

SB

223

COMMITTEE REPORT

DATE: 3/22/91

FURTHER:

Date of 5-Day Notice: 2-13-92
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 2-20-92

Finance Committee considered SB 223

Assignments of the right to receive a permanent fund dividend; efd.

and recommended:

- replace with _____ CS _____
 - or adopt _____ CS _____
 - attached amendment(s)
 - _____ letter of intent adopted
- same title
 - new title
 - technical title change (HB only)

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S):
Dept/Date:

fiscal note(s) _____

zero fiscal note(s) _____
OR 2-20-92

appropriation-no fiscal note

APPROVES PREVIOUS:
Dept/Date:

fiscal note(s) _____

zero fiscal note(s) _____

SIGNING DO PASS:

J. Duncan
Al Bedard
Lynn Hoff
Michelle

OTHER RECOMMENDATIONS:

1. Bob Kunkel no rec 2. J. Vattich NO Rec
Co-Chairs: Signatures and Recommendations

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SB 223

Revision Date: February 20, 1992
Title: An Act relating to assignments of the right to receive a PFD
Sponsor: Senate Rules Committee
Requestor: Senate 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						
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						

Estimate of current year impact: See attached analysis.

ANALYSIS: See Attached.

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

Phone: 465-2323
Date: February 20, 1992

Approved by Commissioner: David [Signature]
Agency: Revenue

Date: 2/20/92

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

ALASKA DEPARTMENT OF REVENUE
PERMANENT FUND DIVIDEND DIVISION

SB 223 ANALYSIS

As of February 20, 1992

This legislation was introduced last year at the request of the Department of Revenue. It would place into statute 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 SB 223 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 division would be faced with the task of trying to process an extremely large number of assignments. It would be increasingly difficult to determine if applicants who assigned their dividend were eligible. Not only would the Department have to respond to more public inquiries and process more paperwork, the Department would have to refocus and increase its review effort to ensure ineligible applicants are not paid. This would adversely impact the Department's ability to conduct timely reviews and resolve appeals.

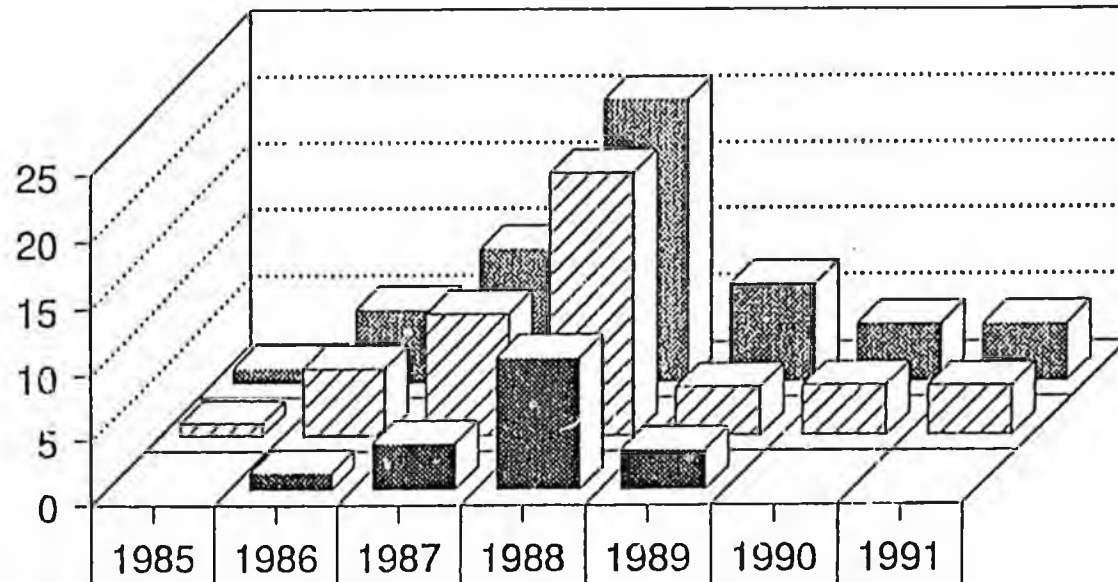
On December 18, 1991 the Department requested an opinion from the Attorney General as to whether or not this legislation would violate or be contrary to any constitutional or other legal provisions regarding the rights of individuals to contract. A copy of the Department of Law's December 31, 1991 opinion concluding there is no legal or constitutional impediment to a statute restricting the assignments of permanent fund dividends is attached. That opinion references HB 234, a bill identical to SB 223 introduced last year in the House.

In addition, we have attached a bar graph depicting assignment activity from 1985 through 1991.

PERMANENT FUND DIVIDEND ASSIGNMENTS

For 1985 - 1991 Dividend Years

Thousands



	1985	1986	1987	1988	1989	1990	1991
Total Assignments	1.047	5.401	9.907	21.132	7.248	4.261	4.256
Matched to File	0.985	5.153	9.243	19.783	3.732	3.847	3.779
Assignments to Buyer		1.282	3.567	10.123	3.041		

Assignments to Buyer
 Matched to File
 Total Assignments

As of January 16, 1992

SENATE BILL NO. 223

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 3/22/91

Referred: Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to assignments of the right to receive a permanent fund dividend; and
2 providing for an effective date."

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

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

5 Sec. 43.23.067. ASSIGNMENTS. (a) Except as provided in (b) of this
6 section, a person eligible to receive a permanent fund dividend may not assign the
7 right to the dividend. An attempted assignment of the right to receive a permanent
8 fund dividend is against public policy and is void.

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

11 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

WALTER J. HICKEL
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 22, 1991

223

The Honorable Richard I. Eliason
President of the Senate
P.O. Box V
Juneau, AK 99811

Dear President Eliason:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill limiting assignments of permanent fund dividends to government agencies and courts. This bill would merely codify in statute a current regulation of the Department of Revenue, 15 AAC 23.220(a).

The regulation limiting assignments of permanent fund dividends was adopted by the Department of Revenue for three reasons:

1. to end the usurious purchase of dividends by commercial buyers for extraordinary discounts;
2. to reduce the incentive to file fictitious or duplicate applications; and
3. to reduce the number of assignments, which were creating an administrative burden for the department.

15 AAC 23.220(a) is currently being challenged in court for lack of statutory authority. If the state loses the litigation and the regulation is found to be invalid, absent the enactment of this proposed legislation there could be a significant disruption to the 1991 and subsequent year programs. In order to prevent such a disruption, I am recommending the prompt adoption of this legislation, and I urge your support of it.

Sincerely,

A large, stylized handwritten signature of Walter J. Hickel in black ink.

Walter J. Hickel
Governor

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

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

February 3, 1992

The Honorable Pat Pourchot
Co-Chair, Senate Finance Committee
Alaska State Senate
State Capital
Juneau, AK 99801-1182

Dear Senator Pourchot:

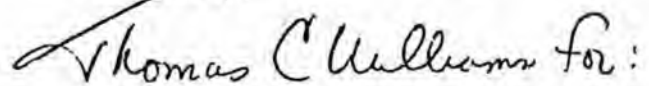
The Department requests a hearing before the Senate Finance Committee on SB 223, an act relating to assignments of the right to receive a Permanent Fund Dividend (PFD).

This legislation was requested by the Department of Revenue and approved for introduction last year by the Department of Law. Identical legislation was introduced in the House last year as HB 234. It was heard by the House State Affairs Committee and passed out to the next committee of referral, the House Judiciary Committee.

On November 15, 1991 Superior Court Judge Dana Fabe struck down our regulation prohibiting PFD assignments to anyone other than a government agency. Therefore, passage of SB 223 or HB 234 early in this legislative session is very important. It would be in the State's best interest if this legislation were enacted by March 31, 1992, before the beginning of the 1992 PFD filing period. Accordingly, we would very much appreciate it if you would schedule a hearing on SB 223 at the Committee's earliest convenience.

We have forwarded an updated fiscal note dated January 31, 1992. Please do not hesitate to contact PFD Division Director Tom Williams at 465-2323 if you require more information regarding this legislation. Thank you very much.

Sincerely,

 Thomas C. Williams for:

Darrel J. Rexwinkel
Commissioner

DJR:TCW:bro
92-029

cc: Thomas C. Williams, Director
Permanent Fund Dividend Division
Alaska Department of Revenue

Tracy McGill, Legislative Liaison
Department of Revenue

ALASKA DEPARTMENT OF REVENUE
PERMANENT FUND DIVIDEND DIVISION

SB 223 ANALYSIS

As of January 31, 1992

This legislation was requested by the Department of Revenue and approved for introduction last year by the Department of Law.

In 1989 the Department adopted 15 AAC 23.220(a) which prohibited PFD assignments to anyone other than a government agency in order to:

- 1) end the usurous arbitrage of Permanent Fund Dividends by commercial buyers who had applicants assign them their dividends in return for an immediate discounted payment;
- 2) stem the increasing temptation for individuals to file fictitious and duplicate applications in order to sell them; and
- 3) stem the substantial increase in the number of assignments the Department was having to process.

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 SB 223 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 division would be faced with the task of trying to process an extremely large number of assignments. It would be increasingly difficult to determine if applicants who assigned their dividend were eligible. Consequently, the integrity of the program could be seriously jeopardized.

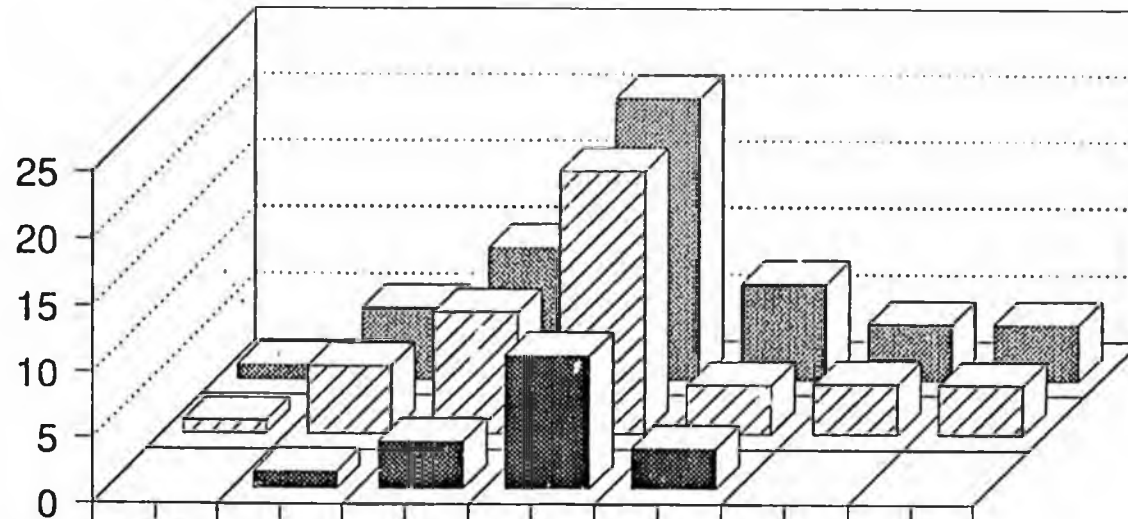
On December 18, 1991 the Department requested an opinion from the Attorney General as to whether or not this legislation would violate or be contrary to any constitutional or other legal provisions regarding the rights of individuals to contract. A copy of the Department of Law's December 31, 1991 opinion concluding there is no legal or constitutional impediment to a statute restricting the assignments of permanent fund dividends is attached. That opinion references HB 234, a bill introduced last year in the House identical to SB 223.

In addition we have attached a bar graph depicting assignment activity from 1985 through 1991.

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Assignments to Buyer
 Matched to File
 Total Assignments

As of January 16, 1992

MEMORANDUM

RECEIVED

JAN 3 1992

State of Alaska

Department of Law

STATE OF ALASKA
DEPT. OF REVENUE
PFD DIVISION

TO:

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

DATE: December 31, 1991

FILE NO.:

663-92-0286

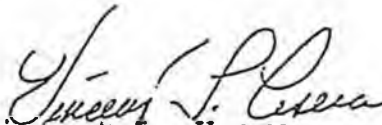
TEL NO.:

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 Asscc. 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. Eagerton*, 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.

VLU/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.