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(7)

Date Referred: April 29, 1989

FURTHER REFERRALS: FINANCE

Date of Committee Action: 3-5-90

The JUDICIARY Committee considered:

HB 255

HOUSE BILL NO. 255

[PF DIVIDENDS/INCARCERATED FELONS]

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

RECOMMENDATIONS:

- be replaced with CS HB 255 Jud the same title
- a new title
- have attached amendment(s)
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

APPROVES PREVIOUS:

- 3cc. fiscal impact ^(Dept) Corrections Revenue, H?SS
- zero fiscal note _____
- zero with analysis _____

- fiscal note(s) _____ (Date/Dept)
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>Mike Hill</u>		<input checked="" type="checkbox"/>	
<u>Terry Hunter</u>		<input checked="" type="checkbox"/>	

W. Shanley Pete Jace
 Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to permanent
 fund dividends..."
 Sponsor: _____
 Requestor: _____

Agency Affected: Department of Corrections
 BRU: Administration and Support

Components: Administrative Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	123.3	123.3	123.3	123.3	123.3	123.3
TRAVEL						
CONTRACTUAL						
SUPPLIES	6.0	6.0	6.0	6.0	6.0	6.0
EQUIPMENT	47.8	-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	177.1	129.3	129.3	129.3	129.3	129.3

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	892.7	129.3	129.3	129.3	129.3	129.3
FEDERAL FUNDS						
OTHER	-763.4					
TOTAL	129.3	129.3	129.3	129.3	129.3	129.3

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

An Analyst Programmer III, Statistical Technician II and Accounting Technician II would be added to handle the 2500 felon and 2000 misdemeanor trust accounts. A computer and trust accounting software will also be acquired to handle all transactions against the accounts and appropriate distribution of the monies.

Prepared by: Susan E. Knighton, Director

Phone: 465-3376

Division: Administrative Services

Date: 03/02/90

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

Date: 03/02/90

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 PFDs for certain incarcerated individuals
Sponsor: Boyer
Requestor: _____

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
OPERATING						
PERSONAL SERVICES	2.3	1.2	1.2	1.2	1.2	1.2
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	1.0	0.5	0.5	0.5	0.5	0.5
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LANDS & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	3.3	1.7	1.7	1.7	1.7	1.7
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	3.3	1.7	1.7	1.7	1.7	1.7
TOTAL	3.3	1.7	1.7	1.7	1.7	1.7

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME	1	1	1	1	1	1
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS: See attached.

Prepared By: Ervin Jones Phone: 465-2323
Division: Permanent Fund Dividend Division Date: January 16, 1990

Approved by Commissioner: Hugh Malone Date: 1/17/90
Agency: Revenue

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
CS HB 255 (SA)
January 16, 1990

Assumptions:

1. With an immediate effective date, this bill is intended to go in effect for the 1990 Dividend program, even though the application period (April 1-June 30) will be half over by the time this bill could become law.
2. The Department of Corrections will file an application for every incarcerated individual who was incarcerated on April 1 and who the Commissioner of Corrections believes to be an otherwise eligible resident. The Department of Corrections will file for such eligible incarcerated individuals, even if they are no longer incarcerated individuals at the time of filing.
3. The Department of Corrections will provide a list of all incarcerated individuals who were incarcerated on April 1. This list will contain full name, birthdate and social security number. The Department of Revenue will deny all applications by such individuals which were not signed by the Commissioner of Corrections or the Commissioner's designee.
4. Dividends will be paid to the Commissioner of Corrections on a weekly basis as the applications are approved for payment, starting in October.
5. All requests for additional information, denials and appeal notices will be sent to the Department of Corrections.
6. With the sudden repeal of AS 43.23.005(d), 43.23.025(b), 43.23.055(5) and 43.23.055(6), the Department of Revenue will be required to contact all felons who would have been ineligible under the repealed sections, and offer them the opportunity to file. The Department of Revenue will probably have to offer them a 90 day filing period, probably May 15-August 15. This, of course, is contingent upon the outcome of the 1989 Supreme Court appeal over AS 43.23.005(d).

Program Summary:

The Department of Revenue will use the list provided in assumption 3 to match against the PFD file. Any person who files an application on their own and who appears on that list will be denied their dividend. A denial notice will be sent to the applicant, with notice of right to appeal. If appeals are forthcoming, the Permanent Fund Dividend Division will hold informal conferences, and where requested by the applicant, the Commissioner will hold formal hearings and represent the Department in court. This is expected to generate approximately 500 additional denials in the first year, with a decreasing number in subsequent years, as felons realize that they may not file for the dividend without the participation of the Department of Corrections.

The Department of Revenue will include in the dividend calculation the total number of incarcerated felons for whom the Department of Corrections files.

Department of Revenue
 Permanent Fund Dividend Division
 Fiscal Note Analysis
 CS HB 255 (SA)
 January 16, 1990

	<u>FY 90</u>	<u>FY 91</u>
1. <u>Positions:</u>		
1 PPT Document Processor I, R7, @ \$2319.66/mo. including salary and benefits for 1 month =	\$2.3	\$1.2
<p>This position will assist in the determination of filings by felons and in the processing and mailing of denial notices, appeals, and correspondence. Reduced by half in second and subsequent years.</p>		
2. <u>Other Expenditures:</u>		
a. <u>Travel:</u> None.		
b. <u>Contractual:</u>		
Printing costs and postage for 500 additional denial notices, appeal forms and envelopes, plus special notice of law change. Reduced by half in second and subsequent years. =	1.0	0.5
c. <u>Supplies:</u> None.		
d. <u>Equipment:</u> Use existing.	-0-	-0-
TOTAL COST	<u>\$3.3</u>	<u>\$1.7</u>

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Relating to PFD for individuals incarcerated
 Sponsor: Boyer
 Requestor: _____

Agency Affected: Health & Social Services
 BRU: Assistance Payments BRU
 Components: AFDC

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
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-
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REVENUE	260.0	260.0	260.0	260.0	260.0	260.0
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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)

GFM	(260.0)	(260.0)	(260.0)	(260.0)	(260.0)	(260.0)
GF/Prgm Receipts	260.0	260.0	260.0	260.0	260.0	260.0

SEE ATTACHED ANALYSIS

Prepared by: John R. Taber, Director *John R. Taber* Phone: 465-3347
 Division: Public Assistance Date: 1/16/90

Approved by Commissioner: Mike M. Munn *Mike M. Munn* Date: 1/16/90
 Agency: Health and Social Services

Distribution (by preparer):

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

Department of Health and Social Services
 Division of Public Assistance

This legislation allows the Department of Corrections to receive the PFD on behalf of incarcerated individuals. This will impact the level of Child Support Enforcement Division (CSED) claims against these dividends in cases with outstanding child support obligations. An AFDC case involving a living absent parent is potentially a child support enforcement case as well. Collection from the absent parent by the CSED reduces the net cost of welfare to the state.

Of the total CSED collections for Alaska welfare cases, 50 percent (less CSED incentive retention) is returned to the federal government as its share of the AFDC benefits paid out, the remaining 50 percent represents restricted GF/program receipts supporting AFDC formula program expenditures.

The impact of this proposed bill will increase CSED collections with some portion of the recovery used to reimburse AFDC entitlement expenditures. The Department of Revenue, CSED estimates the total collections for AFDC cases will be roughly \$520,000 (600 cases at \$800 collected from the Dividend). Of this total \$260,000 would be returned to the federal government and \$260,000 would be transferred to the Department of Health and Social Services to serve as AFDC GF/program receipts. These GF/program receipts supplant general fund match needed to fund the 50 percent state share of AFDC program expenditures. This legislation would potentially make available through CSED collections additional GF/program receipts.

Assuming the enhanced CSED collections result in an additional \$260,000 GF/program receipts the likely revised funding sources with this legislation are as follows:

	<u>TOTAL</u>	<u>FED</u>	<u>(GF) GFM</u>	<u>I/A</u>	<u>(GF) CSED</u>
FY91 Governor					
AFDC Budget	72608.7	33215.2	30409.2	6178.3	2806.0
Impact of Proposed Bill	<u>-0-</u>	<u>-0-</u>	<u>(260.0)</u>	<u>-0-</u>	<u>260.0</u>
FY91 REVISED	72608.7	33215.2	30149.2	6178.3	3066.0

The proposed legislation does not change the projected total AFDC program expenditure of 72608.7 or the total general fund need of 33215.2 (30409.2 + 2806.0). The only change is the mix of general fund sources between general fund match and GF/program receipts.

As mentioned above, enhanced CSED collections do represent additional and available revenue to the State which have a positive fiscal impact. However, we indicate a zero general fund impact supporting AFDC program expenditures because we do not make a distinction between general fund match and GF/program receipts since they both represent the state financial share of AFDC entitlement.

It is our understanding that for fiscal not purposes both sources are "general fund."

HOUSE COMMITTEE ON STATE AFFAIRS

RECAP OF
HB 255

PF Dividends/Incarcerated Felons

Received March 29, 1989
by Rep. Boyer

Heard April 19, 1989
Heard April 20, 1989
Heard April 25, 1989

Committee Substitute adopted April 25, 1989

Passed Out of Committee April 25, 1989
2 Do Pass
3 Do Not Pass
2 No Recommendation

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HB 255: PF Dividends/Incarcerated Felons

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CS HB 255 (SA)
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Services and Department of Revenue
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- Item 4: Memorandum from Sen. Pourchot, April 8, 1989
- Item 5: Position Paper from Department of Revenue
- Item 6: Position Paper from Department of Public Safety,
Violent Crimes Compensation Board
- Item 7: Letter from Alaska Court System, April 17, 1989

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 29, 1989

FURTHER REFERRALS: JUDICIARY
FINANCE

Date of Committee Action: _____

The STATE AFFAIRS Committee considered:

HB 255

HOUSE BILL NO. 255

[PF DIVIDENDS/INCARCERATED FELONS]

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

RECOMMENDATIONS:

- [X] be replaced with CS HB 255 (SA) [] the same title
- [] have attached amendment(s) [X] a new title
- [] do pass
- [X] do not pass
- [] no recommendation
- [] individual recommendations
- [] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- 2 [X] fiscal impact DOR/HESS
- [] zero fiscal note _____
- [] zero with analysis _____

- [] fiscal note(s) _____
- [] zero fiscal note(s) _____
- [] zero fn/analysis _____

SIGNING DO PASS:

Grant Mendenhall
Eileen P. Medson

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>David Douley</u>	X		
<u>Raymond [unclear]</u>	X		
<u>[unclear]</u>		X	
<u>Jim [unclear]</u>	X		
<u>[unclear]</u>			✓

[Signature]
 Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Relating to PFD for individuals incarcerated
Sponsor: Bover
Requestor: _____

Agency Affected: Health & Social Services
BRU: Assistance Payments BRU
Components: AFDC

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
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-
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REVENUE	-0-	260.0	260.0	260.0	260.0	260.0
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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)

GFM	(260.0)	(260.0)	(260.0)	(260.0)	(260.0)
GF/Program Receipts	260.0	260.0	260.0	260.0	260.0

SEE ATTACHED ANALYSIS

Prepared by: John R. Huber; Director
Division: Public Assistance

Phone: 465-3347
Date: 4/1/90

Approved by Commissioner: Maria M. Johnson
Agency: Health & Social Services

Date: 4-10-89

Distribution (by preparer):

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

Department of Health and Social Services
 Division of Public Assistance

This legislation allows the Department of Corrections to receive the PFD on behalf of incarcerated individuals. This will impact the level of Child Support Enforcement Division (CSED) claims against these dividends in cases with outstanding child support obligations. An AFDC case involving a living absent parent is potentially a child support enforcement case as well. Collection from the absent parent by the CSED reduces the net cost of welfare to the state.

Of the total CSED collections for Alaska welfare cases, 50% (less CSED incentive retention) is returned to the federal government as its share of the AFDC benefit paid out, the remaining 50% represents restricted GF/program receipts supporting AFDC formula program expenditures.

The impact of this proposed bill will increase CSED collections with some portion of the recovery used to reimburse AFDC entitlement expenditures. The Department of Revenue, CSED estimates the total collections for AFDC cases will be roughly \$520,000 (600 cases at \$800 collected from the Dividend). Of this total \$260,000 would be returned to the federal government and \$260,000 would be transferred to the Department of Health and Social Services to serve as AFDC GF/program receipts. These GF/program receipts supplant general fund match needed to fund the 50% state share of AFDC program expenditures. This legislation would potentially make available through CSED collections additional GF/program receipts.

Assuming the enhanced CSED collections result in an additional \$260,000 GF/program receipts the likely revised funding sources with this legislation are as follows:

	<u>TOTAL</u>	<u>FED</u>	(GF) <u>GFM</u>	<u>I/A</u>	(GF) <u>CSED</u>
FY90 Governor AFDC Budget	67322.0	30794.0	28094.0	5734.0	2700.0
Impact of Proposed Bill	<u>-0-</u>	<u>-0-</u>	<u>(260.0)</u>	<u>-0-</u>	<u>260.0</u>
FY90 REVISED	67322.0	30794.0	27834.0	5734.0	2960.0

The proposed legislation does not change the projected total AFDC program expenditure of 67322.0 or the total general fund need of 30794.0 (28094.0 + 2700.0). The only change is the mix of general fund sources between general fund match and GF/program receipts.

As mentioned above, enhanced CSED collections do represent additional and available revenue to the State which have a positive fiscal impact. However, we indicate a zero general fund impact supporting AFDC program expenditures because we do not make a distinction between general fund match and GF/program receipts since they both represent the state financial share of AFDC entitlement.

It is our understanding that for fiscal note purposes both sources are

FISCAL NOTE

REQUEST

Revision Date: _____
Title: An Act relating to PFDs for certain incarcerated individuals
Sponsor: Boyer
Requestor: _____

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
OPERATING						
PERSONAL SERVICES	2.3	1.2	1.2	1.2	1.2	1.2
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	1.0	0.5	0.5	0.5	0.5	0.5
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LANDS & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	3.3	1.7	1.7	1.7	1.7	1.7
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	3.3	1.7	1.7	1.7	1.7	1.7
TOTAL	3.3	1.7	1.7	1.7	1.7	1.7

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME	1	1	1	1	1	1
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS: See attached.

Prepared By: Ervin Jones
Division: Permanent Fund Dividend Division

Phone: 465-2323
Date: April 12, 1989

Approved by Commissioner: [Signature]
Agency: Revenue

Date: 4/13/89

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
HB 255
April 12, 1989

Assumptions:

1. With an immediate effective date, this bill is intended to go in effect for the 1989 Dividend program, even though the application period (April 1-June 30) will be half over by the time this bill could become law.
2. The Department of Corrections will file an application for every incarcerated individual who was incarcerated on April 1 and who the Commissioner of Corrections believes to be an otherwise eligible resident. The Department of Corrections will file for such eligible incarcerated individuals, even if they are no longer incarcerated individuals at the time of filing.
3. The Department of Corrections will provide a list of all incarcerated individuals who were incarcerated on April 1. This list will contain full name, birthdate and social security number. The Department of Revenue will deny all applications by such individuals which were not signed by the Commissioner of Corrections or the Commissioner's designee.
4. Dividends will be paid to the Commissioner of Corrections on a weekly basis as the applications are approved for payment, starting in October.
5. All requests for additional information, denials and appeal notices will be sent to the Department of Corrections.
6. With the sudden repeal of AS 43.23.005(d), 43.23.025(b), 43.23.055(5) and 43.23.055(6), the Department of Revenue will be required to contact all felons who would have been ineligible under the repealed sections, and offer them the opportunity to file. The Department of Revenue will probably have to offer them a 90 day filing period, probably May 15-August 15.

Program Summary:

The Department of Revenue will use the list provided in assumption 3 to match against the PFD file. Any person who files an application on their own and who appears on that list will be denied their dividend. A denial notice will be sent to the applicant, with notice of right to appeal. If appeals are forthcoming, the Permanent Fund Dividend Division will hold informal conferences, and where requested by the applicant, the Commissioner will hold formal hearings and represent the Department in court. This is expected to generate approximately 500 additional denials in the first year, with a decreasing number in subsequent years, as felons realize that they may not file for the dividend without the participation of the Department of Corrections.

The Department of Revenue will include in the dividend calculation the total number of incarcerated felons for whom the Department of Corrections files.

Department of Revenue
 Permanent Fund Dividend Division
 Fiscal Note Analysis
 HB 255
 April 12, 1989

	<u>FY 89</u>	<u>FY 90</u>
1. <u>Positions:</u>		
1 PPT Document Processor I, R7, @ \$2319.66/mo. including salary and benefits for 1 month =	\$2.3	\$1.2
This position will assist in the determination of filings by felons and in the processing and mailing of denial notices, appeals, and correspondence. Reduced by half in second and subsequent years.		
2. <u>Other Expenditures:</u>		
a. <u>Travel:</u> None.		
b. <u>Contractual:</u>		
Printing costs and postage for 500 additional denial notices, appeal forms and envelopes, plus special notice of law change. Reduced by half in second and subsequent years. =	1.0	0.5
c. <u>Supplies:</u> None.		
d. <u>Equipment:</u> Use existing.	-0-	-0-
TOTAL COST	<u>\$3.3</u>	<u>\$1.7</u>

Items

Alaska State Legislature

FAIRBANKS

1098 LAKEVIEW TERRACE
FAIRBANKS, ALASKA 99701
(907) 456-6473

JUNEAU

P.O. BOX V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3466

REPRESENTATIVE
MARK BOYER

VICE-CHAIRMAN, HOUSE
HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

MEMBER, HOUSE LABOR AND
COMMERCE COMMITTEE

CHAIR, CHILDREN'S CAUCUS



House of Representatives

MEMORANDUM

TO: Representative Red Boucher
Chair, House State Affairs Committee

FROM: Representative Mark Boyer

DATE: April 13, 1989

SUBJECT: Explanation of HB 255 - "An Act relating to permanent fund dividends for certain incarcerated individuals and providing for an effective date."

I have sponsored this bill not to benefit felons but to benefit approximately 1600 children who are denied much needed child support because one of their parents is in jail because they have been convicted of a felony.

Last year when the legislature repealed the ability of convicted felons to receive permanent fund dividends, I think we forgot the effect that this action would have on their children and the victims of their crimes.

House Bill 255 is drafted so that the state can take 100% of the felon's dividend: first, for child support; second, for court ordered restitution payable to the victims of their crimes; and third, for court ordered fines which are deposited in the general fund. Any remaining money, and I doubt there will be, would be held in trust and used for gate money.

If you have any questions, please contact me or my staff, Nancy Groszek, at 465-3466. Attached is a copy of the bill and a position paper from the Department of Revenue.

MB/NJG/bhn

Attachments

cc: House State Affairs Committee Members

Alaska State Legislature

Item 4

Sen. Pat Pourchot, Chairman

Sen. Jan Falke, Vice Chairman
Sen. Al Adams
Sen. Tim Kelly
Sen. Rick Uehling



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

907-485-3712

Senate State Affairs Committee

MEMORANDUM

TO: Senate State Affairs Committee Members
FROM: Senator Pat Pourchot, Chairman
RE: Permanent Fund Dividends for Felons
DATE: April 8, 1989

During consideration of HB 57, relating to the Violent Crimes Compensation Board, reference was made to litigation over the provision in current statute (AS 43.23.005(d)) which prohibits convicted felons from receiving Permanent Fund Dividends. At the request of the committee, staff spoke with Marilyn May of the Attorney General's Office in Anchorage and received the following report.

Two lawsuits were filed in 1987. They are being tried in the Palmer court under Judge Cutler.

Smith v. State argues that the prohibition violates the ex post facto provision of the state and federal constitutions, which, simply put, protects against an act becoming a crime after it was committed. Smith argues that at the time he committed his crime, he didn't know that his action would result in not receiving the dividend.

Anthony v. State argues that the prohibition violates the constitutional provisions of equal protection (by treating felons differently than others similarly situated), due process (by enactment without input from felons), ex post facto, and Section 1983, which deals with civil rights.

Since these suits were filed, 15 other felons have joined Anthony v. State. A motion to establish a class action suit is pending before the court.

The plaintiffs were to have filed summary judgment with the court by April 1, 1989 with the state responding by May 1. However, an extension of the April filing deadline is currently before the court so it is hard to predict when a final decision might occur. Ms. May assumes early fall as the judge has indicated her desire to rule prior to the distribution of Permanent Fund Dividends in October. Ms. May thinks that the decision will be appealed regardless of who wins.

Felons' PFDs
April 8, 1989
Page 2

Smith has requested an injunction against state expenditure of the felons' PFDs prior to a ruling in the lawsuit. Ms. May thinks it unlikely that the court will grant an injunction. Should the state spend the PFDs and lose the lawsuit, the state will likely have to repay the felons.

The Governor's FY 90 budget proposes appropriation of an anticipated \$1.5 million in felons' PFDs. Each of the following proposals represents an increase to the FY 89 funding level:

201.0	Violent Crimes Compensation Board
1073.5	Dept. Corrections rehabilitation programs
200.0	vocational/postsecondary education
200.0	substance abuse treatment
123.5	sex offender treatment
150.0	anger management
400.0	forensic halfway house
225.0	Dept. Corrections gate money

Based on the number of incarcerated felons, the Department of Revenue estimated that their PFDs would total \$2 million. OMB chose to program only \$1.5 million, anticipating that not all felons would apply for the PFD and that not all who applied would be eligible. The Governor's budget reduction plan, presented to the Budget Summit on April 4, deleted the increments in the rehabilitation programs and used the PFD money to fund existing sex offender and alcohol treatment programs.

A copy of the law prohibiting felons from receiving Permanent Fund Dividends is attached. Section 5 contains legislative intent providing for an amount equal to the felons' PFDs to be annually appropriated from the dividend fund to the Violent Crimes Compensation Board.

cc: Senator Uehling
Senator Binkley
Senator Frank

Chapter 53

Chapter 54

for the interest deposited in
The annual estimated balance
the legislature to the public

ly under AS 01.10.00(c).

AN ACT

Relating to permanent fund dividends for individuals
incarcerated after conviction for a felony; and pro-
viding for an effective date.

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

(d) Notwithstanding the provisions of (a) - (c) of this section,
an individual who has been convicted of a felony is not eligible for a
permanent fund dividend for a year when, during all or part of the
fiscal year ending June 30 of the current year, as a result of the
conviction the individual is incarcerated. This subsection applies
whether or not the individual has applied for the dividend.

43.23.005(d)

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

(b) For the purpose of calculating the amount of a permanent
fund dividend under (a) of this section, an individual who is ineli-
gible to receive a dividend under AS 43.23.005(d) is counted as an
eligible individual whether or not the individual has applied for the
dividend.

43.23.025(b)

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

Sec. 43.23.055. DUTIES OF THE DEPARTMENT. The department shall
(1) annually pay permanent fund dividends from the dividend
funds;
(2) adopt regulations under the Administrative Procedure
Act (AS 44.62) that establish procedures and time limits for claiming

43.23.055

Chapter 54

1 a permanent fund dividend; the department shall set the time limit for
2 applications for permanent fund dividends so that the number of eli-
3 gible applicants is determined by October 1 of the year for which the
4 dividend is declared and permanent fund dividends for a year are paid
5 before April 30 of the year following that year;

6 (3) adopt regulations under the Administrative Procedure
7 Act (AS 44.62) that establish procedures and time limits for an indi-
8 vidual upon emancipation or upon reaching majority to apply for perma-
9 nent fund dividends not received during minority because the parent,
10 guardian, or other authorized representative did not apply on behalf
11 of the individual; (AND)

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

16 (5) annually determine, in cooperation with the Department
17 of Corrections, the number and identity of individuals ineligible for
18 a permanent fund dividend under AS 43.23.005(d); and

19 (6) adopt regulations that are necessary to implement
20 AS 43.23.005(d).

21 * Sec. 4. This Act applies only to eligibility for permanent fund
22 dividends for years after 1988.

23 * Sec. 5. It is the intent of the legislature that an amount approxi-
24 mately equal to the money that would otherwise be paid as permanent fund
25 dividends to individuals determined to be ineligible under AS 43.23.005(d),
26 as enacted by sec. 1 of this Act, be appropriated annually from the divi-
27 dend fund to the crime victim compensation fund (AS 18.67.162) to carry out
28 the purposes of AS 18.67.

29 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c),
30 (CSHA 245rJud)

Eff. 5/26/88

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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;

(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;

(5) annually determine, in cooperation with the Department of Corrections, the number and identity of individuals ineligible for a permanent fund dividend under AS 43.23.005(d); and

(6) adopt regulations that are necessary to implement AS 43.23.005(d). (§ 1 ch 102 SLA 1982; am § 2 ch 55 SLA 1983; am § 3 ch 43 SLA 1984; am § 3 ch 54 SLA 1988)

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 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 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).

The 1988 amendment, effective May 26, 1988, deleted "and" at the end of paragraph (3), and added paragraphs (5) and (6).

Editor's notes. — Section 4, ch. 54, SLA 1988 provides that the amendments made to this section by ch. 54, SLA 1988 apply "only to eligibility for permanent fund dividends for years after 1988."

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.

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

Item 5

STEVE COWPER, GOVERNOR

P.O. BOX 5
JUNEAU, ALASKA 99811-0400
PHONE: (907) 465-2300
TELEFAX: (907) 465-2389

POSITION PAPER ON HB 255

The Department of Revenue supports this legislation. This bill will insure that the Permanent Fund Dividends of incarcerated convicted felons will be available for the support of their children.

Without this legislation, more than 600 children will lose the Permanent Fund Dividends they are due from their parents in prison. In addition, the state will need to provide additional public assistance to another 1,000 children on public assistance who will also lose the child support formerly available from the Permanent Fund Dividends of their imprisoned parents.

The law passed in the 1988 session to make incarcerated convicted felons ineligible for Permanent Fund Dividends hits hard at the felons. That is understandable. This law hits hard as well at their children. That is wrong.

The felons are criminals who deserve punishment. Their children are victims who deserve our help.

In many cases the children are literally the victims of their fathers' physical or sexual abuse. In all cases the children have at least one parent in jail, and in many other cases the other parent is a poor provider.

The children of prisoners are among the neediest of those receiving child support. The Permanent Fund Dividend is about the only source of child support available from incarcerated felons.

Much of the support for the passage of the law last year came from the belief that convicted felons in prison should not be able to spend Permanent Fund Dividends. This is obviously sensible, and House Bill 255 would make it a crime for a convicted incarcerated felon to apply for a Dividend without the sponsorship of the Department of Corrections.

HB 255 protects the rights of the felons' children to child support and the rights of other creditors to repayment of the felons' debts. The legislation provides that the Department of Corrections will hold the felon's Permanent Fund Dividend until the felon is released. By law child support will have first call on the Dividend above other creditors. This will also provide every opportunity for other claims to be satisfied -- including restitution for victims, court fines and the like.

We urge the legislature to enact HB 255. It will protect the rights of society without stepping on any of our weakest members.

BILL NO: HB 255

DATE: 04/17/89

TITLE: An Act relating to permanent fund dividends for certain incarcerated individuals; and providing for an effective date.

CONTACT: Nola K. Capp
465-3040

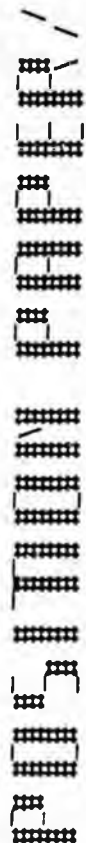
DEPARTMENT OF
PUBLIC SAFETY

The Violent Crimes Compensation Board opposes this bill.

HB 255 would repeal existing law under which incarcerated felons lose the right to apply for their permanent fund dividend checks. The monies which would have been paid to the felons are available for appropriation to a "crime victim compensation fund", and may be used to pay compensation to innocent victims of violent crimes. The Board strongly endorses the concept that criminal offenders should pay for victim compensation; there would be no need for a compensation program if there were no offenders.

Approximately 40 other states fund their victim compensation programs by fines and penalties assessed against convicted criminals. Alaska's present law is based on the policy that offenders should be held responsible for the injuries they have caused, and help pay for damages suffered by innocent victims. This existing law should not be changed.

Millard Ingraham
Millard Ingraham, Chairman
Violent Crimes Compensation Board



Item 7



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

JANALEE R. STRANDBERG
Staff Counsel

303 K Street
Anchorage, AK 99501
(907) 264-0228

April 17, 1989

Representative Mark Boyer
House of Representatives
P. O. Box V
Juneau, AK 99811

Re: HB 255 An act relating to permanent fund dividends for certain incarcerated individuals; and providing for an effective date.

Dear Representative Boyer:

Although the Court System does not collect statistics on the number of court-ordered fines and orders of restitution, generally in felony cases the trial courts do order that the defendant pay fines and, in appropriate cases, restitution. These monies go into the general fund in the cases of fines and to the victims in the case of restitution.

If I can provide further information to you or answer any questions, please let me know.

Sincerely,

Jan Strandberg
Jan Strandberg
Staff Counsel

JS:gb



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

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

M E M O R A N D U M

TO: Committee Staff

FROM: Dennis J. Burns, Aide
House State Affairs Committee

DATE: April 28, 1989

RE: CSHB 255(SA)

The CS for HB 255 passed out of the State Affairs Committee will need further work. My instructions were to include amendments offered by Representative's Boyer and Donely - I was further instructed by Representative's Donely and Boucher to delete language in the State Affairs CS which they felt was necessary for consistency. Tam Cook, however, indicated a need to further clarify the changes - I was given no instructions to proceed further.

Please note the attached memorandum from Tam Cook.

STATE OF ALASKA
THE LEGISLATURE

BOUCHER STATE CAPITOL
JUDICIAL ALASKA BUILDING
207 465 1100

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 28, 1989

SUBJECT: Permanent Fund Dividends
(CSHB 255(L&C))

TO: Representative H.A."Red: Boucher, Chairman
House State Affairs Committee

FROM: Tamara Brandt Cook *TBC*
Director
Division of Legal Services

Here is the change to the committee substitute requested by Mr. Dennis Burns. I was directed to make no drafting changes as a result of this request, so I must alert you to the fact that the change garbles the effect of AS 43.23.065 by eliminating the distinction between subsection (a) type claims and subsection (b) type claims. The entire section needs to be redrafted for clarity.

TBC:lmb
L7/077

Enclosure

Alaska State Legislature

REPRESENTATIVE
MARK BOYER

VICE-CHAIRMAN, HOUSE
HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

MEMBER, HOUSE LABOR AND
COMMERCE COMMITTEE

CHAIR, CHILDREN'S CAUCUS



FAIRBANKS

1098 LAKEVIEW TERRACE
FAIRBANKS, ALASKA 99701
(907) 456-6473

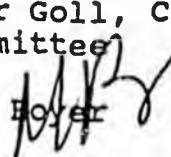
JUNEAU

P.O. BOX V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3466

House of Representatives

M E M O R A N D U M

TO: Representative Max Gruenberg, Co-Chair
Representative Peter Goll, Co-Chair
House Judiciary Committee

FROM: Representative Mark Boyer 

DATE: May 3, 1989

SUBJECT: Scheduling for hearing in House Judiciary - CSHB 255
(State Affairs), "An Act relating to permanent fund
dividends for certain individuals convicted of crimes
and to the exemption for permanent fund dividends from
remedies for the collection of debt."

This is a formal request asking you to schedule CSHB 255 (State Affairs) for a hearing during your interim work schedule. I am concerned that not unlike other victims, the group we are trying to assist may be the least vocal about how they are affected absent a real effort to reach them. I introduced this bill to correct an injustice which denies approximately 700 children of felons their right to child support. This bill would also insure that the Violent Crimes Compensation Fund is funded for victims by the perpetrators of these crimes.

Committee Substitute for House Bill 255 accomplishes two goals. First, it exempts \$50.00 of each recipient's permanent fund dividend (PFD) check from attachment by the child support enforcement agency (CSED), court ordered restitution or a debt owed to a state agency. This is intended to act as an incentive for convicted felons and all other PFD recipients to apply for a PFD regardless of potential attachments. CSED states that approximately 15% of those who owe child support do not apply for the dividend. Second, the bill makes incarcerated individuals eligible for permanent fund dividends so that the state can collect child support, court ordered restitution which goes directly to victims, or if there is any remainder and the felon has been convicted of a crime listed under AS 18.67.101, it will be deposited in the Violent Crimes Compensation Fund. Again \$50.00 is exempted and would be deposited in a trust fund to be given to the felon as gate money.

Thank you in advance for your prompt consideration of this matter.

MB/NJG/bhn

FAIRBANKS 20B

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX 5
JUNEAU, ALASKA 99811-0400
PHONE: (907) 465-2300
TELEFAX: (907) 465-2389

February 5, 1990

The Honorable Dave Donley
Alaska State House
P.O. Box V
Juneau, AK 99811

RECEIVED FEB 7 1990

Dear Representative Donley:

I am sending you this letter as promised during our telephone conversation of January 24, 1990.

After consideration, I decided not to place any discussion of the 1989 deductions in the 1990 dividend application booklet.

My main reasons for the conclusion are that, first, the 1990 dividend booklet should focus on the changes in the eligibility law, mainly the new two year residency requirement, which people need to understand. My second main reason is that dragging up old information from 1989 will only confuse people even more, since people may believe that now we are talking about repeating the 1989 deductions again in 1990. If people get that notion, things would be even more confusing. In fact, I would recommend against trying to explain 1989, and concentrate on avoiding this type of situation happening again.

The information on the check stubs accurately reflected the amounts that the legislature appropriated from the dividend fund. The two new appropriations were shown as a deduction per check.

This is the same way that the law requires the cost of the dividend program and the hold harmless program to be shown. The description of the uses of the money was taken directly from the Legislative Finance Division "short-form" publication of the state operating budget.

I believe that this did give Alaskans adequate information on where their dividend money was going. I believe the phone calls that you received were from people who knew where their money was going, but did not want the Legislature to use their dividend money for these programs -- at least, that is what the Commission of the Future of the Permanent Fund heard during a dozen hearings this year.

I am sure that you agree with me that Alaskans do have a right to know where their dividend money is going.

The Honorable Dave Donley
February 5, 1990
Page 2

On a positive note, I commend your efforts and those of your colleagues in remedying the problem through the adoption of HB 255. HB 255 will solve the problem. Early action on HB 255 will mean that the dividend of felons could be used to pay proper costs instead of paying them over to the felons, while making sure that other peoples' dividends are not affected.

Sincerely,



Hugh Malone
Commissioner

HM:m11

Enclosures: Donley Letter of 1/19/90 and 1989 PFD check stub

90-14

cc: Governor Cowper
Bob Evans
Garrey Peska
All Legislators

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE
DISTRICT ELEVEN • SPENARD
SEAT A

3111 "C" STREET, SUITE 450
ANCHORAGE, ALASKA 99503
(907) 561-7629 (FAX) 562-4376



CHAIRMAN
LABOR AND COMMERCE COMMITTEE

VICE CHAIRMAN
ANCHORAGE CAUCUS

MEMBER
RULES COMMITTEE
STATE AFFAIRS COMMITTEE

January 19, 1990

Commissioner Hugh Malone
Department of Revenue
P.O. Box S (MS0400)
Juneau, Alaska 99811

Malone

Dear Commissioner Malone:

As a followup to our conversation in December, I am writing to request a written response outlining the Department's position on my request that a full explanation of the "deductions" listed on the 1989 dividend check stubs be printed on the front page of the 1990 dividend application form.

This year Legislative offices received hundreds of phone calls from irate constituents who had first become aware of "deductions" from their dividend check through the listing on the check stub. This listing did not adequately explain the "deductions", nor did it indicate that two of them had been with the program virtually since its inception. Instead, Alaskans were left with the impression that the legislature took some devious action last session that reduced the amount of their dividend checks.

This impression could have been avoided had Alaskans been given adequate information with their dividend checks about these "deductions". The best way to provide this information now is for the Department to instruct the Division to provide this information on the 1990 dividend application form. I hope legislation will not be needed to ensure this action.

Please respond indicating whether the Department will implement this suggestion or, if not, your reasons for declining to do so. In either case, your written response should be received in my office no later than February 7 so that I can pursue any necessary legislation in a timely manner.

I look forward to your earliest possible response.

Sincerely,

Representative Dave Donley

cc: Governor Cowper
Bob Evans
Gary Peska
All Legislators

dd/qbs90
c/pfd

ALASKA DEPARTMENT OF REVENUE
JAN 21 1990
COMMISSIONER'S OFFICE



NON NEGOTIABLE

No. 5248293

PAYER'S NAME STATE OF ALASKA 1989 PERMANENT FUND DIVIDEND \$ 873.16
FEDERAL ID NO. 92-6001185

DATE 10/05/89 BATCH 00016
VOUCHER 476776 DLN 90002861 WARRANT AMOUNT \$ 873.16

APPLICANT'S SSN 574-16-9170

APPLICANT'S NAME AND ADDRESS

JAMES H MALONE
2517 DAVID STREET
JUNEAU AK 99801

REDUCTIONS PER DIVIDEND CHECK:
COSTS OF ADMINISTERING DIVIDEND PROGRAM \$ 6.83 (DEPT. OF REVENUE)
HOLD HARMLESS FOR LOST FEDERAL BENEFITS \$22.72 (DEPT. OF H&SS)
GATE MONEY AND SEX OFFENDER TREATMENT \$ 1.47 (DEPT. OF CORRECTIONS)
VIOLENT CRIMES COMPENSATION BOARD \$ 1.42 (DEPT. OF PUBLIC SAFETY)

IMPORTANT - This stub contains important tax and other information (see back).

Donald W.Y. Kilbuck
Wildwood Pre-trial Facility
1st Street, Building #5
Kenai, Alaska 99611

January 20, 1990

Rep. Mark Boyer
P.O. Box V
Juneau, Ak 99811

Dear Mr. Boyer: Thank you for restoring the Permanent Fund Dividend for the first time felons, for especially the children, and it is right to make right with the victim (s) , with restitution. I am planning on using my dividend to make my final payment to make good for the apartment damage at the Sandrik apartments in Fairbanks, Alaska. Then I will able to put some energy into making my freedom a lot easier with the local canneries on the Prince William Sound, or the Kodiak, area and come my release I have now been recovered from the alcoholic lifestyle. Now I am in God's hand and living sober is not bad at all. Especially for the pocket book. This summer I got released on May 31, 1989 to do some cannery work down Valdez, and Exxon sponcered ferry ticket to the Village of Cordova, Alaska. I paid my way up to Fairbanks, Alaska and because the Parole Board had dreamed up some travel plans for me and court hearings. Which delayed most of my good summer what I had left., for work. All this due to my victim, my former alcohol ic brother-in-law, that forwarded my assault to stabbing him. Which made me a fellow felon in the State of Alaska. I worked a lot on the pipeline, and the fund money will help a lot in the future. But that it should be to the benefit for the children with the insurance that the schools, and other maintenance be supported with the PF and also be put in a interest bearing trust fund or a earning stocks, or bonds. Maybe the fund money could keep us felons, even on a good standing with Rep. Remonia Burnse. Will take life easy, and not to get all worked up over little things like the PF.

Thanks for the restoring the fund money and support.

2.

I will remember you in the prayers and that may God save the dinner bell hellraisers!

Down there in the city of Juneau, Alaska.

Say hello to all.

Sincerely.

Donald Kilbuck

Donald Kilbuck

P.S. I don't think building a brewer for the Fink administration in the Ship Creek area - because the brewery will bring forth employment and cash flow the worst dream shouldn't be pushed into the blueprint environment of the Alaska Highways, and streets. There is already drunk drivers, and crime on the streets to make a small flame - a large scale nightmare.

MR. DONALD KILBUCK
WILLOW PRETRAIL 1ST ST
KENAI, AK 99611

RECEIVED
DEPT. OF REVENUE
CSED-ADMIN. DIV.

OCT 23 10 53 AM '89

Lori L. Pond
3817 Autumn Ct.
Juneau, AK 99801

October 17, 1989

Janell L. Briggs
Operations Manager
State of Alaska
Department of Revenue
Child Support Enforcement Division
550 West 7th
Team # 3
4th Floor
Anchorage, Ak 99501-6699

Case # 1JU-77666

Dear Ms Briggs,

This letter is in response to a letter sent to CSED by my ex-husband Thomas G. Mullin dated 9/25/89.

There are several untrue statements made in his letter that I wish to comment on. I will address them in the order in which they appear.

His first statement claims "I want very much to pay all my child support due." The current principal balance on this account is \$13,364.00. The monthly obligation is \$100.00 a month. Tom has NEVER willingly made a payment. All payments have been through garnishments from CSED. He has also refused to file his Permanent Fund Dividend because it would go to CSED. A person does not get this far in debt over a 12 year period at \$100.00 a month if they honestly want to pay. I do not believe Tom has ever wanted to pay child support.

Secondly, he states: "I testified that over \$6000.00 of my back child support is interest charges alone." The current balance on this account is \$15,689.00 of which \$2325.00 is interest and \$13,364.00 is principal. I do not wish to waive any of this interest.

Third, he states: "I know that some of my back bill is to repay AFDC (welfare for my ex-wife)" I have NEVER been on welfare in my entire life including AFDC.

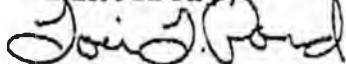
Fourth, he states: "Even though I am at the indigent level I have been denied by the court to have counsel appointed to help me with child support matters" and that his "ex-wife seems to get all sorts of FREE State assistance in this case." I have not had any legal counsel nor have I needed any.

Jeremiah (our son) is almost 14 years old and is very athletic, he plays basketball, football, baseball and skis. I have always made sure he was provided for with all the essential gear, camps and entry fees for these activities. I have always made sure Jer had everything he needed. This has not always been easy. Tom's current monthly obligation is \$100.00 a month which doesn't even cover 1/3 of the monthly support for Jer. In the divorce decree Tom was suppose to pay all medical and dental bills also. To date he has not paid any of them, which meant I was left to pay them. These bills were also very expensive. Although I'm sure it is not easy for an ex-offender to find a job, I do not feel he is doing the best he can. Besides the job at On the Go Video Tom is also working under the table. Over the years Tom has worked at many jobs under the table making it almost impossible to get any child support. Some of these jobs paid very well. I do feel 55% of a persons paycheck is a lot to garnish, but both myself and CSED have tried working with Tom on this many times. He submits false documents and does not live up to his agreements.

In closing, I would like to state I would like my ex-husbands re-entry back into society to be successful, especially for Jeremiah's sake. I feel Tom needs to start trying to help himself before expecting others to help him. He should also get his facts straight before testifying on them or putting them in writting.

I would like to thank CSED for all the time and effort they have put into this case over the last 12 years. If it wasn't for them I would never recieved any child support.

Sincerely,



Lori L. Pond

cc: Thomas G. Mullin
Linda Langston
Dads Against Discrimination
Royce Weller
Senator Rick Uehling
Representative Johnny Ellis
Representative Max Gruenberg
Representative Mike Miller

KEY FEATURES OF CS HB 255 (JUD)
2/28/90 version

- An expanded class of offenders is covered. This version covers incarcerated convicted offenders, both felons and misdemeanants. Current law only covers felons. This version covers inmates in correctional facilities, in community residential centers as a condition of probation or parole, in correctional restitutional centers and on furlough.
- Offenders cannot apply for a PFD while in jail without the Department of Corrections co-signing. Incarcerated offenders may not spend PFDs while in prison.
- PFDs of incarcerated offenders can be seized to pay debts owed to judgement creditors including child support, court-ordered restitution to victims, court fines, court-appointed attorneys and debts owed to state agencies.
- The money that remains in the account of an individual after all debts are paid is given to the offender when they leave prison.
- Excludes a PFD from the liquid assets exemption.

SECTIONAL ANALYSIS
CS HB 255 (JUD) 2/28/90 version

Sec. 1

Allows for exemption from levy that portion of a dividend that is exempted under AS 43.23.065(a) (Sec. 6)

Sec. 2

Allows for taking of a dividend to satisfy a defaulted loan. The change in subsection here is due to a renumbering in Sec. 7.

Sec. 3

This is a new section which mandates that individuals who are incarcerated at the time of application for a dividend must apply through the DOC. Anyone who receives a dividend while incarcerated must deliver the dividend to the DOC. Administrative controls are relied on to insure all individuals subject to this section are included. This section also defines incarcerated.

Sec. 4

Sets Department of Corrections type claims aside from the general rule of how they shall be held in trust by a public agency.

Sec. 5

Requires DOC to disclose the amount of the dividend and the amount by which each dividend has been reduced in order to pay the hold harmless costs and costs of administering the program. Cost for administering CS HB 255 (JUD) are allocated from the general fund, not the PFD fund.

Sec. 6

A 50% exemption is exempt from levy except for dividends taken to satisfy debts listed under section 7.

Sec. 7

100% of a dividend can be taken to satisfy court ordered child support obligations, court ordered restitution, court ordered fines or debts to an agency of the state. This section also prioritizes these debts.

Sec. 8

Excludes a PFD from the liquid assets exemption.

Sec. 9

Repeals ineligibility of felons; calculation of the PFD with regard to their ineligibility; and determining those ineligible in cooperation with DOC and adoption of regulations needed to implement this.

Sec. 10

Repeals Section 5, ch. 54, SLA 1988 which made felons ineligible.

Sec. 11

Immediate effective date.

Original sponsor(s): REP. BOYER

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 255 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to permanent fund dividends for
7 certain individuals convicted of crimes, to costs of
8 administering the dividend program, to the exemption
9 for permanent fund dividends, to remedies for the
10 collection of debts involving dividends, and to the
11 priority of claims on a dividend; and providing for
12 an effective date."

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

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

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

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

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

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

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

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

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

- 1 (7) liquor licenses granted under AS 04;
2 (8) limited entry permits granted under AS 16.43, except as
3 provided in that chapter;
4 (9) that portion of a permanent fund dividend exempted
5 under AS 43.23.065(a).

6 * Sec. 2. AS 14.43.120(i) is amended to read:

7 (i) If a loan is in default, the commission shall notify the
8 borrower that repayment of the remaining balance is accelerated and
9 due by sending the borrower a notice by registered or certified mail.
10 The permanent fund dividend of a borrower may be taken under AS 43.-
11 23.065(b(4)) [AS 43.23.065(b)(3)] to satisfy the balance due on the
12 defaulted loan.

13 * Sec. 3. AS 43.23 is amended by adding a new section to read:

14 Sec. 43.23.007. DIVIDENDS OF INCARCERATED INDIVIDUALS. (a)
15 Notwithstanding the application requirements of AS 43.23.005, only the
16 Department of Corrections may apply during a year for a dividend for
17 an individual who was incarcerated at the time of application. An
18 application under this subsection must be signed by the individual and
19 the commissioner of corrections or an employee of the Department of
20 Corrections authorized by the commissioner to sign applications. An
21 individual who receives a dividend while incarcerated shall deliver
22 the dividend to the Department of Corrections.

23 (b) The Department of Corrections shall notify each individual
24 subject to the requirements of this section of those requirements and
25 shall apply for a permanent fund dividend for each of those indivi-
26 duals who qualifies for a dividend and agrees to sign the application.

27 (c) The Department of Corrections shall, by August 1 of each
28 dividend year, provide the Department of Revenue with a list of all
29 individuals for whom the Department of Corrections has applied for a

1 dividend under this section and all individuals who were incarcerated
2 at some time during the three-month period beginning April 1 of the
3 dividend year for whom the department has not applied for a dividend.
4 The Department of Revenue shall pay a dividend to the Department of
5 Corrections for each individual who is eligible for a dividend and on
6 whose behalf a timely application was filed by the Department of
7 Corrections. The Department of Corrections shall hold in trust each
8 permanent fund dividend it receives from the Department of Revenue or
9 from an incarcerated individual and shall pay the amount held in trust
10 to the individual upon the individual's release from incarceration or
11 upon receipt of the dividend, whichever is later.

12 (d) In this section, "incarcerated" means incarcerated as a
13 result of conviction of a misdemeanor or felony

14 (1) in a correctional facility;

15 (2) on furlough under AS 33.30.101 - 33.30.131;

16 (3) in a community residential center as a condition of
17 probation or parole; or

18 (4) in a correctional restitution center under AS 33.30.-
19 151 - 33.30.181.

20 * Sec. 4. AS 43.23.015(e) is amended to read:

21 (e) Except as provided in AS 43.23.007, if [IF] a public agency
22 claims a permanent fund dividend on behalf of an individual, the
23 public agency shall hold the dividend in trust for the individual.
24 Money held in trust under this subsection shall be invested by the
25 commissioner in accordance with AS 37.10.070.

26 * Sec. 5. AS 43.23.025(a) is amended to read:

27 (a) By October 1 of each year the commissioner shall give public
28 notice of the value of each permanent fund dividend for that year.
29 The public notice shall contain a statement disclosing the amount by

1 which each individual dividend has been reduced in order to pay the
2 costs of [ADMINISTERING THE PROGRAM AND] the hold harmless provisions
3 of AS 43.23.075 and the costs of administering the dividend program,
4 other than costs of administering AS 43.23.007. The commissioner
5 shall also include the statement on the stub attached to each indi-
6 vidual dividend check. The commissioner shall determine the value of
7 a permanent fund dividend by

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

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

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

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

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

23 (E) less the costs of the hold harmless provisions of
24 AS 43.23.075 and the costs of administering the dividend program,
25 other than costs of administering AS 43.23.007;

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

28 (3) dividing the amount determined under (1) of this sec-
29 tion by the amount determined under (2) of this section.

1 * Sec. 6. AS 43.23.065(a) is amended to read:

2 (a) Except as provided in (b) of this section, 50 percent of the
3 annual permanent fund dividend payable to an individual or to the
4 Department of Corrections under AS 43.23.007 is exempt from levy,
5 execution, garnishment, attachment, or any other remedy for the col-
6 lection of debt. This exemption applies to an eligible individual's
7 permanent fund dividend both before and after payment is made to the
8 individual. No other exemption applies to a dividend. If the divi-
9 dend is levied upon while in the possession of the Department of
10 Revenue or the Department of Corrections, the department shall with-
11 hold from the creditor the amount of the dividend that is exempt.

12 * Sec. 7. AS 43.23.065(b) is amended to read:

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

15 (1) child support obligations required by court order or
16 decision of the child support enforcement agency under AS 47.23.140 -
17 47.23.220;

18 (2) court ordered restitution under AS 12.55.045 - 12.55.-
19 051 or 12.55.100; [OR]

20 (3) court ordered fines; or

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

24 * Sec. 8. AS 43.23.065 is amended by adding a new subsection to read:

25 (d) AS 09.38.080(c) and 09.38.085 do not apply to a levy on a
26 permanent fund dividend. The department shall include the case name
27 and number with a dividend or portion of a dividend delivered to the
28 court in response to a writ of execution. At the time payment is made
29 to the court, the department shall send to the individual at the

1 address provided in the individual's dividend application a notice
2 that contains

3 (1) notice that all or part of the individual's dividend
4 has been seized under a writ of execution;

5 (2) the name and address of the court that issued the writ;

6 (3) the case name and number for which the writ was issued;

7 (4) the amount seized; and

8 (5) notice that the individual has 30 days from the date
9 the notice is mailed in which to file with the court an objection to
10 the seizure if a mistake has been made.

11 * Sec. 9. AS 43.23.005(d), 43.23.025(b), 43.23.055(5), and 43.23.055(6)
12 are repealed.

13 * Sec. 10. Section 5, ch. 54, SLA 1988 is repealed.

14 * Sec. 11. This Act takes effect immediately under AS 01.10.070(c).
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A M E N D M E N T

OFFERED IN THE HOUSE

BY REP. MARTIN

TO: CSHB 255(SA)

Page 1, line 7:

Delete "and"

Insert ", "

Page 1, line 9, after "debt":

Insert ", and to the allowable absence for military service for purposes of the permanent fund dividend program"

Page 4, line 14:

Insert a new bill section to read:

"* Sec. 8. AS 43.23.095(7) is amended to read:

(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 in the military forces of the

United States or to accompany as a spouse or dependent a person serving in the military forces of the United States; notwithstanding AS 43.23.005(a)(3), to remain eligible under this subparagraph, an individual must be physically present in the state at some time between each tour of military duty;

(D) medical treatment;

(E) service in Congress;

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

(G) service in the Peace Corps;"

Renumber the following bill sections accordingly.

6-1111H
Cook
7/25/90

Original sponsor(s): REP. BOYER

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 255 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to permanent fund dividends for
7 certain individuals convicted of crimes and to the
8 exemption for permanent fund dividends from remedies
9 for the collection of debt; and providing for an
10 effective date."

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

12 * Section 1. AS 18.67.162 is amended to read:

13 Sec. 18.67.162. CRIME VICTIM COMPENSATION FUND. There is cre-
14 ated a crime victim compensation fund which shall be administered by
15 the Violent Crimes Compensation Board. The fund consists of money
16 appropriated to it by the legislature and of deposits made under (b)
17 of this section. The fund shall be administered in accordance with
18 the provisions of this chapter. Money distributed from the fund shall
19 be in addition to other sources of compensation provided in this
20 chapter.

21 * Sec. 2. AS 18.67.162 is amended by adding a new subsection to read:

22 (b) Notwithstanding any other law, the Department of Revenue
23 shall withhold all but \$50 from the permanent fund dividend of each
24 individual convicted of an offense listed under AS 18.67.101 and pay
25 that amount into the crime victim compensation fund. A payment into
26 the fund under this subsection has priority over other claims to the
27 dividend except those listed under AS 43.23.065(b)(1) and (2). Money
28 shall be withheld under this subsection from a dividend for a year if,
29 as a result of the conviction of an offense listed under AS 18.67.101,

1 the individual was, for a period of at least 10 consecutive days
2 during the 12-month period beginning April 1 of the prior year, ,

3 (1) in a correctional facility;

4 (2) on furlough under AS 33.30.101 - 33.30.131;

5 (3) in a community residential center as a condition of
6 probation or parole; or

7 (4) in a correctional restitution center under AS 33.30.-
8 151 - 33.30.181. *on probation or parole deleted.*

9 * Sec. 3. AS 43.23 is amended by adding a new section to read:

10 Sec. 43.23.007. DIVIDENDS OF INCARCERATED INDIVIDUALS. (a)
11 Notwithstanding the application requirements of AS 43.23.005, only the
12 Department of Corrections may apply during a year for a dividend for
13 an individual who was incarcerated for a period of at least 10 con-
14 secutive days during the 12-month period beginning April 1 of the
15 prior year. An application under this subsection must be signed by
16 the individual and the commissioner of corrections or an employee of
17 the Department of Corrections authorized by the commissioner to sign
18 applications.

19 (b) The Department of Corrections shall notify each individual
20 subject to the requirements of this section of those requirements and
21 shall apply for a permanent fund dividend for each of those indivi-
22 duals who qualifies for a dividend and agrees to sign the application.

23 (c) The Department of Corrections shall, by June 30 of each
24 dividend year, provide the Department of Revenue with a list of all
25 individuals for whom the Department of Corrections has applied for a
26 dividend under this section and all individuals who were incarcerated
27 for a period of at least 10 consecutive days during the 12-month
28 period beginning April 1 of the prior year for whom the department has
29 not applied for a dividend. The Department of Revenue shall pay a

1 dividend to the Department of Corrections for each individual who is
2 eligible for a dividend and on whose behalf a timely application was
3 filed by the Department of Corrections. The Department of Corrections
4 shall hold in trust each permanent fund dividend it receives and shall
5 pay the dividend to the individual upon the individual's release from
6 incarceration or upon receipt of the dividend, whichever is later.

7 (d) In this section, "incarcerated" means incarcerated as a
8 result of conviction of a felony

9 (1) in a correctional facility;

10 (2) on furlough under AS 33.30.101 - 33.30.131;

11 (3) in a community residential center as a condition of
12 probation or parole; or

13 (4) in a correctional restitution center under AS 33.30.-
14 151 - 33.30.181.

15 * Sec. 4. AS 43.23.015(e) is amended to read:

16 (e) Except as provided in AS 43.23.007, if [IF] a public agency
17 claims a permanent fund dividend on behalf of an individual, the
18 public agency shall hold the dividend in trust for the individual.
19 Money held in trust under this subsection shall be invested by the
20 commissioner in accordance with AS 37.10.070.

21 * Sec. 5. AS 43.23.035 is amended by adding a new subsection to read:

22 (d) An individual who knowingly violates AS 43.23.007(a) is
23 guilty of a class A misdemeanor.

24 * Sec. 6. AS 43.23.065(a) is amended to read:

25 (a) Except as provided in (b) of this section, \$50 [50 PERCENT]
26 of the annual permanent fund dividend payable to an individual or to
27 the Department of Corrections under AS 43.23.007 is exempt from levy,
28 execution, garnishment, attachment, or any other remedy for the col-
29 lection of debt. This exemption applies to an eligible individual's

1 permanent fund dividend both before and after payment is made to the
2 individual.

3 * Sec. 7. AS 43.23.065(b) is amended to read:

4 (b) The following claims have priority in the order listed over
5 other claims on a dividend: [AN EXEMPTION IS NOT AVAILABLE UNDER THIS
6 SECTION FOR PERMANENT FUND DIVIDENDS TAKEN TO SATISFY] .

7 (1) child support obligations required by court order or
8 decision of the child support enforcement agency under AS 47.23.140 -
9 47.23.220;

10 (2) court ordered restitution under AS 12.55.045 - 12.55.-
11 051 or 12.55.100; or

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

15 * Sec. 8. AS 43.23.005(d), 43.23.025(b), 43.23.055(5), 43.23.055(6),
16 and 43.23.065(c) are repealed.

17 * Sec. 9. Section 5, ch. 54, SLA 1988 is repealed.

18 * Sec. 10. This Act takes effect immediately under AS 01.10.070(c).
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6-1111D
Cook
2/28/90

Original sponsor(s): REP. BOYER

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 255 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

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10 collection of debts involving dividends, and to the
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21 (3) benefits paid or payable for medical, surgical, or
22 hospital care to the extent they are or will be used to pay for the
23 care;

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

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

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

1 (7) liquor licenses granted under AS 04;

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

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

6 * Sec. 2. AS 14.43.120(i) is amended to read:

7 (i) If a loan is in default, the commission shall notify the
8 borrower that repayment of the remaining balance is accelerated and
9 due by sending the borrower a notice by registered or certified mail.
10 The permanent fund dividend of a borrower may be taken under AS 43.-
11 23.065(b(4)) [AS 43.23.065(b)(3)] to satisfy the balance due on the
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17 an individual who was incarcerated at the time of application. An
18 application under this subsection must be signed by the individual and
19 the commissioner of corrections or an employee of the Department of
20 Corrections authorized by the commissioner to sign applications. An
21 individual who receives a dividend while incarcerated shall deliver
22 the dividend to the Department of Corrections.

23 (b) The Department of Corrections shall notify each individual
24 subject to the requirements of this section of those requirements and
25 shall apply for a permanent fund dividend for each of those indivi-
26 duals who qualifies for a dividend and agrees to sign the application.

27 (c) The Department of Corrections shall, by August 1 of each
28 dividend year, provide the Department of Revenue with a list of all
29 individuals for whom the Department of Corrections has applied for a

1 dividend under this section and all individuals who were incarcerated
2 at some time during the three-month period beginning April 1 of the
3 dividend year for whom the department has not applied for a dividend.
4 The Department of Revenue shall pay a dividend to the Department of
5 Corrections for each individual who is eligible for a dividend and on
6 whose behalf a timely application was filed by the Department of
7 Corrections. The Department of Corrections shall hold in trust each
8 permanent fund dividend it receives from the Department of Revenue or
9 from an incarcerated individual and shall pay the amount held in trust
10 to the individual upon the individual's release from incarceration or
11 upon receipt of the dividend, whichever is later.

12 (c) In this section, "incarcerated" means incarcerated as a
13 result of conviction of a misdemeanor or felony

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15 (2) on furlough under AS 33.30.101 - 33.30.131;

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19 151 - 33.30.181.

20 * Sec. 4. AS 43.23.015(e) is amended to read:

21 (e) Except as provided in AS 43.23.007, if [IF] a public agency
22 claims a permanent fund dividend on behalf of an individual, the
23 public agency shall hold the dividend in trust for the individual.
24 Money held in trust under this subsection shall be invested by the
25 commissioner in accordance with AS 37.10.070.

26 * Sec. 5. AS 43.23.025(a) is amended to read:

27 (a) By October 1 of each year the commissioner shall give public
28 notice of the value of each permanent fund dividend for that year.
29 The public notice shall contain a statement disclosing the amount by

1 which each individual dividend has been reduced in order to pay the
2 costs of [ADMINISTERING THE PROGRAM AND] the hold harmless provisions
3 of AS 43.23.075 and the costs of administering the dividend program,
4 other than costs of administering AS 43.23.007. The commissioner
5 shall also include the statement on the stub attached to each indi-
6 vidual dividend check. The commissioner shall determine the value of
7 a permanent fund dividend by

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

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

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

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

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

23 (E) less the costs of the hold harmless provisions of
24 AS 43.23.075 and the costs of administering the dividend program,
25 other than costs of administering AS 43.23.007;

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

28 (3) dividing the amount determined under (1) of this sec-
29 tion by the amount determined under (2) of this section.

1 * Sec. 6. AS 43.23.065(a) is amended to read:

2 (a) Except as provided in (b) of this section, 50 percent of the
3 annual permanent fund dividend payable to an individual or to the
4 Department of Corrections under AS 43.23.007 is exempt from levy,
5 execution, garnishment, attachment, or any other remedy for the col-
6 lection of debt. This exemption applies to an eligible individual's
7 permanent fund dividend both before and after payment is made to the
8 individual. No other exemption applies to a dividend. If the divi-
9 dend is levied upon while in the possession of the department, the
10 department shall withhold from the creditor the amount of the dividend
11 that is exempt.

12 * Sec. 7. AS 43.23.065(b) is amended to read:

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

15 (1) child support obligations required by court order or
16 decision of the child support enforcement agency under AS 47.23.140 -
17 47.23.220;

18 (2) court ordered restitution under AS 12.55.045 - 12.55.-
19 051 or 12.55.100; [OR]

20 (3) court ordered fines; or

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

24 * Sec. 8. AS 43.23.065 is amended by adding a new subsection to read:

25 (d) AS 09.38.080(c) and 09.38.085 do not apply to a levy on a
26 permanent fund dividend. The department shall include the case name
27 and number with a dividend or portion of a dividend delivered to the
28 court in response to a writ of execution. At the time payment is made
29 to the court, the department shall send to the individual at the

1 address provided in the individual's dividend application a notice
2 that contains

3 (1) notice that all or part of the individual's dividend
4 has been seized under a writ of execution;

5 (2) the name and address of the court that issued the writ;

6 (3) the case name and number for which the writ was issued;

7 (4) the amount seized; and

8 (5) notice that the individual has 30 days from the date
9 the notice is mailed in which to file with the court an objection to
10 the seizure if a mistake has been made.

11 * Sec. 9. AS 43.23.005(d), 43.23.025(b), 43.23.055(5), and 43.23.055(6)
12 are repealed.

13 * Sec. 10. Section 5, ch. 54, SLA 1988 is repealed.

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

Section

- 55. Duties of the department
- 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 ex rel. Beattie v. United States*, 635 F. Supp. 481 (D. Alaska 1986), *aff'd sub nom. Greisen ex rel. Greisen v. United States*, 831 F.2d 916 (9th Cir. 1987), *cert. denied*, U.S. , 108 S. Ct. 1469, 99 L. Ed. 2d 699 (1988).

Permanent fund dividend payments subject to federal income tax. — Permanent 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 ex rel. Beattie v. United States*, 635 F. Supp. 481 (D. Alaska 1986), *aff'd sub nom. Greisen ex rel. Greisen v. United States*, 831 F.2d 916 (9th Cir. 1987), *cert. denied*, U.S. , 108 S. Ct. 1469, 99 L. Ed. 2d 699 (1988).

Payments received under Alaska's Permanent Fund Dividend Program are subject to federal income tax. *Greisen ex rel. Greisen v. United States*, 831 F.2d 916 (9th Cir. 1987), *cert. denied*, U.S. , 108 S. Ct. 1469, 99 L. Ed. 2d 699 (1988).

Sec. 43.23.005. Eligibility. (a) [Effective January 1, 1990] 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;
- (2) the individual was a state resident for a period of at least 24 consecutive months immediately preceding April 1 of the current dividend year; and

(3) the individual has been physically present in the state at some time during the period beginning July 1 two years before the date of application and ending on 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.

(d) Notwithstanding the provisions of (a) — (c) of this section, an individual who has been convicted of a felony is not eligible for a permanent fund dividend for a year when, during all or part of the fiscal year ending June 30 of the current year, as a result of the conviction the individual is incarcerated. This subsection applies whether or not the individual has applied for the dividend.

(e) [Effective January 1, 1990] If a court finds the durational residency requirement under (a)(2) of this section is invalid and no appeal is pending, the residency requirement is one year. If a court finds the one year residency requirement is invalid and no appeal is pending, the residency requirement is the longest duration permitted by law. The department shall change the statement of eligibility under AS 43.23.015(b) as necessary to conform to this subsection. (§ 1 ch 102 SLA 1982; am § 1 ch 57 SLA 1987; am § 1 ch 54 SLA 1988; am § 1 ch 159 SLA 1988; am §§ 2, 3 ch 107 SLA 1989)

Revisor's notes. — Sections 2 and 3, ch. 99, SLA 1985, amend (c) and add a new subsection (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."

Cross references. — For legislative findings in connection with the 1989 amendment to (a) of this section, see § 1(a), ch. 107, SLA 1989 in the Temporary and Special Acts.

Effect of amendments. — The 1987 amendment 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."

The first 1988 amendment, effective May 26, 1988, added subsection (d).

The second 1988 amendment, effective January 1, 1989, in subsection (a), deleted "and" at the end of paragraph (1), added "and" at the end of paragraph (2), and added paragraph (3).

The 1989 amendment, effective January 1, 1990, substituted "24 consecutive months" for "six consecutive months" in paragraph (a)(2) and added subsection (e).

Editor's notes. — Section 4, ch. 54, SLA 1988 provides that the amendments made to this section by ch. 54, SLA 1988 apply "only to eligibility for permanent fund dividends for years after 1988."

Section 7, ch. 107, SLA 1989 provides that notwithstanding the amendments to AS 43.23 made by §§ 2-4 of ch. 107, "if an individual received a permanent fund dividend for 1989 the individual's eligibility to receive a dividend for 1990 shall be determined under the law as it existed before those amendments."

Until January 1, 1990, subsection (a)

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and a certification of residency in substan- tially 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 immedi- ately preceding the date of this applica- tion; 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 resi- dency to obtain a permanent fund divi- dend for myself or for another is a crimi- nal offense and that if convicted I will for- feit future permanent fund dividends and that I will lose or must repay all perma- nent fund dividends that have been cred- ited or paid to me, and any accrued inter- est 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 repre- sentative)

(e) If a public agency claims a dividend on behalf of an individual under this section, the public agency shall elect 100 per cent 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 individ- ual 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 represen- tative 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).

"(g) The permanent fund dividend appli- cation form shall be prepared to allow an applicant, other than a person who is ex- empt under AS 47.45.015(b), to elect to receive the dividend either in cash or as an annuity credit."

Cross references. — For voluntary contributions to Alaska Winter Olympics account, see AS 05.35.100.

Effect of amendments. — The 1988 amendment, effective January 1, 1989, re- wrote the statement of eligibility and cer- tification of residency in subsection (b) to the extent that a detailed comparison is impracticable.

The 1989 amendment, effective Janu- ary 1, 1990, substituted "24 months" for "six months" in the first two paragraphs of the form in subsection (b).

Editor's notes. — Until January 1, 1990, the first two paragraphs in the form in subsection (b) refer to a six-month rather than 24-month residency period.

Sec. 43.23.025. Amount of dividend. (a) 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 pro- gram and the hold harmless provisions of AS 43.23.075. The commis- sioner 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.

(b) For the purpose of calculating the amount of a permanent fund dividend under (a) of this section, an individual who is ineligible to receive a dividend under AS 43.23.005(d) is counted as an eligible individual whether or not the individual has applied for the dividend. (§ 1 ch 102 SLA 1982; am § 1 ch 55 SLA 1983; am § 2 ch 43 SLA 1984; am § 2 ch 57 SLA 1987; am § 2 ch 54 SLA 1988)

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

The 1987 amendment 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.

The 1988 amendment, effective May 26, 1988, added subsection (b).

Editor's notes. — Section 4, ch. 54, SLA 1988 provides that the amendments made to this section by ch. 54, SLA 1988 apply "only to eligibility for permanent fund dividends for years after 1988."

NOTES TO DECISIONS

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

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.

(c) An individual who, in claiming a permanent fund dividend, or an individual who, in certifying another person's eligibility, wilfully misrepresents, exercises gross negligence, or recklessly disregards a

in AS 43.23.025(a)(1)(B). (§ 1 ch 102 SLA 1982; am § 24 ch 99 SLA 1985; am § 3 ch 57 SLA 1987; am § 1 ch 38 SLA 1989)

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

The 1987 amendment, added subsection (d).

The 1989 amendment, effective May 13, 1989, added the second sentence in subsection (b).

Editor's notes. — An error in the in-

ternal reference in subsection (d) was corrected in 1989 by the revisor.

Legislative history reports. — For governor's transmittal letter related to the amendment to (b) of this section by ch. 38, SLA 1989 (CSHB 276(Fin) am), see 1989 House Journal 933-934.

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;

(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;

(5) annually determine, in cooperation with the Department of Corrections, the number and identity of individuals ineligible for a permanent fund dividend under AS 43.23.005(d); and

(6) adopt regulations that are necessary to implement AS 43.23.005(d). (§ 1 ch 102 SLA 1982; am § 2 ch 55 SLA 1983; am § 3 ch 43 SLA 1984; am § 3 ch 54 SLA 1988)

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 indi-

viduals 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 depart-

AN ACT

Relating to permanent fund dividends for individuals incarcerated after conviction for a felony; and providing for an effective date.

• Section 1. AS 43.23.005 is amended by adding a new subsection to

read:

(d) Notwithstanding the provisions of (a) - (c) of this section, an individual who has been convicted of a felony is not eligible for a permanent fund dividend for a year when, during all or part of the fiscal year ending June 30 of the current year, as a result of the conviction the individual is incarcerated. This subsection applies whether or not the individual has applied for the dividend.

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

(b) For the purpose of calculating the amount of a permanent fund dividend under (a) of this section, an individual who is ineligible to receive a dividend under AS 43.23.005(d) is counted as an eligible individual whether or not the individual has applied for the dividend.

• Sec. 3. AS 43.23.035 is amended to read:

Sec. 43.23.035. (NOTICES 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 44.07) that establish procedures and time limits for claiming

Chapter 54

1 a permanent fund dividend; the department shall set the time limit for
2 application for permanent fund dividends so that the number of eli-
3 gible applicants is determined by October 1 of the year for which the
4 dividend is declared and permanent fund dividends for a year are paid
5 before April 30 of the year following that year;

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

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

16 (5) annually determine, in cooperation with the Department
17 of Corrections, the number and identity of individuals ineligible for
18 a permanent fund dividend under AS 43.23.005(d); and

19 (6) adopt regulations that are necessary to implement
20 AS 43.23.005(d).

21 * Sec. 4. This Act applies only to eligibility for permanent fund
22 dividends for years after 1988.

23 * Sec. 5. It is the intent of the legislature that an amount approxi-
24 mately equal to the money that would otherwise be paid as permanent fund
25 dividends to individuals determined to be ineligible under AS 43.23.005(d),
26 as enacted by sec. 1 of this Act, be appropriated annually from the divi-
27 dend fund to the crime victim compensation fund (AS 18.67.162) to carry out
28 the purposes of AS 18.67.

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

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF REVENUE

PERMANENT FUND DIVIDEND DIVISION

STATE OFFICE BUILDING
P.O. BOX S-0463
JUNEAU, ALASKA 99811-0400

October 10, 1989

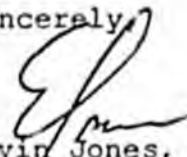
The Honorable Max Gruenberg
Alaska State House
3111 C Street, Ste. 440
Anchorage, AK 99503

Dear Representative Gruenberg:

Enclosed, as requested by Mr. Andrew Hemenway of your office, is the copy of the Order granting Judgment in favor the Plaintiffs in Case No. 3PA-88-1009 CI (PFD-Felons) and a copy of the Order Granting Stay of Judgment (Case No. 3KN-88-966 Civil and No. 3KN-88-970 Civil) in regards to the former.

If you need any additional information or assistance concerning the above, or any other PFD related issue, please contact me.

Sincerely,



Ervin Jones, Director
Permanent Fund Dividend Division
(907) 465-2323

EJ:bro
89-217

7095G

Anthony J. Smith

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT PALMER

RECEIVED

JUL 26 1989

STATE OF ALASKA
DEPT OF REVENUE
FED DIVISION

1 ANTHONY, et al.,)
2 Plaintiffs,)
3 vs.)
4 STATE OF ALASKA,)
5 Defendant,)
6 SMITH, et al.,)
7 Plaintiffs,)
8 vs.)
9 STATE OF ALASKA,)
10 Defendant.)

FILED IN THE TRIAL COURTS
STATE OF ALASKA THIRD DISTRICT

JUL 26 1989

Clerk of the Trial Courts
By [Signature] Deputy

Case No. 3PA-88-1009 CI

JUDGMENT

15 Based upon the summary judgment motion of Plaintiffs, the oral
16 ruling of this court on June 9, 1989, and a finding that there is no just
17 reason for delay, now, therefore,

18 IT IS HEREBY ORDERED, ADJUDGED, DECREED AND DIRECTED that
19 final judgment is entered in favor of all Plaintiffs in this case. AS
20 43.23.005(d) is hereby adjudged and decreed void and unconstitutional.

21 IT IS FURTHER ORDERED that judgment is hereby rendered in favor
22 of the Plaintiffs in the amount of \$_____ for costs incurred and
23 \$_____ for attorney's fees.

24 DATED this 26 day of July, 1989.

26 I certify that on 8-1-89
27 a copy of this document was sent to:
 COED
 Plaintiff Attorney(s) of Record *Christander*
 Defendant *may*
28 of the address(es) of record
Rec'd Jrd _____
Deputy Clerk

[Signature]
BEVERLY W. CUTLER
SUPERIOR COURT JUDGE

JUN 29 1989

*Robinson, Brucenyer & Christard
Sueyons
35401 Menai Spar Hwy.
Soldotna, Alaska 99669
(907) 262-2767*

*Arthur J. Robinson
William Brucenyer
Peter Christard*

TERRY F. NEWELL,)	
)	
Plaintiff.)	
)	
vs.)	Case No. 3KN-88-966 Civil
)	
STATE OF ALASKA,)	
)	
Defendant.)	
_____)	
ROBERT G. KLINK,)	
)	
Plaintiff.)	
)	
vs.)	Case No. 3KN-88-970 Civil
)	
STATE OF ALASKA,)	
)	
Defendant.)	
_____)	

ORDER GRANTING STAY OF JUDGMENT

Defendant, State of Alaska, requested a stay of the effect of the judgment dated July 26, 1989, in order to delay disbursement of the 1989 permanent fund dividend checks to persons falling within the terms of A.S. 43.23.005(d), until after a ruling on the constitutionality of that statute by the Alaska Supreme Court. This Court having found a Stay of Judgment should be granted has also determined that provisions should be included in that Stay. Accordingly;

No reply to plaintiff's opposition or this proposed order has been filed by the state.

IT IS HEREBY ORDERED, Defendant's request for a Stay of Judgment is hereby GRANTED.

IT IS FURTHER ORDERED, Defendant will place the funds which would normally be distributed to persons falling with

the terms of A.S. 43.23.005(d) in an "Interest Bearing Trust," until such time as the Supreme Court rules on the issue of Constitutionality of the Statute.

DEFENDANT will keep accurate records of deposits and interest generated by the Trust and all funds with interest will be disbursed to eligible persons should the Supreme Court affirm the ruling of this Court.

Dated, this 22 day of September, 1989 at Palmer.

Beverly W. Cutler
Beverly W. Cutler
Judge of the Superior Court

Order Granting
Stay of Judgment
Page 4

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3. Defendant
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91. [unclear]
92. [unclear]
93. [unclear]
94. [unclear]
95. [unclear]
96. [unclear]
97. [unclear]
98. [unclear]
99. [unclear]
100. [unclear]

EDWARD P. LOWRY
Plaintiff

vs.

STATE OF ALASKA
Defendant

Case No. 3AN-88-9165CI

JOHN ASPELL
Plaintiff

vs.

STATE OF ALASKA
Defendant

Case No. 3AN-88-8987CI

RICHARD KRANTZ
Plaintiff

vs.

STATE OF ALASKA
Defendant

Case No. 3AN-88-8986CI

ORDER GRANTING ATTORNEY FEES

The court hereby grants plaintiffs Anthony, Silvernail, Newell and Klink attorney fees in the amount of \$5,000.

The court disagrees that the award of attorney fees should be based on a money judgment. No money judgment issued in the case. Plaintiffs sought and received declaratory relief.

The court rejects plaintiffs' claim that they are public interest litigants. The court also rejects plaintiffs' claims that they should recover greater than their actual fees either

because of the conduct of the state or because the court ought to encourage attorneys to represent "unpopular" persons or causes.

Plaintiffs are entitled to attorney fees under the last sentence of Civil Rule 82(a)(1). The court awards less than half of the actual fees requested by plaintiff, however. The court reaches this decision because the state prevailed on most of the claims briefed and because the actual fees alleged appear unreasonably high. There was not a large number of motions filed or briefed by counsel. The court finds \$5,000 to be a reasonable partial recovery. The court rejects Anthony's claim that he is entitled to reimbursement for his own labor.

From the filings, it does not appear that the state is appealing the Taxation of Costs done by the Clerk of Court on August 17, 1989. The state's cost arguments were filed earlier. Because the state has not proceeded under Civil Rule 79(d), the court assumes any appeal to the court is waived.

Dated at Palmer, Alaska this 26 day of September, 1989.

Everly W. Cutler
EVERLY W. CUTLER
SUPERIOR COURT JUDGE

Verify that on 9-29-89
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 Plaintiff *from Attorney(s) of Recd. The*
 Other *Smith* Defendant *Richard*
at the address(es) of record
File 11

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1 entering into a whole another due process problem; and two,
2 usurping a legislative function in rewriting the statute. The
3 typical kind of excision that the Court would perform would be
4 simply to stike a section of the statute. But there really are
5 more problems then simply that; that one problem I think, that
6 43.23.025 has some problems of its own in that its declare each
7 person -- it discusses this problem of ineligible -- how to deal
8 with ineligible person that don't apply at all and what the
9 Corrections and the State will do. It's -- fundementally it's an
10 intellectual problem, there isn't much help out there for the Court
11 and -- but I do think that contrary to the State's position, these
12 problems are not unlikely. I've been practicing criminal law for
13 ten years in this state and all kinds of situations arise. I'm
14 certain that I could dig up a client who is serving a ten day
15 sentence lapse -- lapping over June 30th, July 1. I have a client
16 allready how I represent in this case who's doing -- who's going to
17 do one day in jail this year and lose his Permanent Fund. Those
18 situations are not unlikely; they will occur, they are occuring.
19 The statute is flawed and the Court should strike it. That's all I
20 have.

RULING:

21 THE COURT: I have read all your pleadings a number of times.
22 I just have only read this defense supplemental brief two times
23 now, but, I don't -- I guess I don't think anything's going to be
24 gained by taking the case under advisement other then the delay in
25 issuing a scholarly written decision. I do think the State's

1 briefing is very good. I think really that the State's done an
2 excellent job in defeating the large part of the arguments raised
3 by the plaintiffs'. I think the plaintiffs' did a good job. I
4 agree that the reply brief is certainly not as well written as it
5 might be but I appreciate your personal comments about that. I
6 don't find that your going to prejudice the Court in resolving the
7 case. I guess, in a sense, it's tempting to be a judicial chicken.
8 By that I mean we do the bare minimum the Trial Court needs to do
9 to make a decision in the case and leave the great philosophical
10 statements for the Appellate Court as well as many of the issues
11 that the Court might not need to reach, particularly, whether, you
12 know, the nature of this Permanent Fund Dividend, whether it is of
13 the class of property rights or grants, whatever you want to
14 characterize it at, that should have strict scrutiny when we're
15 limiting its availability is something I really feel is ultimately
16 a political question that only the Supreme Court is going to be
17 able to tell us the answer to. The most analogous situation I can
18 think of is -- not analogous really, because as the counsel for the
19 plaintiffs have pointed out there's really nothing like the
20 Permanent Fund Dividend anywhere in our legal system and any other
21 states that we're going to find to look at. When, for example, the
22 state here repealed state income taxes along the same time as the
23 Permanent Fund Dividends were brought up, if the state had repealed
24 state income taxes and given refunds for those years, say only to
25 persons who would not been convicted of felonies and not sentenced

1 -- not served any time in jail during those years on felonies, I
2 think the Supreme Court would have had to reach some of these same
3 questions. They didn't do a selective tax refund. I don't know if
4 anyone in the courtroom other than myself remembers even the tax
5 refund that we got in, I think it was '78 and '79 or '79 and '80 or
6 something a long those lines, but I think we'd have a -- I
7 can't imagine that the court, the Supreme Court would have said
8 anything other than that strict scrutiny had to be applied and a
9 compelling state interest shown to have discriminated in the repeal
10 of those or the across the board repeals. But, I don't think this
11 Court actually has to get at that because for reasons pointed out
12 by the plaintiff. For some of the reasons I think there is some
13 fundamental due process violations in AS 43.23.005(D). As it
14 reads, it can't be fixed by either interpreting it in a manner in
15 which the legislature might have intended us to do or by severing a
16 portion of the statute from the rest of the statute and, you know,
17 returning to just briefly the Zobel case, that was really a pretty
18 simply issue. Now residence requirements and how and if they would
19 be permitted to affect a dividend, the courts wrestled with that;
20 with various other give-a-way programs that we have in this state,
21 the Permanent Fund Dividends was basically a give-a-way. The due
22 process violation here, I think there are a couple of very obvious
23 due process violations that just can't be stomached by the Court.
24 Not because they result in any kind of evidentiary (ph) gross
25 discrimination that makes the government seem repulsive to the --

1 a large group of society, but because the individual rights we have
2 are those two, due process and equal protection, and an equal
3 protection is really a pretty simple concept. There are certainly
4 are times when it is not easy to figure out if something is an
5 equal protection violation or not. But, I don't think it's very
6 difficult to figure out, for example, that the example I gave with
7 a typical low level felon, the one, you know, we have felon A and
8 felon B. Felon A is arrested in February or January, I mean he can
9 be arrested in any month, we'll make him arrested in January for
10 ease, I guess. Bail is set at \$5,000, he doesn't make bail. Ten
11 days later the State still hasn't gone to Grand Jury. The State
12 agrees to release him on his own recognizance on the condition that
13 he do dah-da-dah-da-dah..... Ultimately the State indicates and he
14 gets a couple of continuances of his trial to investigate the under
15 coverage and to everything else and he ultimately pleads to his
16 offense in November and the following January, a year later, he's
17 sentenced, and, let us just say for simplicity, that he gets one
18 year with all but the ten days he already served suspended on the
19 condition that he do da-dah-da-dah-da-dah -- or maybe even give him
20 an SIS on the condition that he serve the ten days he's already
21 served and he does -- whatever he does, for conditions of
22 probation. That person, under AS 43.23.005(D) is clearly as it's
23 written, clearly on the June 30th that's between those two January
24 dates he can lawfully apply for a dividend, he can lawfully receive
25 a dividend in November and I don't think the State can take it away

1 from him. I mean I disagree with Ms. May's response that well
2 maybe it's illegal at the time he gets it. I think it's perfectly
3 legal under the statute. The individual who is arrested in the
4 same drug bust as he's arrested -- I'm sorry, I actually -- if I
5 have obviously confused my facts, please correct me when I'm
6 finished. The individual B arrested out of the same drug bust who
7 is not arrested but rather summons, because that often is the case.
8 Several people are involved in a drug bust but one of them aren't
9 arrested and when the Grand Jury meets a lot of them are summons if
10 they're local and there's no reason to think they're a danger to
11 the public other than the plea. He's indicted, maybe even in the
12 same indictment as this fellow. But he's summons into court; he
13 comes in, he's never done a days stay in a jail, he's released on
14 his own recognizance. He pleads out to the offense. Whether he
15 pleads before June 30th or after isn't important because what's
16 important is gonna be when he serves his time (indiscernible). He
17 goes to jail. Let's just say he pleads at arraignment because he
18 doesn't want to fight his case and the judge sentences him and the
19 judge orders him to do ten days in jail, one year with all but ten
20 days suspended. Admittedly it might be more likely to be one year
21 with all but 30 days suspended. I'm just using ten days for
22 simplicity. He clearly, if he had served his ten days before June
23 30th, would not be eligible for the dividend. As Mr. Ehrhardt
24 points out, if he had the misfortune to go to jail June 25th and
25 not get out until July 5th, he's going to be ineligible for two

1 years worth of dividends. Two individuals clearly both done ten
2 days in jail, they both committed the same crime, they both
3 burdened the state to the same extent. For simplicity, they both
4 could have gotten the same restitution order to pay back the Alaska
5 State Troopers Narcotic Drug Enforcement Unit the same amount of
6 money, maybe, was the same \$400 sale. Maybe it wasn't. Those two
7 individuals, clearly, as to the one who's deprived of the Permanent
8 Fund Dividend, even if he's only deprived of one dividend because
9 he does all his time either before June 30th or after June 30th, so
10 he's deprived for the next year, that individual, clearly, is
11 denied equal protection of the law. I just don't think there's
12 anyway around that conclusion. If the Court were to strike the
13 portion of the statute that reads as a result of the conviction and
14 simply have the statute, as the State suggests in its supplemental
15 brief, give Permanent Fund Dividends unless a person who has been
16 convicted of a felony during any portion of the year is
17 incarcerated, then we have the equal protection problem of the
18 felon from 1962 being popped for DWI doing his 72 hours and the
19 misdemeanor popped for DWI doing his 73 hours, and one of them
20 loses the dividend, one of them doesn't, and again I would say there's
21 clearly a equal protection violation because there's no rational
22 basis at all; no legitimate basis to deprive the other 1962 felon
23 of his dividend as distinguished from the misdemeanor. In light
24 of the purposes of the statute being to not give money to people
25 who are costing the state a bunch of money because they're

1 incarcerated on a felony, which appears to be a shorthand version
2 of one of the major purposes of the statute. and by that same token
3 if we're saving that bunch of money that we morally shouldn't have
4 to give to that persons we're providing for them any ways, we can
5 rationalize that we're saving, squeezing up some funds we can use
6 for restitution, because we all know that convicted felons as a
7 group never pay their restitution and that's sort of the second
8 purpose of the statute.

9 Without even getting to the legitimacy of those goals and
10 whether if the statute didn't have this constitutional infirmity,
11 the courts are pointing out that they would otherwise be sufficient
12 and amount to either a legitimate -- clearly not to a legitimate
13 basis. But whether there should be strict scrutiny and they -- the
14 State satisfied the compelling state interest test, the Court just
15 doesn't have to reach that with the analysis the Court is making.
16 The Court doesn't have to reach the issue of possible inequities
17 between a person receiving an SIS and one not receiving an SIS. I
18 think it is actually my view that an individual who receives an SIS
19 is still convicted. If not he wouldn't have to come back to court
20 to get the conviction set aside. So he's convicted, clearly, at
21 the moment he receives the SIS order. At least for my belief for
22 purposes of this statute he would be. But there hasn't been
23 extensive reading about that, that the Court has to reach that.

24 It appears to me that the reason the Court can't say as one of the
25 reasons, maybe not the only reason that the Court can't save the

1 statute by an interpretation that obviously reflects the
2 legislature's intent is I don't think the legislature really
3 told us what they intended. I don't think it's really all that
4 clear what they intended. They intended to, we think, as I stated,
5 deprive felons of dividends because they're costing the state a
6 bunch of money and there's no reason to give them money, and
7 because everybody knows there's a lot of unpaid restitution and
8 most it's from convicted felons who don't have the money to pay it
9 or won't pay it or won't even apply for the Permanent Fund Dividend
10 because they think it's a useless gesture because it's just gonna
11 go get attached for child support or restitution anyway, and
12 therefore they won't bother to help out the victim by applying for
13 the dividend. As to the second goal, and there are clearly some
14 very direct ways the legislature could accomplish that goal, and
15 that doesn't mean they can't do it with another legitimate method,
16 but if that's what they wanted to do they clearly could do some
17 things like -- they could pass a statute compelling. Courts as
18 part of sentencing, convicted felons who are going to serve time in
19 jail or has served any appreciable time in jail or any time in
20 jail, however they want to write it. They want to make it 30 days
21 or more or any time at all or whatever, they could compel the
22 courts to sentence defendants to apply for Permanent Fund Dividends
23 and use them for a certain purpose. I certainly think they could
24 compel courts or as part of the restitution statute make it clear
25 that a person under a court order to pay restitution is obliged by

1 statute, if eligible for the Permanent Fund Dividend to apply for
2 it and to apply it to restitution. I mean whether they order
3 judges to do it or they simply said a person who's under a court
4 order for restitution has to do it. There would obviously have to
5 be some teeth in that statute. Clearly if judges were ordered to
6 do it the teeth could be suspended time if there was or if it's
7 just a straight forward sentence with no suspended time then.
8 Clearly there would still be some inherent contempt authority on
9 the part of the judge. There are other consequences of felons not
10 doing things they're suppose to do that would obviously help to
11 enforce the statute. We deal with that in presumptive sentencings
12 all the time. People won't go to their programs, well maybe they
13 won't go to their programs but they're not likely to get classified
14 then to where they want to be here. They're not likely to get out
15 of jail on parole even if they have the straight five year sentence
16 and no suspended time over their head. If they don't do what
17 they're ordered to do they're not likely to be paroled and so
18 forth. There are clearly though some direct ways the legislature
19 could fix the law to make it a lot more likely that convicted
20 felons are going to apply for dividends and use them for either of
21 the two purposes the legislature seems to want to use them for.
22 I'm ^{not} saying it's easy, but, clearly if they'd written a specific law
23 we would know that was their specific intent. It appears to me
24 that the statute is written, and I don't have any idea who wrote
25 it. I doubt that Ms. May wrote it because it appears that she

1 recently has started representing the State in these types of
2 lawsuits. But it appears to me that the reason the statute fails
3 is it simply wasn't drafted by people who saw its meaning in the
4 real world of criminal justice. In other words, people who
5 understand how the sentencing system works and how it's not
6 arraignment trial, plea and sentencing and then from the date of
7 sentencing the sentence begins to be served. Maybe it was just not
8 thought of that the way the statute is worded it clearly is going
9 to result in equal protection violations. But, it appears to me
10 that one of the things that happens in the legislature all the
11 time, of course, is there's compromise and negotiation and things
12 get done at the last moment and..... You know, people are often
13 asked to draft pieces of legislation that they really don't know
14 very much about. I have no idea who drafted this, as I stated,
15 but, it appears to me that if the legislature wanted to use the
16 criminal and civil expertise in the Department of Law and draft a
17 statute that would prohibit convicted felons under various and
18 specific circumstances but didn't have an equal protection
19 violation getting their Permanent Fund Dividends, that depending on
20 the purposes of the statute, that statute might be able to survive
21 constitutional scrutiny. Of course depending on the purposes of
22 the statute and how it was written and what class of felons or what
23 class of convicted criminals, if deprived of the dividends, the
24 court and ultimately the Supreme Court would have to reach the
25 issue of what level of scrutiny are we going to apply to this, and

1 are we gonna let them do it period. I do not feel that this Court
2 sitting as an individual, the Superior Court, is able to give the
3 legislature the kind of guidance that the Supreme Court might be
4 able to give in a sense of stating. Even if you rewrite the
5 statute in a certain way, it's not gonna be upheld anyway, so don't
6 bother or is gonna be upheld if you do it in such and such and such
7 a fashion, and I realize there are judges who would go that far. I
8 don't feel that it's the trial courts role to do that. As I stated
9 it is in part, of course, ultimately a political decision as to the
10 degree of scrutiny that the courts are going to give any attempt to
11 discriminate on who gets a Permanent Fund Dividend and who doesn't;
12 and it has to do with a whole lot of facts. It's a legal decision,
13 yes, on a piece of paper, but what makes the legal body, the Court,
14 see it in the way the plaintiffs' are arguing it should be seen or
15 the way the defendants are arguing it should be seen. Ultimately,
16 I think we all recognize has to do with, in a sense, the politics
17 of the -- I won't say the derivation and distribution of the
18 Permanent Fund --

19 7212

20 (Tape change - Side two)

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22 0001

23 really has to do with the -- for lack of a better word, I guess I'd
24 say the judgment of the Supreme Court with regard to the quality of
25 the right that the citizens of this state have to their Permanent

1 Fund Dividend, and as we've all stated, there really is nothing
2 like it to compare it to and I don't even think it's directly
3 comparable to -- it's not even directly comparable to the right to
4 a tax refund and then an across the board tax refund is declared.
5 Otherwise, certainly it gets close to it. With regards to the
6 other arguments, very briefly, I do not find -- I might say, it
7 might be a shorter way of saying this. I pretty clearly agree with
8 the State's reply brief and its summary of the (indiscernible case
9 name) argument, the ^{bill of attainder} ~~ex~~ ^{ex post facto} ~~pose~~ factor argument, the cruel and unusual
10 punishment argument. There were a couple of points in the State's
11 reply brief, this is the brief file stamped June 6th, that I feel
12 the Court might just touch on briefly so that there's no
13 misunderstanding either at the appellate level or otherwise about
14 what the State was saying. On page 14, 15 and 16 of the reply
15 brief, and this is not the supplemental oppositions we have today
16 but the reply brief. The State repeatedly states things that just
17 appear not to be true with regard to the -- what I'm talking about,
18 the equal protection problem. The State argues for example on page
19 15 that no judge determines in an individual case that a convicted
20 felon should be denied the right to vote because it fits the crime.
21 It is simply a statutory consequence in committing and being
22 convicted of a felony. So it is a denial of eligibility for a
23 Permanent Fund Dividend. The court's equal protection decision
24 today shows that that is simply not the case. If what we were
25 dealing with was every person convicted of a felony, whether they

1 served time in jail or not or whether they served it pretrial or
2 not loses their Permanent Fund Dividend, we'd have an entirely
3 different decision. The Court would have to reach some of these
4 other difficult issues you raised. But state statute clearly is
5 not like the statute that deprives people of their right to vote
6 because they've been convicted of a felony. You're not deprived of
7 a Permanent Fund Dividend because you've been convicted of a
8 felony. You're deprived a Permanent Fund Dividend because you've
9 been convicted of a felony and because you've served some time in
10 jail as a result of the conviction, which means it doesn't affect
11 people that served their time in jail before being convicted and it
12 doesn't affect people who never served any time in jail at all, and
13 it doesn't affect, the way it's written, people who eventually
14 serve time in jail but manage not to do it -- excuse me --
15 eventually are sentenced to time to serve in jail but don't get
16 sentenced until after they've already lawfully gotten a dividend
17 for the year when they actually were in jail but it was pretrial
18 and therefore it didn't count towards service of the sentence. By
19 the time it counted towards the service of the sentence we were
20 into the next Permanent Fund Dividend year and therefore they don't
21 lose their dividend for either the first year or the second year
22 because neither of those years were they actually serving time as a
23 result of the conviction of the felony. I think the State on page
24 14 and on page 16 really kind of repeats that same argument. On
25 page 16, the State says it is an appropriate disability upon every

1 felon regardless of the precise nature of the crime imposed, and of
2 course the courts found that that's just not the case. It's a
3 disability only upon a limited and a ^{illogical} logical class of felons.

4 The Court is going to be granting, therefore, the plaintiff's
5 motion for summary judgment on the equal protection grounds but not
6 specifically for the equal protection (^{reasons,} ^{or} indiscernible) for all of
7 them, cited in the State's memorandum. I don't think any written
8 order is necessary. I would think today's transcript is clear. If
9 either of you wishes to take a review and because I feel that time
10 is of the essence given the programs deadlines, particularly for
11 this year, and given that it took maybe six months to get all this
12 briefing done, not the legal systems fault, not really the parties'
13 fault, but it took a long time to get to today. I think that
14 that's a socially responsible decision for the Court is simply this
15 verbal decision and you each can get a transcript or take as you
16 wish. You can do whatever you want as a result thereof, but I
17 don't intend to make any 20 or 30 page written order setting out
18 what the Court set out on the record. Does the defendant request
19 clarification of any aspects of the Court's ruling?

20 MS. MAY: Yes, Your Honor. Could you just briefly clarify
21 your due process rule?

22 THE COURT: I think I said due process when I meant equal
23 protection and I think I paused there saying to myself what am I
24 saying. It is an equal protection rule and not a due process rule.

25 MS. MAY: Have you made a ruling at all on the due process

1 issues?

2 THE COURT: Well, when I went through your reply memorandum
3 just now, I kind of glossed over that. I guess I don't see that
4 it's necessary to get to that point. I don't think the Court needs
5 to made a specific rule. I think I know how I would rule but I
6 would prefer to go back and study your briefs before reaching that
7 and I think it's really moot at this point based on the Court's
8 other ruling.

9 Any other requests for clarification?

10 MS. MAY: No, Your Honor.

11 MR. EHRHARDT: No, with regards to clarification, Your Honor,
12 but there are two other pending motions before the Court; the
13 consolidation motion and the class action motion.

14 THE COURT: As I stated at this pre - oral argument hearing we
15 had, I felt that in reality those are moot. To do procedural due
16 process in both of those motions is so time consuming. The State
17 clearly indicated that it would not -- it would treat all prisoners
18 with regard to allowing them an opportunity to benefit from the
19 position if it were favorable to prisoners. It would treat them
20 the same whether they were joined or not and with regard to the
21 motions to consolidate, if any of the other plaintiffs trying to
22 get consolidation had attorneys and were worried about
23 consolidation only so they could claim to be prevailing parties and
24 get attorneys' fees, I suppose it might be important. But, it
25 appears to me that in a sense it's moot because as I understood

1 what the State was saying -- well it couldn't -- the State couldn't
2 tie the hands of the plaintiffs and say if you don't win in the
3 Superior Court we're going to make sure you don't shop around for
4 another superior court judge to see if you get a different result.
5 The State, if I understood it, pretty clearly was saying whatever
6 is ruled here we won't shop around for another Superior Court
7 opinion. We'll either appeal it and we'll get a resolution from
8 the Supreme Court or not, but they would follow whatever was done
9 in a single case so that all plaintiffs' and potential plaintiffs'
10 will benefit whether they're consolidated or whether they're judged
11 to be a class. Am I wrong?

12 MS. MAY: That's correct, Your Honor.

13 THE COURT: I'm going to state they're moot simply because
14 procedurally, just checking the service on everybody for half of
15 these papers, takes a lot of time not to mention the distribution
16 of orders to all the parties affected and so forth. The motion by
17 Brown to amend his complaint I do think is going to have to have a
18 ruling and I don't even remember what the issue is now, but I
19 remember that as being something that the State opposed for some
20 specific reason but you are not -- are you Brown's attorney?

21 MR. EHRHARDT: No I'm not, Your Honor.

22 THE COURT: You're not Browns attorney then.

23 MS. MAY: I believe he's pro se.

24 THE COURT: Therefore I will review that motion and if it
25 needs a ruling get a ruling on it but I'm not sure that that needs

1 to be done at this moment. Any other requests before we recess?

2 MR. EHRHARDT: I guess the only other request I have is that
3 the Court -- well, I guess it would be answered by the civil rules,
4 I assume we'll be applying for attorneys' fees and costs prior to
5 the assert of appeal (indiscernible). I've got to sit down and
6 review the civil rules.

7 THE COURT: When the Court issues -- makes a summary judgment
8 order, there still is no judgment signed until the party brings in
9 a judgment. At the time you bring in the judgment then there's a
10 final order. Rule 54(B) sometimes prevents the entry of the
11 judgment if there are other outstanding claims that haven't been
12 resolved and that's part of the problem with the consolidation of
13 all of these issues. All these cases particularly were people like
14 Brown. I don't remember what he was moving to add in his amended
15 complaint, but I believe that it might be something that would
16 prevent under Rule 54(B) a judgment. I think that can be taken
17 care of. The parties can be excused. On the trial matter we'll
18 reconvene in a couple of minutes if you want to go ahead and bring
19 Mr. Trolen (ph) in and take Mr. Smith back.

20 (Off record)

21 1410

22

23

END OF REQUESTED PORTION

24

25

- C/M/W/K
H-16255

Anchorage Daily News

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Criminals' dividends should pay for child support, restitution, imprisonment costs

An Alaskan who is convicted of a serious crime costs the public tens of thousands of dollars. We pay for the police officer who catches him. We pay for the prosecutor and judge who try him — and we often pay for the lawyer who defends him. We pay for the prison cell where he does his time.



So it seems odd that we would send these convicted criminals hundreds of dollars a year in handouts from the state treasury. That's why legislators voted in 1988 to strip imprisoned felons of future permanent fund dividends.

Lawmakers had a good idea — but they fouled up the implementation. A Superior Court judge has ruled that technical problems with the 1988 law render it unconstitutional.

That ruling has lawmakers reconsidering the issue. They should stick with the idea of denying dividend money to convicted felons — including those who get probation instead of prison time. Ironically, the best and fairest way of doing that may be to let the convicts remain in the dividend program.

Lawmakers discovered their 1988 law had damaging side effects. Many prisoners fail to pay court-ordered child support or victim restitution. The dividend was the one place criminals' families or victims could turn to get money they were owed. No dividend meant no child support and no restitution.

Lawmakers should look for a way to stop subsidizing criminals without harming their families or victims. Here's a way that's worth trying:

Let felony convicts remain eligible for dividends. Let their families have first crack at the payment for unpaid child support. Let victims go next, to collect unpaid restitution. Then let the state claim the balance to cover any unpaid criminal fines and offset costs of imprisonment, probation, and victims' compensation. Once felons have completed their sentence, they could once again keep their dividends.

Of course, convicts may not bother to apply for dividends if they won't actually see any of the money. But that shouldn't deter lawmakers. They should see if they can deal with that possibility by changing dividend application rules. Perhaps the state should be directed to apply on behalf of criminals who are in prison or on probation.

Garnishing permanent fund dividends is one way to make sure criminals help repay the debt they owe society. If the state can deny felons the right to vote, it should be able to deny them the fruits of their permanent fund dividends

PASS HB 255 -- BOOK 'EM

1. MAKE CRIMINALS PAY THEIR DEBTS

MAKE THEM PAY THEIR KIDS

--More than 1700 children are due unpaid child support from jailed fathers and mothers, and grabbing the parents' PFDs is often the only way to get any money from the parents to the kids

--More than 80 percent of all incarcerated felons who owe child support file for PFDs

MAKE THEM PAY THEIR VICTIMS -- ALL THEIR VICTIMS

--HB 255 goes farther than current law, which does not help the victims of burglars and thieves -- HB 255 will help them as well as victims of violent crimes

--HB 255 will also cover serious drunk drivers and misdemeanor assaulters -- the current law on criminals PFDs does not cover violent misdemeanor criminals

MAKE THEM PAY THE COURTS

--The Court System has estimated that criminals owe more than \$6 million in unpaid court fines, court-appointed attorneys' fees, and court-ordered restitution to victims

2. DON'T USE PERMANENT FUND MONEY IN THE BUDGET THROUGH THE BACK DOOR

--Current law resulted in \$1.5 million of Permanent Fund Dividends going into the budget -- HB 255 would avoid this problem

--Rep. Mark Boyer
February 14, 1990

STRUCTURE OF HB 255

