistance program (AS 47.25.120 — 47.25.300). The individual is entitled to receive, for a period not to exceed four months, the same level of medical assistance as the individual would have received under 42 U.S.C. 1396 — 1396p (Social Security Act, Title XIX) had there

been no permanent fund dividend program.

"(c) An individual who is denied assistance solely because permanent fund dividends credited to or received by the individual or by a member of the individual's household are counted as income or resources under federal law or regulation is eligible for cash assistance under the general relief assistance program (AS 47.25.120 — 47.25.300). Notwithstanding the limit in AS 47.25.130, the individual is entitled to receive, for a period not to exceed four months, the same amount as the individual would have received under other public assistance programs had there been no permanent fund dividend program."

Sec. 43.23.095. Definitions.

Revisor's notes. — Section 15, ch. 99, SLA 1985, amends (6) of 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 paragraph will read: "(6) 'permanent fund dividend' means a credit to an annuity account or a cash payment under this chapter;"

In addition, § 16, ch. 99, SLA 1985, also effective upon the repeal of § 1, ch. 99, SLA 1985, enacts AS 43.23.110 — 43.23.130. If § 16, ch. 99, SLA 1985 becomes law, the new sections will read:

"Article 2. Annuity Program.

"Sec. 43.23.110. **Annuity investment fund.** (a) The annuity investment fund is established as a separate fund in the state treasury. The annuity investment fund consists of money transferred from the dividend fund and income earned by the annuity investment fund. Notwithstanding AS 37.13.145, an amount equal to the permanent fund dividends taken as annuity credits under this chapter shall be annually transferred from the dividend fund to the annuity investment fund.

"(b) Money in the annuity investment fund shall be invested by the commissioner of revenue in investments authorized under AS 39.35.110. The commissioner of administration shall credit the net income of the annuity investment fund to the individual annuity accounts.

"(c) The legislature may annually appropriate to the Department of Administration an amount sufficient to pay monthly annuity payments for the subse-

quent fiscal year under AS 43.23.130 from the annuity investment fund. Funds appropriated under this subsection shall be transferred from the annuity investment fund to the Department of Administration in order to meet the current demands of the annuity program.

"(d) The legislature may annually appropriate from the annuity investment fund an amount sufficient to administer the annuity program. Any costs of administration funded under this subsection shall be allocated equitably among all individual annuity accounts.

"(e) Notwithstanding AS 39.35.110 or (b) of this section, the commissioner of revenue may invest all or part of the annuity investment fund in commercial insurance contracts purchased from insurance companies that have a Best's policyholders' rating of A or better and belong to Best's financial size Group XV at the time of purchase.

"Sec. 43.23.120. **Annuity program.** (a) The annuity program is administered by the commissioner of administration. The commissioner of administration shall adopt regulations necessary to implement the annuity program.

"(b) The commissioner of administration shall maintain records of individual annuity accounts and make annuity payments under AS 43.23.130.

"Sec. 43.23.130. **Payment of annuities.** (a) An individual with one or more annuity credits may receive an annuity upon reaching the age of 65.

"(b) An annuity under this section is a monthly payment based upon the princi-

pal and accrued interest in the person's annuity account. An annuity shall be paid as a straight life annuity or other payment plan authorized by the commissioner of the Department of Administration. The size of the annuity may not vary on account of the individual's sex.

"(c) An individual need not be a resident of the state to be eligible to receive an annuity payment from the individual's account.

"(d) Except as provided in (b) and (e) of this section, an annuity account may not be assigned, sold, or otherwise transferred from one individual to another.

"(e) If a person elects to credit a permanent fund dividend to an annuity account in a particular year, that person may make an irrevocable choice regarding death benefits with respect to that credit. If a person dies before age 65 and that person has selected death benefits in at least one year, a lump sum payment shall, subject to appropriation, be paid to the

surviving spouse by right of survivorship unless a different beneficiary was designated. When no spouse survives and no beneficiary is designated, the lump sum shall be paid to the decedent's estate. The lump sum payment includes all dividends credited to the person's annuity account in years in which death benefits were selected and interest on those dividends. Dividends credited to a person's annuity account in years for which death benefits were not selected and interest on those dividends shall, if the person dies before age 65, be distributed equitably among the annuity accounts of all individuals for which death benefits were not selected.

"(f) An individual does not receive a vested property right in an annuity payment until that payment is made. Notwithstanding this section, the state is not obligated to provide annuity payments for annuity credits granted under AS 43.23.005."

Chapter 25. Alaska Industrial Incentive Act.

[Repealed, § 63 ch 37 SLA 1986.]

Chapter 26. Industrial Incentive Tax Credits.

[Repealed, § 64 ch 37 SLA 1986.]

Chapter 31. Alaska Estate Tax.

Section

151. Notice of deficiency in federal estate tax

Sec. 43.31.151. Notice of deficiency in federal estate tax. It is the duty of the executor to file with the department within 60 days after a final determination of a deficiency in federal estate tax has been made, written notice of the deficiency. If, based upon this deficiency and the ground for it, it appears that the amount of tax previously paid is less than the amount of tax owing, the difference together with interest at the rate of seven percent a year from the due date of the tax shall be paid upon notice and demand by the department. If the executor fails to give the notice required by this section, any additional tax owing may be assessed, or a proceeding in court for the collection of the tax may be begun without assessment at any time before the filing of notice or within 30 days after the delinquent filing