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HOUSE COMMITTEE REPORT

(7)
Date Referred: May 7, 1992

FURTHER REFERRALS:

Date of Committee Action: 5-9-92

The JUDICIARY Committee considered:

CSSB 254(JUD)

CS FOR SENATE BILL NO. 254 (JUD)

CLAIMS ON PERMANENT FUND DIVIDENDS

"An Act relating to the exemption for permanent fund dividends from the collection of debts, to the seizure of dividends for the collection of debts, to claims on a dividend, and providing that claims on defaulted scholarship loans have third priority among claims against a dividend; and providing for an effective date."

RECOMMENDATIONS: [] 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 _____

[] fiscal note(s) _____

[] zero fiscal note _____

zero fiscal note(s) Courts 4-14-92

SIGNING <u>DO PASS</u>	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>		<i>Daniel Donley</i>		✓	
<i>[Signature]</i>		<i>[Signature]</i>		α	
<i>[Signature]</i>	✓	<i>Kevin Pat Parnell</i>		✓	
<i>[Signature]</i>	x				

[Signature]
CHAIRMAN'S SIGNATURE

FISCAL NOTE

No. 1

Bill Version: SB 254

Bill (S) Publish Date: 4-24-92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act relating to the exemption for BRU: Trial Courts
permanent fund dividends from collection of debts Components: _____
 Sponsor: Judiciary Committee by request
 Requestor: _____ COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						

REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

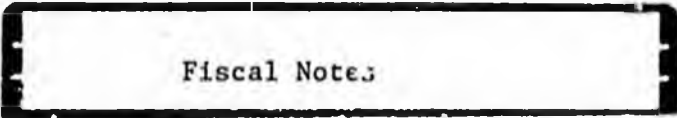
ANALYSIS: (Attach a separate page if necessary)
 No fiscal impact.

Changes in SSB 254 (JUD) reflect NO FISCAL CHANGE from the original fiscal note. This fiscal note is appropriate.
4/24 date 67LB Comte Aide (initial)

Prepared by: C. S. Christensen III, Staff Counsel *(Signature)* Phone: 264-8228
 Division: Alaska Court System Date: 02/11/92

Approved by: Arthur H. Snowden, II, Administrative Director *(Signature)* Date: 02/11/92
 Agency: Alaska Court System

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



No. 2

Bill Version: SB 254

(S) Publish Date: 4-25-92

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SB 254

Revision Date: _____
Title: An Act relating to claims on
permanent fund dividends
Sponsor: Senate Judiciary Committee
Requestor: Senate Judiciary Committee

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						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LANDS & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Changes in CSB (JUD) reflect NO FISCAL CHANGE from the original fiscal note. This fiscal note is appropriate.

4/24 6718
date Comte Aide (Initial)

Estimate of current year impact: None.

ANALYSIS: None required.

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

Phone: 465-2323
Date: February 12, 1992

Approved by Commissioner: David Reynolds
Agency: Revenue

Date: 2/12/92

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

SECTIONAL ANALYSIS

CSSB 254 (JUD) "An Act relating to the exemption for permanent fund dividends from the collection of debts, to the seizure of dividends for the collection of debts, to claims on a dividend, and providing that claims on a defaulted scholarship loans have third priority among claims against a dividend; and providing for an effective date."

Section 1. Amends AS 09.38.015(a) to clarify that an individual is entitled to an exemption of a portion of a permanent fund dividend under AS 43.23.064(a).

Section 2. Amends AS 09.38.030(b) to clarify that the liquid assets exemption does not apply to an individual's permanent fund dividend.

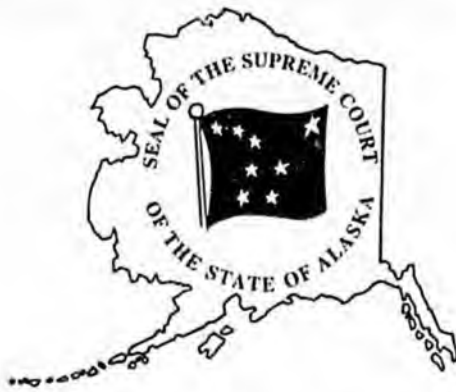
Section 3. Amends AS 43.23.065 in five ways: First, it conforms with section 2 of this bill, to clarify that the liquid assets exemption does not apply to an individual's permanent fund dividend. Second, it adds court-ordered fines to the list of debts for which a permanent fund dividend exemption is not available to an individual. Third, it provides that claims on defaulted student loans have priority over other debts owed to state agencies when a dividend is seized. Fourth, it provides that claims listed in AS 43.23.065(b) have priority over other debts whether payment is sought through legal action or through assignment. Fifth, it allows a writ of execution on a dividend to be served on the Department of Revenue by certified mail rather than by process server.

Section 4. Provides that AS 09.38.080(c) and 09.38.085, relating to notice, do not apply to a levy on a permanent fund dividend. Instead, the Department of Revenue must provide notice of the levy to a debtor. Also provides that the department may not accept an assignment of or an execution on a dividend prior to April 1 of a dividend year.

Section 5. Amends AS 43.23.067(b), relating to seizure of a dividend to pay a student loan, to clarify that a debtor's request for a hearing must be made to the Postsecondary Education Commission, rather than the Department of Revenue.

Section 6. Amends AS 43.23.067(c) to conform with the amendment made by section 5.

Section 7. Immediate effective date.



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

CHARLES S. CHRISTENSEN III
Staff Counsel

303 K Street
Anchorage, AK 99501
(907) 264-8228

May 7, 1992

The Honorable Dave Donley
Chairman, House Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

Dear Representative Donley:

I am writing to urgently request that the Judiciary Committee schedule SB 254, relating to claims on a permanent fund dividend, at its earliest convenience. This bill was introduced at the request of the Alaska Supreme Court, and was drafted with the assistance of the Department of Law and the Department of Revenue. Its primary purpose is to improve the procedures surrounding execution by a creditor on the permanent fund dividend of a debtor.

As you know, existing law provides that a creditor may execute on the dividend of a debtor, just as a creditor may execute on a debtor's bank account or other property. The amount which the creditor may seize is limited to 55% of a dividend, unless the creditor is executing on the dividend in order to satisfy a child support obligation, court-ordered restitution, or a debt owed to the state. In such cases, the entire dividend may be seized.

The current procedures surrounding execution on a dividend are contradictory, cumbersome, expensive, and frequently fail to give adequate notice to the debtor. Specific problems, and the corrections proposed in SB 254, are as follows:

1. Existing law requires the creditor to serve notice of the execution on the debtor. This causes several problems. First, aside from being unwieldy and expensive, existing

notice procedures are unnecessary, since the Department of Revenue automatically notifies a debtor that the dividend has been seized. Second, the creditor frequently does not know where the debtor can be reached in order to be notified of the claim. Great expense can be incurred in attempting to locate and serve the debtor, and if he cannot be found, the execution may take place without notice. Third, since the state is frequently the creditor seeking execution, the unnecessary expense of the notice requirement prevents it from attempting to recover many small debts.

SB 254 corrects these problems by eliminating the existing notice requirement, and instead requiring the Department of Revenue to provide legally adequate notice to the debtor. Because the department already sends notice to debtors, no additional expense will be incurred by expanding the information provided in that notice. Because the debtor has provided a current address to the department in order to receive a dividend, the debtor is more likely to receive notice of the seizure than under the existing procedure. Finally, because notice procedures will be less expensive, the state will be able to economically pursue far more debts than it does now (section 4).

2. As noted above, AS 43.23.065 provides that 45% of a dividend is exempt from execution for most debts. However, AS 09.38.030(b) provides a liquid assets exemption for debtors which can be read to exempt all of a dividend from execution. Most courts have rejected this reading, because it subverts the legislature's purpose in enacting the 45% exemption. SB 254 resolves this issue by making it clear that the liquid assets exemption does not apply to dividends (sections 2 and 3).
3. As noted above, creditors may seize an entire dividend, not just 55% of it, to pay for child support obligations, restitution, or other debts owed to a state agency, in that order of priority. A court-ordered fine for a violation of state law is a "debt owed . . . to a state agency" and thus is not subject to the exemption. However, criminal fines imposed by a municipality are subject to the exemption. SB 254 corrects this inequity by adding court-ordered fines for either state or municipal violations to the list of exemptionless debts (section 3).
4. While current law prioritizes claims against a dividend, it is not clear whether the listed priorities apply only in the case of execution, or if the listed priorities also apply to

The Honorable Dave Donley
May 7, 1992
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voluntary assignments of a dividend. SB 254 provides that the priorities apply in both cases (section 3).

The Judiciary Committee substitute for SB 254 makes three additional changes to existing law:

First, the CS provides in section 3 that a writ of execution upon a dividend may be served on the Department of Revenue by certified mail, rather than by process server as is currently required.

Second, the CS provides in section 3 that claims on defaulted student loans shall be given priority over other debts owed to state agencies when a dividend is seized by the state.

Third, the CS provides in section 5 that the Department of Revenue may not accept an assignment of or an execution on a dividend before April 1 of a dividend year.

Passage of SB 254 will improve the procedures surrounding execution on a permanent fund dividend by giving better notice to debtors that their dividend is being seized, and making it less expensive for the state to execute on persons who fail to pay child support or other debts. We urge your favorable consideration.

Very truly yours,



C. S. Christensen III
Staff Counsel



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

303 K Street
Anchorage, Alaska 99501

February 17, 1992

The Honorable Rick Halford, Chair
Senate Judiciary Committee

The Honorable Dave Donley, Chair
House Judiciary Committee

The Honorable Jay Kerttula, Co-Chair
The Honorable Pat Pourchot, Co-Chair
Senate Finance Committee

The Honorable Mike Navarre, Co-Chair
The Honorable Eileen MacLean, Co-Chair
House Finance Committee

Dear Legislators:

We are writing to express the joint support of the Alaska Court System and the Departments of Revenue, Law, Public Safety and Administration for House Bill 291 and Senate Bill 254, companion legislation relating to the collection of debts by execution on permanent fund dividends.

HB 291 and SB 254 were introduced at the request of the Alaska Supreme Court, and drafted with the assistance of the Departments of Law and Revenue. Their primary purpose is to improve the existing procedures surrounding execution by a creditor on the permanent fund dividend of a debtor.

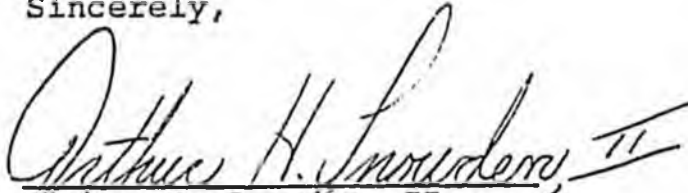
Current procedures are cumbersome, expensive, and unnecessary. They result in increased case processing costs for the court system, increased debt collection costs for the Department of Law, and increased process serving costs for the Department of Public Safety. To resolve these problems, HB 291 and SB 254 transfer certain procedural responsibility for the notification of debtors to the Department of Revenue. There is no fiscal

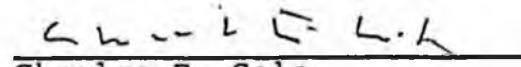
The Honorable Rick Halford, et al
February 18, 1992
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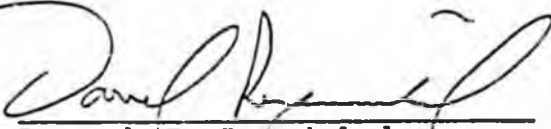
impact associated with Revenue's increased responsibility. Law will find it easier to recover debts owed to the state, and even debtors will benefit, in that it is more likely that they will receive notice of an impending execution.


HB 291 and SB 254 are rare examples of legislation that benefits several state governmental entities by merely shifting responsibility in a mutually agreeable way. We urge you to bring these bills before your committees at your earliest convenience, and to give them your favorable consideration.

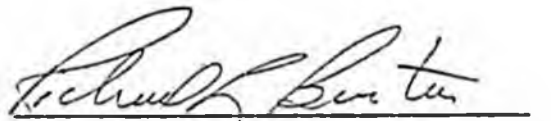
Sincerely,


Arthur H. Snowden, II
Alaska Court System


Charles E. Cole
Department of Law


Darrel J. Rexwinkel
Department of Revenue


Nancy Bear-Usara
Department of Administration


Richard L. Burton
Department of Public Safety