

SB327

HOUSE COMMITTEE REPORT

File

(11)

Date Referred: February 18, 1992

FURTHER REFERRALS:

Date of Committee Action: 3/18/92

The FINANCE Committee considered:

CSSB 327(FIN)

CS FOR SENATE BILL NO. 327 (FINANCE)

QUALIFICATIONS FOR PF DIVIDENDS

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

RECOMMENDATIONS: HCSCSSB 327 (FIN) | the same title
 be replaced with _____ | a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

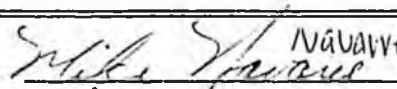
fiscal impact Revenue

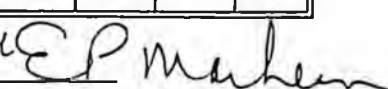
fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<u>Eileen P. Mackay</u> ^{Mackay}	✓				
<u>Mike Navarre</u> ^{Navarre}	✓				
<u>Mark Boyer</u> ^{Boyer}	X				
<u>Ken Kopinski</u> ^{Kopinski}	✓				
<u>Ken Hanson</u> ^{Hanson}	✓				
<u>Bob Sharp</u> ^{Sharp}	✓				
<u>Richard Phillips</u> ^{Phillips}	✓				
<u>H. Ulmer</u> ^{Ulmer}	X				
<u>John Jacko</u> ^{Jacko}	✓				

 ^{Navarre}
 CHAIRMAN'S SIGNATURE


 Mackay

HOUSE CS FOR CS FOR SENATE BILL NO. 327 (FINANCE)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): SENATORS CRAFT, Pourchot, Rodey, Sturgulewski, Zharoff, Duncan, Kerttula, Collins, Frank, Menard, Jones

REPRESENTATIVES Gruenberg, Boyer, Ulmer

A BILL

FOR AN ACT ENTITLED

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

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

3 * Section 1. INTENT. The change to the definition of residency in sec. 16 of this Act only clarifies
4 what the legislature has always intended the definition to be.

5 * Sec. 2. AS 34.45.720 is amended by adding a new subsection to read:

6 (c) AS 34.45.110 - 34.45.780 do not apply to a warrant for the payment of a permanent
7 fund dividend.

8 * Sec. 3. AS 37.05.180 is amended to read:

9 Sec. 37.05.180. TWO-YEAR LIMITATION ON PAYMENT OF WARRANTS. A [NO]
10 warrant upon the state treasury may not be [IS] paid unless presented at the office of the
11 commissioner of revenue within two years of the date of its issuance. A warrant [ALL
12 WARRANTS] not presented within that time is [ARE] considered paid and money held at the
13 expiration of that time in a special fund or account for the payment of the warrant shall be
14 transferred to the general fund, except where the warrant is for the payment of a permanent

1 fund dividend or where transfer is prohibited by the federal government for state participation
2 in a federal program.

3 * Sec. 4. AS 43.23.005(a) is amended to read:

4 (a) An individual is eligible to receive one permanent fund dividend each year in an
5 amount to be determined under AS 43.23.025 if

6 (1) the individual applies to the department;

7 (2) [, AND IF (1)] on the date of application the individual is a state resident;

8 (3) [(2)] the individual was a state resident for [A PERIOD OF] at least the
9 calendar year [12 CONSECUTIVE MONTHS] immediately preceding January 1 [APRIL 1]
10 of the current dividend year; [AND]

11 (4) [(3)] the individual has been physically present in the state at some time
12 during the prior [PERIOD BEGINNING JULY 1] two calendar years before the current
13 dividend year; and

14 (5) the individual is

15 (A) a citizen of the United States;

16 (B) an alien lawfully admitted for permanent residence in the United

17 States;

18 (C) an alien with refugee status under federal law; or

19 (D) an alien that has been granted asylum under federal law [DATE

20 OF APPLICATION AND ENDING ON THE DATE OF APPLICATION].

21 * Sec. 5. AS 43.23.005(c) is amended to read:

22 (c) A parent, guardian, or other authorized representative may claim a permanent fund
23 dividend on behalf of an unemancipated minor or on behalf of a disabled or an incompetent
24 individual who is eligible to receive a payment under this section. Notwithstanding (a)(1) - (3)
25 of this section, a minor is eligible for a dividend if, during the 24 months immediately
26 preceding the current dividend year, the minor was born to or adopted by an individual
27 who is eligible for a dividend for the current dividend year.

28 * Sec. 6. AS 43.23.005(c) is repealed and reenacted to read:

29 (c) A parent, guardian, or other authorized representative may claim a permanent fund
30 dividend on behalf of an unemancipated minor or on behalf of a disabled or an incompetent
31 individual who is eligible to receive a payment under this section. Notwithstanding (a)(2) - (4)

1 of this section, a minor is eligible for a dividend if, during the two calendar years immediately
2 preceding the current dividend year, the minor was born to or adopted by an individual who is
3 eligible for a dividend for the current dividend year.

4 * Sec. 7. AS 43.23.005(d) is amended to read:

5 (d) Notwithstanding the provisions of (a) - (c) of this section, an individual who has been
6 convicted of a felony is not eligible for a permanent fund dividend for a year when, during all
7 or part of the previous calendar year [FISCAL YEAR ENDING JUNE 30 OF THE CURRENT
8 YEAR], as a result of the conviction, the individual is incarcerated. [THIS SUBSECTION
9 APPLIES WHETHER OR NOT THE INDIVIDUAL HAS APPLIED FOR THE DIVIDEND.]

10 * Sec. 8. AS 43.23.005(f) is amended to read:

11 (f) In a time of national military emergency, the commissioner may waive the
12 requirement of (a)(4) [(a)(3)] of this section for an individual absent from the state under military
13 orders while serving in the armed forces of the United States, or for the spouse and dependents
14 of that individual.

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

16 Sec. 43.23.011. APPLICATION PERIOD. An application for a permanent fund dividend
17 shall be filed during the period that begins January 2 and ends March 31 of that dividend year.

18 * Sec. 10. AS 43.23.015(a) is amended to read:

19 (a) The commissioner shall adopt regulations under the Administrative Procedure Act
20 (AS 44.62) for determining the eligibility of individuals for permanent fund dividends. The
21 commissioner may require an individual to provide proof of eligibility, and the commissioner
22 may use other information available from other state departments or agencies to determine the
23 eligibility of an individual. The commissioner shall consider all relevant circumstances in
24 determining the eligibility of an individual. However, the residency of an individual's
25 spouse may not be the only factor relied upon by the commissioner in determining the
26 residency of the individual.

27 * Sec. 11. AS 43.23.015(b) is amended to read:

28 (b) The department shall prescribe and furnish an application form for claiming a
29 permanent fund dividend. The application must include notice of the penalties provided for
30 under AS 43.23.035 and contain a statement of eligibility and a certification of residency. [IN
31 SUBSTANTIALLY THE FOLLOWING FORM:

1 I CERTIFY THAT

2 () I AM A STATE RESIDENT ON THE DATE OF THIS APPLICATION, I HAVE
3 BEEN A STATE RESIDENT FOR AT LEAST 12 MONTHS IMMEDIATELY
4 PRECEDING APRIL 1 OF THE CURRENT DIVIDEND YEAR, AND I HAVE BEEN
5 PHYSICALLY PRESENT IN THE STATE OF ALASKA AT SOME TIME DURING
6 THE PERIOD BEGINNING JULY 1 TWO YEARS BEFORE THE DATE OF
7 APPLICATION AND ENDING ON THE DATE OF THIS APPLICATION UNLESS
8 THIS REQUIREMENT HAS BEEN WAIVED UNDER AS 43.23.005(f); OR

9 () (NAME), THE INDIVIDUAL ON WHOSE BEHALF I AM APPLYING, IS A
10 STATE RESIDENT ON THE DATE OF THIS APPLICATION, HAS BEEN A STATE
11 RESIDENT FOR AT LEAST 12 MONTHS IMMEDIATELY PRECEDING APRIL 1 OF
12 THE CURRENT DIVIDEND YEAR, AND HAS BEEN PHYSICALLY PRESENT IN
13 THE STATE OF ALASKA AT SOME TIME DURING THE PERIOD BEGINNING
14 JULY 1 TWO YEARS BEFORE THE DATE OF APPLICATION AND ENDING ON
15 THE DATE OF THIS APPLICATION UNLESS THIS REQUIREMENT HAS BEEN
16 WAIVED UNDER AS 43.23.005(f).

17 I UNDERSTAND THAT A FALSE CLAIM OF ELIGIBILITY TO OBTAIN A
18 PERMANENT FUND DIVIDEND FOR MYSELF OR FOR ANOTHER IS A
19 CRIMINAL OFFENSE, THAT IF CONVICTED I WILL FORFEIT FUTURE
20 DIVIDENDS, AND THAT I MUST REPAY ALL DIVIDENDS THAT HAVE BEEN
21 PAID TO ME. I UNDERSTAND THAT IF I WILFULLY MISREPRESENT,
22 EXERCISE GROSS NEGLIGENCE, OR RECKLESSLY DISREGARD A MATERIAL
23 FACT REGARDING MY ELIGIBILITY FOR A PERMANENT FUND DIVIDEND I
24 WILL FORFEIT THE DIVIDEND, BE SUBJECT TO A CIVIL FINE OF UP TO \$5,000,
25 AND LOSE MY ELIGIBILITY FOR THE NEXT FIVE DIVIDENDS. I UNDERSTAND
26 THAT THESE PENALTIES ARE IN ADDITION TO ANY CRIMINAL PENALTIES
27 IMPOSED.

28 _____
29 (SIGNATURE OF INDIVIDUAL,
30 PARENT, GUARDIAN, OR OTHER
31 AUTHORIZED REPRESENTATIVE)]

1 * Sec. 12. AS 43.23.035(b) is amended to read:

2 (b) If the commissioner determines that a permanent fund dividend should not have been
3 claimed by or paid to an individual, the commissioner may use all collection procedures or
4 remedies available for collection of taxes under this title to recover the payment of a permanent
5 fund dividend that was improperly made. A notice of an improperly paid dividend must be sent
6 to the individual within

7 (1) three years after the improper payment is sent; or

8 (2) six years after the improper payment is sent if the commissioner
9 determines that the individual exercised gross negligence or recklessly disregarded a
10 material fact in connection with a false statement made in an application [10 YEARS
11 AFTER THE IMPROPER PAYMENT. IF NOTICE IS NOT SENT WITHIN THE 10-YEAR
12 PERIOD, PROCEEDINGS MAY NOT BE COMMENCED IN COURT FOR RECOVERY OF
13 THE IMPROPER PAYMENT].

14 * Sec. 13. AS 43.23.035 is amended by adding a new subsection to read:

15 (d) If notice is not sent within the time required under (b) of this section, administrative
16 or judicial proceedings may not be commenced for recovery of an improperly paid dividend. The
17 time limitations of (b) of this section do not apply if a dividend is forfeited under (a) of this
18 section or if it is more probable than not that an individual has committed a crime in connection
19 with a false statement made in an application.

20 * Sec. 14. AS 43.23.055 is amended to read:

21 Sec. 43.23.055. DUTIES OF THE DEPARTMENT. The department shall

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

23 (2) subject to AS 43.23.011 and paragraph (8) of this section, adopt regulations
24 under the Administrative Procedure Act (AS 44.62) that establish procedures and time limits for
25 claiming a permanent fund dividend; the department shall determine [SET THE TIME LIMIT
26 FOR APPLICATIONS FOR PERMANENT FUND DIVIDENDS SO THAT] the number of
27 eligible applicants [IS DETERMINED] by October 1 of the year for which the dividend is
28 declared and pay the [PERMANENT FUND] dividends by December 31 of that year [FOR A
29 YEAR ARE PAID BEFORE APRIL 30 OF THE YEAR FOLLOWING THAT YEAR];

30 (3) adopt regulations under the Administrative Procedure Act (AS 44.62) that
31 establish procedures and time limits for an individual upon emancipation or upon reaching

1 majority to apply for permanent fund dividends not received during minority because the parent,
2 guardian, or other authorized representative did not apply on behalf of the individual;

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

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

9 (6) adopt regulations that are necessary to implement AS 43.23.005(d);

10 (7) adopt regulations that establish procedures for the parent, guardian, or other
11 authorized representative of a disabled individual to apply for prior year permanent fund
12 dividends not received by the disabled individual because no application was submitted on behalf
13 of the individual;

14 (8) adopt regulations that establish procedures for an individual to apply to
15 have a dividend warrant reissued if it is returned to the department as undeliverable or it
16 is not paid within two years of the date of its issuance; however, the department may not
17 establish a time limit within which an application to have a warrant reissued must be filed.

18 * Sec. 15. AS 43.23 is amended by adding a new section to read:

19 Sec. 43.23.069. ASSIGNMENTS. (a) Except as provided in (b) of this section, a person
20 eligible to receive a permanent fund dividend may not assign the right to the dividend. An
21 attempted assignment of the right to receive a permanent fund dividend is against public policy
22 and is void.

23 (b) A person may assign the right to receive a permanent fund dividend to a federal,
24 state, or municipal government agency or to a court.

25 * Sec. 16. AS 43.23.095(8) is amended to read:

26 (8) "state resident" means an individual who is physically present in the state with
27 the intent to remain permanently in the state under the requirements of AS 01.10.055 or, if the
28 individual is not physically present in the state, intends to return to the state and remain
29 permanently in the state under the requirements of AS 01.10.055, and is absent only for any
30 of the following reasons:

31 (A) vocational, professional, or other specific education for which a

1 comparable program was not reasonably available in the state;

2 (B) secondary or postsecondary education;

3 (C) military service;

4 (D) medical treatment;

5 (E) service in Congress;

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

7 (G) service in the Peace Corps;

8 * Sec. 17. AS 43.23.095 is amended by adding a new subsection to read:

9 (b) For purposes of AS 43.23.069, "state agency" includes a regional housing authority
10 created under AS 18.55.996.

11 * Sec. 18. AS 43.23.005(b) is repealed.

12 * Sec. 19. APPLICATION PERIODS. (a) Notwithstanding permanent fund dividend application
13 procedures or deadlines, a parent, guardian, or other authorized representative of a minor who qualified
14 for a dividend for 1992 because of the amendment to AS 43.23.005(c), made in sec. 5 of this Act, may
15 apply on behalf of the minor for the dividend by December 31, 1992. Notwithstanding permanent fund
16 dividend application procedures or deadlines, an individual who qualified for a dividend for 1992
17 because of the amendment to AS 43.23.015(a), made in sec. 10 of this Act, may apply for the dividend
18 by September 30, 1992. The Department of Revenue shall prepare a form for applications under this
19 section.

20 (b) Notwithstanding AS 43.23.011, as added by sec. 9 of this Act, the application period for
21 1993 is the period that begins January 2, 1993, and ends June 30, 1993.

22 * Sec. 20. Sections 5 and 10 of this Act are retroactive to January 1, 1992.

23 * Sec. 21. Sections 1 - 3, 5, 10, 12, 13, 15 - 17, 19, and 20 of this Act take effect immediately under
24 AS 01.10.070(c).

25 * Sec. 22. Sections 4, 6 - 9, 11, 14, and 18 of this Act take effect January 1, 1993.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HCS CSSB 327 (FINANCE)

Revision Date: March 18, 1992
Title: An Act relating to permanent fund dividends
Sponsor: Craft, Pourchot, et al
Requestor: House Finance

Agency Affected: Revenue
BRU: Permanent Fund Dividend Division
Components: Permanent Fund Dividend Division
COMPONENT SERIAL NO. 9 8 1

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
OPERATING						
PERSONAL SERVICES	84.4					
TRAVEL						
CONTRACTUAL	53.0					
SUPPLIES						
EQUIPMENT						
LANDS & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	137.4	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (DIVIDEND FUND)	137.4					
TOTAL	137.4	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: See attached.

ANALYSIS: See attached.

Prepared By: Thomas C. Williams
Division: Permanent Fund Dividend Division

Phone: 465-2323
Date: March 18, 1992

Approved by Commissioner: David Reppel
Agency: Revenue

Date: 3/18/92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

ALASKA DEPARTMENT OF REVENUE
PERMANENT FUND DIVIDEND DIVISION
HCS CSSB 327 (FINANCE) ANALYSIS
As of March 18, 1992

I. FISCAL IMPACT OF CONVERTING TO A CALENDAR YEAR ELIGIBILITY PERIOD
(SECTIONS 4, 7, 14 AND 18).

With the current April 1 through June 30 filing period, we employ non-permanent positions from April 1 to August 31. In addition, in July and August the Division routinely mails supplemental forms and letters requesting information from applicants who submitted incomplete applications or who were selected for review.

By moving the beginning of 1993 and subsequent year filing periods up three months to January 2, processing costs normally incurred in July and August will now be incurred in April and May. This will necessitate a one-time adjustment to the FY 93 budget for the costs that would have been incurred in July and August of FY 94. There will be no net additional costs or savings in the FY 94 and subsequent year budgets after this one-time budget cycle adjustment.

There will also be additional costs associated with advertising the change in the eligibility and filing periods.

1. Personal Services (Non-permanent costs previously incurred in July and August)

FY 93

Extend the following non-permanent positions as follows:

Day Shift

5 Long-term Non-Permanent Document Processor I's, R.7 @ \$2,238/mo. for 2 months \$ 22.4

6 Short-term Non-Permanent Document Processor I's, R.7 @ \$1,846/mo. for 1 month 11.1

10 Short-term Non-Permanent Data Proc. Clerk I's, R.8 @ \$1,950/mo. for 1 month 19.5

Swing Shift

10 Short-term Non-Permanent Document Processor I's, R.7 @ \$1,916/mo. for 1 month 19.2

14 Short-term Non-Permanent Data Proc. Clerk I's, R.8 @ \$2,024/mo. for 1/2 month 14.2

Total Personal Services

\$ 84.4

ALASKA DEPARTMENT OF REVENUE
 PERMANENT FUND DIVIDEND DIVISION
HCS CSSB 327 (FINANCE) ANALYSIS
 As of March 18, 1992

2. <u>Contractual Services</u>		<u>FY 93</u>
Postage costs previously incurred in July and August.	25.0	
Advertising of the change in eligibility and filing periods. Notice with 1992 dividend checks, newspaper and radio.	<u>28.0</u>	
<u>Total Contractual Services</u>		<u>53.0</u>
<u>Total FY 93 Cost</u>		<u>\$ 137.4</u>

II. FISCAL IMPACT OF MAKING SECTION 5 RETROACTIVE TO JANUARY 1, 1992 AND ALLOWING AN EXTENDED FILING PERIOD UNDER SECTION 19(a).

Section 19(a) will require the Permanent Fund Dividend Division to send notices to all applicants who filed from an out-of-state address notifying them that if a child was born to them during the eligibility period, that the child may be eligible to receive that year's dividend.

<u>Contractual Services</u>	<u>FY 92</u>	<u>FY 93</u>
<u>Printing Costs</u>		
15,000 envelopes and stationary	\$ 0.3	\$ -0-
200 applications	0.1	-0-
<u>Postage Costs</u>		
15,000 notification letters @ \$0.29	2.9	1.4
200 applications @ \$0.29	<u>-0-</u>	<u>0.1</u>
<u>Total Contractual Services</u>	<u>\$ 3.3</u>	<u>\$ 1.5</u>

The division would likely incur most of these costs in FY 92. However, the division expects to be able to absorb these costs as well as any related marginal processing costs within the current FY 92 and FY 93 budgets, as amended by this fiscal note.

ALASKA DEPARTMENT OF REVENUE
PERMANENT FUND DIVIDEND DIVISION
HCS CSSB 327 (FINANCE) ANALYSIS
As of March 18, 1992

III. FISCAL IMPACT OF MAKING SECTION 10 RETROACTIVE TO JANUARY 1, 1992
AND ALLOWING AN EXTENDED FILING PERIOD UNDER SECTION 19(a).

Section 19(a) will also require the Division to print a late filed application and make it available to individuals who ask to file between July 1 and December 31, 1992 because they did not understand they might be eligible even though they were married to a non-resident. Because virtually all such individuals will have had ample opportunity to file a 1992 dividend application by the general June 30, 1992 filing deadline, we do not expect very many applications. The Division does not intend to advertise this filing extension beyond posting notice in the Dividend Information Offices and advising applicants who call or write about the extension. Consequently, the Division expects to be able to absorb the printing costs in the Division's current FY 92 budget and the processing costs in the FY 93 budget, as amended by this fiscal note.

However, if the Division receives a significant number of such applications after September 1, 1992 there would be a corresponding impact on the processing of applications. Because the dividend will be calculated based on the number of applications received and processed as of October 1, 1992, a large number of applications received after a September 1, 1992 processing cutoff might mean some of the applications could not be paid until July, 1993.

In addition, an extended six month application period for certain individuals may result in a larger number of late filed applications not related to the provisions of Section 10. All costs associated with any such increase would have to be absorbed by the Division. If we receive such applications, we will deny them as late filed. If these individuals appeal their denials, we will have to work those appeals. If there are a significant number of such filings, it would impact both our review and appeals workload.

IV. FISCAL IMPACT OF ALLOWING FOR AN EXTRA 3 MONTHS TO FILE A 1993
APPLICATION UNDER SECTION 19(b).

This transition provision will help ensure eligible Alaskans are not denied a 1993 dividend simply because they were not aware of the change in the filing period. The Division intends to aggressively advertise the changes to the eligibility and the application periods in order to minimize the number of applications submitted from April 1, 1993 through June 30, 1993. Accordingly, the Division will attempt to process the applications received during this period within FY93 and FY94 budgets, as amended by this fiscal note.

ALASKA DEPARTMENT OF REVENUE
PERMANENT FUND DIVIDEND DIVISION
HCS CSSB 327 (FINANCE) ANALYSIS

As of March 18, 1992

V. THE IMPORTANCE OF SECTIONS 15 AND 17.

Sections 15 and 17 would place into statute the elements of a regulation which was effective from April 1, 1989 through November 14, 1991.

On April 1, 1989 the Department adopted 15 AAC 23.220(a) which prohibited PFD assignments to anyone other than a government agency. Prior to the enactment of the regulation, an ever increasing number of individuals were assigning their right to a dividend to other individuals or companies, often in exchange for a cash payment. As a result, the Department was receiving a substantially increasing number of assignments to process. More importantly, there was an increasing temptation for individuals to file fictitious and duplicate applications in order to sell them. Accordingly, the Department was also receiving more invalid applications, requiring additional screening and review efforts to ensure ineligible applicants were not paid.

Despite the adoption of the regulation, Frontier Financial Services still purchased several thousand 1989 dividends. When the Department did not honor those assignments, Frontier Financial Services challenged the regulation in Court. On November 15, 1991 Superior Court Judge Dana Fabe struck down this regulation stating the Department had no authority to enact it.

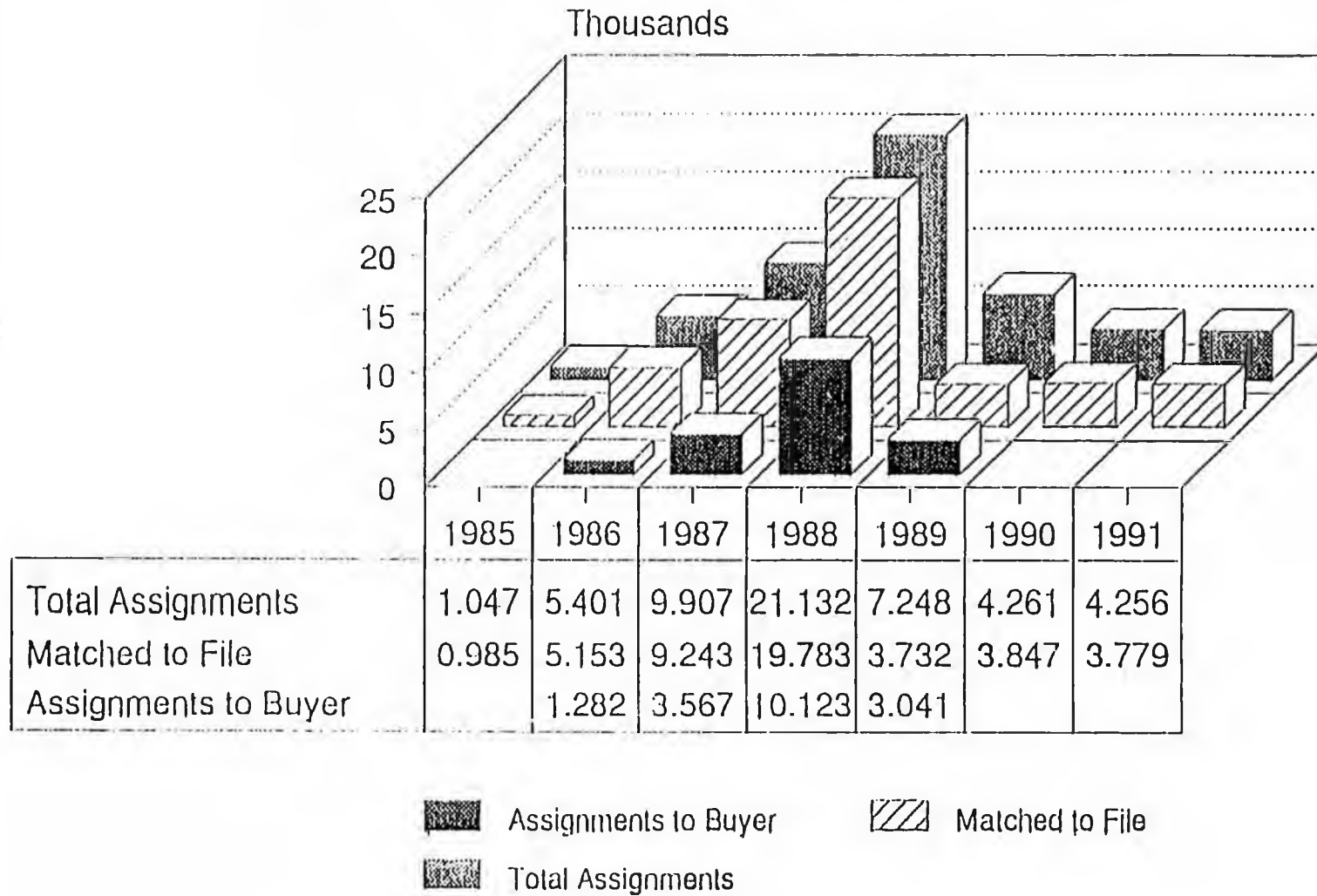
Passage of these provisions early in the current legislative session is very important. It would be in the State's best interest if this legislation were enacted early enough so the Governor could sign it by March 31, 1992, before the beginning of the 1992 PFD filing period.

Without such legislation we face a significant disruption to the 1992 and subsequent year programs. The PFD Division would be faced with the task of trying to process an extremely large number of assignments and to respond to more public inquiries regarding applicants' ability to make assignments. In addition, our experience has shown that the Division would likely receive an increased number of duplicate and fraudulent applications from individuals who would assign their right to a dividend in exchange for a cash payment. This would require the Division to re-focus and increase its review effort to ensure duplicate applications and ineligible applicants are not paid. This would adversely impact the Department's ability to conduct timely reviews and resolve appeals.

In the attached copy of a December 31, 1991 opinion the Department of Law concluded there is no legal or constitutional impediment to a statute restricting the assignments of permanent fund dividends. In addition, the attached bar graph depicts assignment activity from 1985 through 1991.

PERMANENT FUND DIVIDEND ASSIGNMENTS

For 1985 - 1991 Dividend Years



As of January 16, 1992

RECEIVED

MEMORANDUM

JAN 3 1992

State of Alaska

Department of Law

STATE OF ALASKA
DEPT. OF REVENUE
PFD DIVISION DATE:

TO:

Thomas C. Williams, Director
Permanent Fund Division
Department of Revenue

December 31, 1991

FILE NO.:

663-92-0286

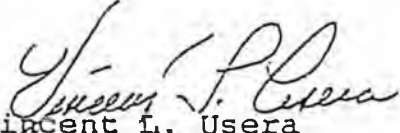
TEL NO.:

465-3600

SUBJECT:

Assignment of PFDs;
constitutionality of HB 234

FROM:


Vincent L. Usera
Assistant Attorney General
Commercial Section - Juneau

You have asked whether enactment of HB 234, a statute forbidding the assignment of a permanent fund dividend (PFD) to entities other than government agencies or courts, would constitute interference with an individual's constitutional right to contract. We conclude that it would not.

Alaska's Permanent Fund Dividend program is unique. It gives rise to the right for all state residents who are eligible, to receive a dividend. *Anthony v. State*, 810 P.2d 155 (Alaska 1991). There is presently no statutory impediment to the assignment of dividends and individuals are not restricted in making assignments. We understand the Division is seeking legislation which would change this by prohibiting any assignment of a PFD to other than a governmental agency or a court.

Restrictions on the right to make various types of assignments may be found in other existing laws. Federal statutes prohibit the assignment of claims against the United States, and the federal government and several states bar the assignment of public contracts. Statutes in practically every state, including Alaska, restrict wage assignments, 1/ some barring them entirely, some restricting to whom or in what amount assignments can legally be made. See *Restatement (Second) of Contracts* ch. 15 (Introductory and Statutory Notes) (1981). Alaska also prohibits any attempted assignment of unemployment benefits, 2/ worker's compensation benefits, 3/ benefits payable from the state pension fund, 4/ or rights to maintenance for handicapped

1/ AS 06.20.290

2/ AS 23.20.405

3/ AS 23.30.160

4/ AS 39.35.500

persons. 5/ 6/ The Restatement also states, "[a] contractual right can be assigned unless . . . the assignment is forbidden by statute or is otherwise inoperative on grounds of public policy . . ." Restatement (Second) of Contracts § 316(2) (1981) (emphasis added). Thus, it becomes clear that, as a general rule, placing statutory restrictions or impediments on or otherwise regulating assignments is not improper and does not violate individual rights to contract.

You raised concerns about article I, section 15 of the Alaska Constitution. 7/ This section, virtually identical in pertinent part to the contracts clause of the U. S. Constitution, 8/ prohibits the impairment of the obligation of contracts, which the U.S. Supreme Court explained "was to be understood as the legal duties imposed upon the contracting parties by the operation of law on the contract." *Eckles v. State*, 760 P.2d 846, 859 (Oregon 1988) (citing *Ogden v. Saunders*, 25 U.S. (12 Wheat.) 213 (1827)).

In a recent leading case in which the subject statute was found to violate the contracts clause, the United States Supreme Court stated:

First of all, it is to be accepted as commonplace that the Contract Clause [of the United States Constitution] does not operate to obliterate the police power of the States. "It is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the State from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected. This power, which in its various ramifications is known as the police power, is an exercise of the sovereign right of the Government to protect the lives, health, morals, comfort and general welfare

5/ AS 23.15.170

6/ Several other statutes regulate the subject matter of assignments and the manner in which they may be made.

7/ Article I, section 15, states in pertinent part: "No law impairing the obligation of contracts . . . shall be passed."

8/ U. S. Const. art. I, § 10.

of the people and is paramount to any rights under contracts between individuals."

Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 241 (1978) reh'g denied 439 U.S. 886 (quoting *Manigault v. Springs*, 199 U.S. 473, 480 (1905)) (emphasis added).

Even though a statute impairs contract rights, it will still be judged on the severity of the impairment, and "[m]inimal alteration of contractual obligations may end the inquiry at its first stage." *Allied Structural Steel* at 245. "[It] is customary in reviewing economic and social regulation, however, [for] courts [to] properly defer to legislative judgment as to the necessity and reasonableness of a particular matter." *United States Trust Co. v. New Jersey*, 431 U.S. 1, 22 (1977), reh'g denied, 431 U.S. 975. See also *Allied Structural Steel*; *Diamond Glue Co. v. United States*, 187 U.S. 611 (1903). If the legislature enacts HB 234, it is presumed that, since the bill contains a statement of public policy, it will have been found to be necessary and reasonable and would survive any challenge on those grounds.

One additional hurdle a statute must clear to avoid violation of the contracts clause is the requirement that its purpose be reasonably connected to a public rather than private interest. *Veix v. Sixth Ward Building & Loan Assoc. of Newark*, 310 U.S. 32 (1940); *Treigle v. Acme Homestead Assoc.*, 297 U.S. 189 (1936). The bill would apply to all individuals who apply for a PFD and is, therefore, directed to the public at large, not to any individual interest. Thus, the bill does not run afoul of the contracts clause on this ground.

All that being said, however, the most salient point is that the contracts clause can only be violated when it impacts contracts already in effect on the date of a legislative enactment; there can be no violation of the clause where it only affects contracts that might be made in the future. A long line of cases expressly supports this well-settled principle, from *Ogden v. Saunders*, 25 U.S. 213 (1827), through *Exxon Corp. v. Zagerton*, 462 U.S. 176 (1983), on remand 440 So. 2d 1031 (Ala. 1983); and it is found by implication in all cases cited herein. See Annot., 57 L.Ed.2d 1279, § 5[b] (1979). As a practical matter, the contracts of concern - assignments of future PFDs - will not likely be formed if the bill is enacted prior to March 31, 1992. It is highly doubtful anyone would pay for an assignment unless the dividend had been applied for, and applications cannot be made prior to March 31 of a given year. 2/ It is possible that some contracts may

2/ 15 AAC 23.145(a)

have already been formed; however, we feel the bill would still be found constitutional even were it to affect those contracts.

As to other constitutional challenges, we do not believe the bill would run afoul of the equal protection provisions of either the U.S. or Alaska Constitutions, as the bill applies universally to PFD recipients; no class of any sort is excluded. An argument could be advanced that the provision permitting assignment of PFDs to governmental or judicial entities may require equal protection scrutiny, but we believe the provision would pass constitutional muster. The Alaska Supreme Court already has decided that individual rights to a permanent fund dividend are entitled only to minimum protection. It is the law in Alaska that "[a permanent fund] dividend is merely an economic interest and therefore is entitled only to minimum protection under our equal protection analysis." *State v. Anthony*, 810 P.2d 155, 158 (Alaska 1991). The court has adopted a flexible, sliding scale approach to the analysis of equal protection issues. *State v. Erickson*, 574 P.2d 1 (Alaska 1978). Under this approach, the first step is to determine where on the scale to locate the issue. As the right to receive a permanent fund dividend is at the lowest end of the scale, *Anthony*, the Division need only show that the distinction complained of has a fair and legitimate purpose. *Id.* at 12. As articulated by the division, the purpose is to ensure that the courts have a means of affirmatively pursuing restitution and payment of fines and other court-ordered obligations, such as child support. An additional purpose is that the public have a means of meeting legitimate obligations to government by use of the dividend. The state has a legitimate interest in having those obligations met and the public benefits as well. ^{10/} The purpose is reasonable, and the assignability of PFDs to governments and the courts bears a rational relationship to the state's objectives. Thus, the proposed statute does not offend the equal protection clauses contained in either constitution and should be upheld if challenged on those grounds.

We conclude, therefore, that there is no legal or constitutional impediment to a statute restricting assignments of Permanent Fund Dividends.

VLJ/ps

^{10/} Many Alaska citizens make voluntary use of the PFD to repay student loans and other obligations to the state. Since it became possible to do so, repayments have increased the amounts available for further lending from these revolving fund programs.

submitted by Senator Craft

Differences between the Senate Finance Committee and the proposed blank House Committee Substitute:

Section 2: Delete language in the Senate Finance CS and includes language to exempt unclaimed permanent fund dividends from the Unclaimed Property Act.

Section 3: Clarifies the language from the Senate Finance CS regarding unclaimed warrants and keeping them in the dividend fund.

Section 6: Replaces "24 months" with "two calendar years".

Section 14: Adds paragraph (8) which stipulates that persons may have checks reissued if the dividend has been returned to the dividend fund as undeliverable or unpaid.

Section 17: Includes adults made eligible by Section 10 within the retroactivity clause and gives them a deadline for applying of September 30, 1992. Also, this section extends the length of time a minor made eligible in Section 5 from September 1, 1992 to December 31, 1992.

7-LS1663NY
Cook
2/26/92

HOUSE CS FOR CS FOR SENATE BILL NO. 327 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): SENATORS CRAFT, Pourchot, Rodey, Sturgulewski, Zharoff, Duncan Kerttula, Collins, Frank, Menard, Jones

REPRESENTATIVES GRUENBERG, Boyer

A BILL

FOR AN ACT ENTITLED

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

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

3 * Section 1. INTENT. The change to the definition of residency in sec. 15 of this Act only clarifies
4 what the legislature has always intended the definition to be.

5 * Sec. 2. AS 34.45.720 is amended by adding a new subsection to read:

6 (c) AS 34.45.110 - 34.45.780 do not apply to a warrant for the payment of a permanent
7 fund dividend.

8 * Sec. 3. AS 37.05.180 is amended to read:

9 Sec. 37.05.180. TWO-YEAR LIMITATION ON PAYMENT OF WARRANTS. A [NO]
10 warrant upon the state treasury may not be [IS] paid unless presented at the office of the
11 commissioner of revenue within two years of the date of its issuance. A warrant [ALL
12 WARRANTS] not presented within that time is [ARE] considered paid and money held at the
13 expiration of that time in a special fund or account for the payment of the warrant shall be
14 transferred to the general fund, except where the warrant is for the payment of a permanent

1 fund dividend or where transfer is prohibited by the federal government for state participation
2 in a federal program.

3 * Sec. 4. AS 43.23.005(a) is amended to read:

4 (a) An individual is eligible to receive one permanent fund dividend each year in an
5 amount to be determined under AS 43.23.025 if

6 (1) the individual applies to the department;

7 (2) [, AND IF (1)] on the date of application the individual is a state resident;

8 (3) [(2)] the individual was a state resident for [A PERIOD OF] at least the
9 calendar year [12 CONSECUTIVE MONTHS] immediately preceding January 1 [APRIL 1]
10 of the current dividend year; [AND]

11 (4) [(3)] the individual has been physically present in the state at some time
12 during the prior [PERIOD BEGINNING JULY 1] two calendar years before the current
13 dividend year; and

14 (5) the individual is

15 (A) a citizen of the United States;

16 (B) an alien lawfully admitted for permanent residence in the United
17 States;

18 (C) an alien with refugee status under federal law; or

19 (D) an alien that has been granted asylum under federal law [DATE
20 OF APPLICATION AND ENDING ON THE DATE OF APPLICATION].

21 * Sec. 5. AS 43.23.005(c) is amended to read:

22 (c) A parent, guardian, or other authorized representative may claim a permanent fund
23 dividend on behalf of an unemancipated minor or on behalf of a disabled or an incompetent
24 individual who is eligible to receive a payment under this section. Notwithstanding (a)(1) - (3)
25 of this section, a minor is eligible for a dividend if, during the 24 months immediately
26 preceding the current dividend year, the minor was born to or adopted by an individual
27 who is eligible for a dividend for the current dividend year.

28 * Sec. 6. AS 43.23.005(c) is repealed and reenacted to read:

29 (c) A parent, guardian, or other authorized representative may claim a permanent fund
30 dividend on behalf of an unemancipated minor or on behalf of a disabled or an incompetent
31 individual who is eligible to receive a payment under this section. Notwithstanding (a)(2) - (4)

1 of this section, a minor is eligible for a dividend if, during the two calendar years immediately
2 preceding the current dividend year, the minor was born to or adopted by an individual who is
3 eligible for a dividend for the current dividend year.

4 * Sec. 7. AS 43.23.005(d) is amended to read:

5 (d) Notwithstanding the provisions of (a) - (c) of this section, an individual who has been
6 convicted of a felony is not eligible for a permanent fund dividend for a year when, during all
7 or part of the previous calendar year [FISCAL YEAR ENDING JUNE 30 OF THE CURRENT
8 YEAR], as a result of the conviction, the individual is incarcerated. [THIS SUBSECTION
9 APPLIES WHETHER OR NOT THE INDIVIDUAL HAS APPLIED FOR THE DIVIDEND.]

10 * Sec. 8. AS 43.23.005(f) is amended to read:

11 (f) In a time of national military emergency, the commissioner may waive the
12 requirement of (a)(4) [(a)(3)] of this section for an individual absent from the state under military
13 orders while serving in the armed forces of the United States, or for the spouse and dependents
14 of that individual.

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

16 Sec. 43.23.011. APPLICATION PERIOD. An application for a permanent fund dividend
17 shall be filed during the period that begins January 2 and ends March 31 of that dividend year.

18 * Sec. 10. AS 43.23.015(a) is amended to read:

19 (a) The commissioner shall adopt regulations under the Administrative Procedure Act
20 (AS 44.62) for determining the eligibility of individuals for permanent fund dividends. The
21 commissioner may require an individual to provide proof of eligibility, and the commissioner
22 may use other information available from other state departments or agencies to determine the
23 eligibility of an individual. The commissioner shall consider all relevant circumstances in
24 determining the eligibility of an individual. However, the residency of an individual's
25 spouse may not be the only factor relied upon by the commissioner in determining the
26 residency of the individual.

27 * Sec. 11. AS 43.23.015(b) is amended to read:

28 (b) The department shall prescribe and furnish an application form for claiming a
29 permanent fund dividend. The application must include notice of the penalties provided for
30 under AS 43.23.035 and contain a statement of eligibility and a certification of residency. [IN
31 SUBSTANTIALLY THE FOLLOWING FORM:

1 I CERTIFY THAT

2 () I AM A STATE RESIDENT ON THE DATE OF THIS APPLICATION, I HAVE
3 BEEN A STATE RESIDENT FOR AT LEAST 12 MONTHS IMMEDIATELY
4 PRECEDING APRIL 1 OF THE CURRENT DIVIDEND YEAR, AND I HAVE BEEN
5 PHYSICALLY PRESENT IN THE STATE OF ALASKA AT SOME TIME DURING
6 THE PERIOD BEGINNING JULY 1 TWO YEARS BEFORE THE DATE OF
7 APPLICATION AND ENDING ON THE DATE OF THIS APPLICATION UNLESS
8 THIS REQUIREMENT HAS BEEN WAIVED UNDER AS 43.23.005(f); OR

9 () (NAME), THE INDIVIDUAL ON WHOSE BEHALF I AM APPLYING, IS A
10 STATE RESIDENT ON THE DATE OF THIS APPLICATION, HAS BEEN A STATE
11 RESIDENT FOR AT LEAST 12 MONTHS IMMEDIATELY PRECEDING APRIL 1 OF
12 THE CURRENT DIVIDEND YEAR, AND HAS BEEN PHYSICALLY PRESENT IN
13 THE STATE OF ALASKA AT SOME TIME DURING THE PERIOD BEGINNING
14 JULY 1 TWO YEARS BEFORE THE DATE OF APPLICATION AND ENDING ON
15 THE DATE OF THIS APPLICATION UNLESS THIS REQUIREMENT HAS BEEN
16 WAIVED UNDER AS 43.23.005(f).

17 I UNDERSTAND THAT A FALSE CLAIM OF ELIGIBILITY TO OBTAIN A
18 PERMANENT FUND DIVIDEND FOR MYSELF OR FOR ANOTHER IS A
19 CRIMINAL OFFENSE, THAT IF CONVICTED I WILL FORFEIT FUTURE
20 DIVIDENDS, AND THAT I MUST REPAY ALL DIVIDENDS THAT HAVE BEEN
21 PAID TO ME. I UNDERSTAND THAT IF I WILFULLY MISREPRESENT,
22 EXERCISE GROSS NEGLIGENCE, OR RECKLESSLY DISREGARD A MATERIAL
23 FACT REGARDING MY ELIGIBILITY FOR A PERMANENT FUND DIVIDEND I
24 WILL FORFEIT THE DIVIDEND, BE SUBJECT TO A CIVIL FINE OF UP TO \$5,000,
25 AND LOSE MY ELIGIBILITY FOR THE NEXT FIVE DIVIDENDS. I UNDERSTAND
26 THAT THESE PENALTIES ARE IN ADDITION TO ANY CRIMINAL PENALTIES
27 IMPOSED.

28 _____
29 (SIGNATURE OF INDIVIDUAL,
30 PARENT, GUARDIAN, OR OTHER
31 AUTHORIZED REPRESENTATIVE)]

1 * **Sec. 12.** AS 43.23.035(b) is amended to read:

2 (b) If the commissioner determines that a permanent fund dividend should not have been
3 claimed by or paid to an individual, the commissioner may use all collection procedures or
4 remedies available for collection of taxes under this title to recover the payment of a permanent
5 fund dividend that was improperly made. A notice of an improperly paid dividend must be sent
6 to the individual within

7 (1) three years after the improper payment is sent; or

8 (2) six years after the improper payment is sent if the commissioner
9 determines that the individual exercised gross negligence or recklessly disregarded a
10 material fact in connection with a false statement made in an application [10 YEARS
11 AFTER THE IMPROPER PAYMENT. IF NOTICE IS NOT SENT WITHIN THE 10-YEAR
12 PERIOD, PROCEEDINGS MAY NOT BE COMMENCED IN COURT FOR RECOVERY OF
13 THE IMPROPER PAYMENT].

14 * **Sec. 13.** AS 43.23.035 is amended by adding a new subsection to read:

15 (d) If notice is not sent within the time required under (b) of this section, administrative
16 or judicial proceedings may not be commenced for recovery of an improperly paid dividend. The
17 time limitations of (b) of this section do not apply if a dividend is forfeited under (a) of this
18 section or if it is more probable than not that an individual has committed a crime in connection
19 with a false statement made in an application.

20 * **Sec. 14.** AS 43.23.055 is amended to read:

21 Sec. 43.23.055. DUTIES OF THE DEPARTMENT. The department shall

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

23 (2) subject to AS 43.23.011 and paragraph (8) of this section, adopt regulations
24 under the Administrative Procedure Act (AS 44.62) that establish procedures and time limits for
25 claiming a permanent fund dividend; the department shall determine [SET THE TIME LIMIT
26 FOR APPLICATIONS FOR PERMANENT FUND DIVIDENDS SO THAT] the number of
27 eligible applicants [IS DETERMINED] by October 1 of the year for which the dividend is
28 declared and pay the [PERMANENT FUND] dividends by December 31 of that year [FOR A
29 YEAR ARE PAID BEFORE APRIL 30 OF THE YEAR FOLLOWING THAT YEAR];

30 (3) adopt regulations under the Administrative Procedure Act (AS 44.62) that
31 establish procedures and time limits for an individual upon emancipation or upon reaching

1 majority to apply for permanent fund dividends not received during minority because the parent,
2 guardian, or other authorized representative did not apply on behalf of the individual;

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

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

9 (6) adopt regulations that are necessary to implement AS 43.23.005(d);

10 (7) adopt regulations that establish procedures for the parent, guardian, or other
11 authorized representative of a disabled individual to apply for prior year permanent fund
12 dividends not received by the disabled individual because no application was submitted on behalf
13 of the individual;

14 (8) adopt regulations that establish procedures for an individual to apply to
15 have a dividend warrant reissued if it is returned to the department as undeliverable or it
16 is not paid within two years of the date of its issuance; however, the department may not
17 establish a time limit within which an application to have a warrant reissued must be filed.

18 * Sec. 15. AS 43.23.095(8) is amended to read:

19 (8) "state resident" means an individual who is physically present in the state with
20 the intent to remain permanently in the state under the requirements of AS 01.10.055 or, if the
21 individual is not physically present in the state, intends to return to the state and remain
22 permanently in the state under the requirements of AS 01.10.055, and is absent only for any
23 of the following reasons:

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

26 (B) secondary or postsecondary education;

27 (C) military service;

28 (D) medical treatment;

29 (E) service in Congress;

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

31 (G) service in the Peace Corps;

1 * Sec. 16. AS 43.23.005(b) is repealed.

2 * Sec. 17. APPLICATION PERIODS. (a) Notwithstanding permanent fund dividend application
3 procedures or deadlines, a parent, guardian, or other authorized representative of a minor who qualified
4 for a dividend for 1992 because of the amendment to AS 43.23.005(c), made in sec. 5 of this Act, may
5 apply on behalf of the minor for the dividend by December 31, 1992. Notwithstanding permanent fund
6 dividend application procedures or deadlines, an individual who qualified for a dividend for 1992
7 because of the amendment to AS 43.23.015(a), made in sec. 10 of this Act, may apply for the dividend
8 by September 30, 1992. The Department of Revenue shall prepare a form for applications under this
9 section.

10 (b) Notwithstanding AS 43.23.011, as added by sec. 9 of this Act, the application period for
11 1993 is the period that begins January 2, 1993, and ends June 30, 1993.

12 * Sec. 18. Sections 5 and 10 of this Act are retroactive to January 1, 1992.

13 * Sec. 19. Sections 1 - 3, 5, 10, 12, 13, 15, 17, and 18 of this Act take effect immediately under
14 AS 01.10.070(c).

15 * Sec. 20. Sections 4, 6 - 9, 11, 14, and 16 of this Act take effect January 1, 1993.

7-LS1663V
Cook
2/20/92

HOUSE CS FOR CS FOR SENATE BILL NO. 327 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS CRAFT, Pourchot, Rodey, Sturgulewski, Zharoff, Duncan, Kerttula, Collins, Frank, Menard, Jones

REPRESENTATIVE Gruenberg

A BILL

FOR AN ACT ENTITLED

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

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

3 * Section 1. INTENT. The change to the definition of residency in sec. 15 of this Act only clarifies
4 what the legislature has always intended the definition to be.

5 * Sec. 2. AS 34.45.720 is amended by adding a new subsection to read:

6 (c) AS 34.45.110 - 34.45.780 do not apply to a warrant for the payment of a permanent
7 fund dividend.

8 * Sec. 3. AS 37.05.180 is amended to read:

9 Sec. 37.05.180. TWO-YEAR LIMITATION ON PAYMENT OF WARRANTS. A [NO]
10 warrant upon the state treasury may not be [IS] paid unless presented at the office of the
11 commissioner of revenue within two years of the date of its issuance. A warrant [ALL
12 WARRANTS] not presented within that time is [ARE] considered paid and money held at the
13 expiration of that time in a special fund or account for the payment of the warrant shall be
14 transferred to the general fund, except where the warrant is for the payment of a permanent

1 fund dividend or where transfer is prohibited by the federal government for state participation
2 in a federal program.

3 * Sec. 4. AS 43.23.005(a) is amended to read:

4 (a) An individual is eligible to receive one permanent fund dividend each year in an
5 amount to be determined under AS 43.23.025 if

6 (1) the individual applies to the department;

7 (2) [, AND IF (1)] on the date of application the individual is a state resident;

8 (3) [(2)] the individual was a state resident for [A PERIOD OF] at least the
9 calendar year [12 CONSECUTIVE MONTHS] immediately preceding January 1 [APRIL 1]
10 of the current dividend year; [AND]

11 (4) [(3)] the individual has been physically present in the state at some time
12 during the prior [PERIOD BEGINNING JULY 1] two calendar years before the current
13 dividend year; and

14 (5) the individual is

15 (A) a citizen of the United States;

16 (B) an alien lawfully admitted for permanent residence in the United
17 States;

18 (C) an alien with refugee status under federal law; or

19 (D) an alien that has been granted asylum under federal law [DATE
20 OF APPLICATION AND ENDING ON THE DATE OF APPLICATION].

21 * Sec. 5. AS 43.23.005(c) is amended to read:

22 (c) A parent, guardian, or other authorized representative may claim a permanent fund
23 dividend on behalf of an unemancipated minor or on behalf of a disabled or an incompetent
24 individual who is eligible to receive a payment under this section. Notwithstanding (a)(1) - (3)
25 of this section, a minor is eligible for a dividend if, during the 24 months immediately
26 preceding the current dividend year, the minor was born to or adopted by an individual
27 who is eligible for a dividend for the current dividend year.

28 * Sec. 6. AS 43.23.005(c) is repealed and reenacted to read:

29 (c) A parent, guardian, or other authorized representative may claim a permanent fund
30 dividend on behalf of an unemancipated minor or on behalf of a disabled or an incompetent
31 individual who is eligible to receive a payment under this section. Notwithstanding (a)(2) - (4)

1 of this section, a minor is eligible for a dividend if, during the two calendar years immediately
2 preceding the current dividend year, the minor was born to or adopted by an individual who is
3 eligible for a dividend for the current dividend year.

4 * Sec. 7. AS 43.23.005(d) is amended to read:

5 (d) Notwithstanding the provisions of (a) - (c) of this section, an individual who has been
6 convicted of a felony is not eligible for a permanent fund dividend for a year when, during all
7 or part of the previous calendar year [FISCAL YEAR ENDING JUNE 30 OF THE CURRENT
8 YEAR], as a result of the conviction, the individual is incarcerated. [THIS SUBSECTION
9 APPLIES WHETHER OR NOT THE INDIVIDUAL HAS APPLIED FOR THE DIVIDEND.]

10 * Sec. 8. AS 43.23.005(f) is amended to read:

11 (f) In a time of national military emergency, the commissioner may waive the
12 requirement of (a)(4) [(a)(3)] of this section for an individual absent from the state under military
13 orders while serving in the armed forces of the United States, or for the spouse and dependents
14 of that individual.

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

16 Sec. 43.23.011. APPLICATION PERIOD. An application for a permanent fund dividend
17 shall be filed during the period that begins January 2 and ends March 31 of that dividend year.

18 * Sec. 10. AS 43.23.015(a) is amended to read:

19 (a) The commissioner shall adopt regulations under the Administrative Procedure Act
20 (AS 44.62) for determining the eligibility of individuals for permanent fund dividends. The
21 commissioner may require an individual to provide proof of eligibility, and the commissioner
22 may use other information available from other state departments or agencies to determine the
23 eligibility of an individual. The commissioner shall consider all relevant circumstances in
24 determining the eligibility of an individual. However, the residency of an individual's
25 spouse may not be the only factor relied upon by the commissioner in determining the
26 residency of the individual.

27 * Sec. 11. AS 43.23.015(b) is amended to read:

28 (b) The department shall prescribe and furnish an application form for claiming a
29 permanent fund dividend. The application must include notice of the penalties provided for
30 under AS 43.23.035 and contain a statement of eligibility and a certification of residency. [IN
31 SUBSTANTIALLY THE FOLLOWING FORM:

1 I CERTIFY THAT

2 () I AM A STATE RESIDENT ON THE DATE OF THIS APPLICATION, I HAVE
3 BEEN A STATE RESIDENT FOR AT LEAST 12 MONTHS IMMEDIATELY
4 PRECEDING APRIL 1 OF THE CURRENT DIVIDEND YEAR, AND I HAVE BEEN
5 PHYSICALLY PRESENT IN THE STATE OF ALASKA AT SOME TIME DURING
6 THE PERIOD BEGINNING JULY 1 TWO YEARS BEFORE THE DATE OF
7 APPLICATION AND ENDING ON THE DATE OF THIS APPLICATION UNLESS
8 THIS REQUIREMENT HAS BEEN WAIVED UNDER AS 43.23.005(f); OR

9 () (NAME), THE INDIVIDUAL ON WHOSE BEHALF I AM APPLYING, IS A
10 STATE RESIDENT ON THE DATE OF THIS APPLICATION, HAS BEEN A STATE
11 RESIDENT FOR AT LEAST 12 MONTHS IMMEDIATELY PRECEDING APRIL 1 OF
12 THE CURRENT DIVIDEND YEAR, AND HAS BEEN PHYSICALLY PRESENT IN
13 THE STATE OF ALASKA AT SOME TIME DURING THE PERIOD BEGINNING
14 JULY 1 TWO YEARS BEFORE THE DATE OF APPLICATION AND ENDING ON
15 THE DATE OF THIS APPLICATION UNLESS THIS REQUIREMENT HAS BEEN
16 WAIVED UNDER AS 43.23.005(f).

17 I UNDERSTAND THAT A FALSE CLAIM OF ELIGIBILITY TO OBTAIN A
18 PERMANENT FUND DIVIDEND FOR MYSELF OR FOR ANOTHER IS A
19 CRIMINAL OFFENSE, THAT IF CONVICTED I WILL FORFEIT FUTURE
20 DIVIDENDS, AND THAT I MUST REPAY ALL DIVIDENDS THAT HAVE BEEN
21 PAID TO ME. I UNDERSTAND THAT IF I WILFULLY MISREPRESENT,
22 EXERCISE GROSS NEGLIGENCE, OR RECKLESSLY DISREGARD A MATERIAL
23 FACT REGARDING MY ELIGIBILITY FOR A PERMANENT FUND DIVIDEND I
24 WILL FORFEIT THE DIVIDEND, BE SUBJECT TO A CIVIL FINE OF UP TO \$5,000,
25 AND LOSE MY ELIGIBILITY FOR THE NEXT FIVE DIVIDENDS. I UNDERSTAND
26 THAT THESE PENALTIES ARE IN ADDITION TO ANY CRIMINAL PENALTIES
27 IMPOSED.

28 _____
29 (SIGNATURE OF INDIVIDUAL,
30 PARENT, GUARDIAN, OR OTHER
31 AUTHORIZED REPRESENTATIVE))

1 * Sec. 12. AS 43.23.035(b) is amended to read:

2 (b) If the commissioner determines that a permanent fund dividend should not have been
3 claimed by or paid to an individual, the commissioner may use all collection procedures or
4 remedies available for collection of taxes under this title to recover the payment of a permanent
5 fund dividend that was improperly made. A notice of an improperly paid dividend must be sent
6 to the individual within

7 (1) three years after the improper payment is sent; or

8 (2) six years after the improper payment is sent if the commissioner
9 determines that the individual exercised gross negligence or recklessly disregarded a
10 material fact in connection with a false statement made in an application [10 YEARS
11 AFTER THE IMPROPER PAYMENT. IF NOTICE IS NOT SENT WITHIN THE 10-YEAR
12 PERIOD, PROCEEDINGS MAY NOT BE COMMENCED IN COURT FOR RECOVERY OF
13 THE IMPROPER PAYMENT].

14 * Sec. 13. AS 43.23.035 is amended by adding a new subsection to read:

15 (d) If notice is not sent within the time required under (b) of this section, administrative
16 or judicial proceedings may not be commenced for recovery of an improperly paid dividend. The
17 time limitations of (b) of this section do not apply if a dividend is forfeited under (a) of this
18 section or if it is more probable than not that an individual has committed a crime in connection
19 with a false statement made in an application.

20 * Sec. 14. AS 43.23.055 is amended to read:

21 Sec. 43.23.055. DUTIES OF THE DEPARTMENT. The department shall

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

23 (2) subject to AS 43.23.011 and paragraph (8) of this section, adopt regulations
24 under the Administrative Procedure Act (AS 44.62) that establish procedures and time limits for
25 claiming a permanent fund dividend; the department shall determine [SET THE TIME LIMIT
26 FOR APPLICATIONS FOR PERMANENT FUND DIVIDENDS SO THAT] the number of
27 eligible applicants [IS DETERMINED] by October 1 of the year for which the dividend is
28 declared and pay the [PERMANENT FUND] dividends by December 31 of that year [FOR A
29 YEAR ARE PAID BEFORE APRIL 30 OF THE YEAR FOLLOWING THAT YEAR];

30 (3) adopt regulations under the Administrative Procedure Act (AS 44.62) that
31 establish procedures and time limits for an individual upon emancipation or upon reaching

1 majority to apply for permanent fund dividends not received during minority because the parent,
2 guardian, or other authorized representative did not apply on behalf of the individual;

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

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

9 (6) adopt regulations that are necessary to implement AS 43.23.005(d);

10 (7) adopt regulations that establish procedures for the parent, guardian, or other
11 authorized representative of a disabled individual to apply for prior year permanent fund
12 dividends not received by the disabled individual because no application was submitted on behalf
13 of the individual;

14 (8) adopt regulations that establish procedures for an individual to apply to
15 have a dividend warrant reissued if it is returned to the department as undeliverable or it
16 is not paid within two years of the date of its issuance; however, the department may not
17 establish a time limit within which an application to have a warrant reissued must be filed.

18 * Sec. 15. AS 43.23.095(8) is amended to read:

19 (8) "state resident" means an individual who is physically present in the state with
20 the intent to remain permanently in the state under the requirements of AS 01.10.055 or, if the
21 individual is not physically present in the state, intends to return to the state and remain
22 permanently in the state under the requirements of AS 01.10.055, and is absent only for any
23 of the following reasons:

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

26 (B) secondary or postsecondary education;

27 (C) military service;

28 (D) medical treatment;

29 (E) service in Congress;

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

31 (G) service in the Peace Corps;

- 1 * **Sec. 16.** AS 43.23.005(b) is repealed.
- 2 * **Sec. 17.** APPLICATION PERIODS. (a) Notwithstanding permanent fund dividend application
3 procedures or deadlines, a parent, guardian, or other authorized representative of a minor who qualified
4 for a dividend for 1992 because of the amendment to AS 43.23.005(c), made in sec. 5 of this Act, may
5 apply on behalf of the minor for the dividend by September 1, 1992. The Department of Revenue shall
6 prepare a form for applications under this section.
- 7 (b) Notwithstanding AS 43.23.011, as added by sec. 9 of this Act, the application period for
8 1993 is the period that begins January 2, 1993, and ends June 30, 1993.
- 9 * **Sec. 18.** Sections 5 and 10 of this Act are retroactive to January 1, 1992.
- 10 * **Sec. 19.** Sections 1 - 3, 5, 10, 12, 13, 15, 17(a), and 18 of this Act take effect immediately under
11 AS 01.10.070(c).
- 12 * **Sec. 20.** Sections 4, 6 - 9, 11, 14, 16, and 17(b) of this Act take effect January 1, 1993.

submitted by Senator Craft

SECTIONAL ON CS SB 327 (FIN)

Section 1: Establishes the intent of Section 15.

Section 2 & 3: Unclaimed warrants on the dividend fund remain in the dividend fund. This is not meant to limit the time that a person can come back and claim a permanent fund check.

Section 4: Changes the program year from April to March to January to December and clarifies that illegal aliens are not eligible for the permanent fund dividend program.

Section 5 & 6: Exempts children that were either born to or adopted by Alaskans out of state on allowable absences from the physical presence requirements.

Section 7: Revises the necessary statute relative to the changes in the program year.

Section 8: Revises the necessary statute relative to the changes regarding minors' exemptions.

Section 9: Sets the application period for the permanent fund dividend program from January 2 to March 31.

Section 10: Establishes that the Commissioner of Revenue will not deny an applicant solely on the basis of their spouses residency.

Section 11: Deletes the specific certification of residence language that is set in statute and allows the department to come up with it as well as including the penalties for false application.

Section 12 & 13: Establishes a statute of limitations for permanent fund dividend checks that have been erroneously issued. For those people who received checks due to an oversight on the department, the department has three years to recover the check. If the person had misrepresented the facts, the department has six years. If the person had fraudulently misrepresented the facts, there is no limitation.

Section 14: States that the department shall pay the dividends by December 31.

Section 15: Makes reference to the definition of "state resident" in AS 01.10.055.

Section 16: Repeals a statute made obsolete by changes made in previous sections.

Section 17: Makes retroactive the application period for

children made eligible under Section 5. This section also extends the application period from January 2 to June 30 for only the 1993 dividend.

Section 18 - 20: Effective dates.

Proposed changes reflected in the blank House Committee Substitute:

Section 2: Delete language in the Senate Finance CS and includes language to exempt unclaimed permanent fund dividends from the Unclaimed Property Act.

Section 14: Adds paragraph (8) which stipulates that persons may have checks reissued if the dividend has been returned to the dividend fund as undeliverable or unpaid.

ALASKA DEPARTMENT OF REVENUE
 PERMANENT FUND DIVIDEND DIVISION
INFORMATION RELEVANT TO CSSB 327 (FIN)
 As of February 20, 1992

<u>Pertinent Sections</u>	<u>2 & 3</u>		<u>4</u>		<u>5 & 6</u>
	<u>02/03/92 Canceled Warrants</u>	<u>Acceptable & Paid</u>	<u>Aliens Missing Info or Under Review</u>	<u>Denied</u>	<u>Children Born in the Lower 49 to AK Residents per Vital Stats</u>
<u>Dividend Year</u>	1982	3,699			
	1983	3,071			
	1984	2,781			
	1985	2,970			
	1986	1,777			
	1987	1,351			
	1988	961	8,696	34	732
	1989	1,100	8,415	135	713
	1990	413	7,778	187	1,038
	1991	<u>441</u>	<u>7,854</u>	<u>865</u>	<u>553</u>
	Total	<u>18,564</u>	<u>32,743</u>	<u>1,221</u>	<u>3,036</u>

Notes:

- A. Information on the number of 1982-1987 applications received from aliens is not available.
- B. Only 1988-1990 information on the number of children born in the Lower 49 to Alaskan residents was obtained from Vital Statistics.

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