

SENATE FINANCE COMMITTEE REPORT

DATE: 4/24/92

FURTHER:

DATE TURNED
INTO OFFICE:

5/5/92

The Finance Committee considered SENATE BILL NO. 254

"An Act relating to the exemption for permanent fund dividends from the collection of debts, to the collection of debts by execution on dividends, and to claims on a dividend; and providing for an effective date."

and recommends:

replace with _____ CS _____ (FINANCE)
or adopt previous _____ CS SB 254 (JUD)
 attaches amendment(s)

same title
 new title
 technical
title change
(HB only)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES: Dept/Date

zero fiscal notes _____

fiscal notes _____

appropriation--no fiscal note

PREVIOUS FISCAL NOTES: Dept/Date

zero fiscal notes DOR 2/12/92

AK COURTSYS 2/11/92

fiscal notes _____

DO PASS:

Jim Duncan
Tom Holton
Paul Smith
Kirk Deh
Pat Hammett
1. *Pat Hammett*
Co-Chair: Signature/Recommendation

OTHER RECOMMENDATIONS:

2. _____
Co-Chair: Signature/Recommendation

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.

000 000	000 768
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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						
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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

67UB
Comte Aide (initial)

Prepared by: C. S. Christensen III, Staff Counsel

Division: Alaska Court System

Phone: 264-8228

Date: 02/11/92

Approved by: Arthur H. Snowden, II, Administrative Director

Agency: Alaska Court System

Date: 02/11/92

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

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.

Estimate of current year impact: None.

4/24 67LB
date Comte Aide (initial)

ANALYSIS: None required.

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

Phone: 465-2323
Date: February 12, 1992

Approved by Commissioner: David Rapch
Agency: Revenue

Date: 2/12/92

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

CS FOR SENATE BILL NO. 254 (JUDICIARY)
 IN THE LEGISLATURE OF THE STATE OF ALASKA
 SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/24/92
 Referred: Finance

Sponsor(s): SENATE JUDICIARY COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

9 (2) health aids reasonably necessary to enable the individual or a dependent to
 10 work or to sustain health;

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

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

- 1 (5) benefits paid or payable as a longevity bonus under AS 47.45;
2 (6) compensation or benefits paid or payable and exempt under federal law;
3 (7) liquor licenses granted under AS 04;
4 (8) limited entry permits granted under AS 16.43, except as provided in that
5 chapter;
6 (9) tuition credits under an advance college tuition payment contract authorized
7 under AS 14.40.809(a);
8 (10) that portion of a permanent fund dividend exempted under
9 AS 43.23.065(a).

10 * Sec. 2. AS 09.38.030(b) is amended to read:

11 (b) An individual who does not receive earnings either weekly, semi-monthly or monthly
12 is entitled to a maximum exemption for the aggregate value of cash and other liquid assets
13 available in any month of \$1,400, except as provided in AS 09.38.050. The term "liquid assets"
14 includes deposits, securities, notes, drafts, accrued vacation pay, refunds, prepayments, and
15 receivables, but does not include permanent fund dividends before or after receipt by the
16 individual.

17 * Sec. 3. AS 43.23.065 is amended to read:

18 Sec. 43.23.065. EXEMPTION OF AND LEVY ON PERMANENT FUND DIVIDENDS.

19 (a) Except as provided in (b) of this section, 45 percent of the annual permanent fund dividend
20 payable to an individual is exempt from levy, execution, garnishment, attachment, or any other
21 remedy for the collection of debt. This exemption applies to an eligible individual's permanent
22 fund dividend both before and after payment is made to the individual. No other exemption
23 applies to a dividend. Notwithstanding other laws, a writ of execution upon a dividend that
24 has not been delivered to the debtor may be served on the commissioner by certified mail,
25 return receipt requested. Upon receipt of a writ by certified mail, return receipt requested,
26 the commissioner shall deliver that portion of the dividend executed upon to the court along
27 with the case name and number.

28 (b) An exemption is not available under this section for permanent fund dividends taken
29 to satisfy

30 (1) child support obligations required by court order or decision of the child
31 support enforcement agency under AS 25.27.140 - 25.27.220:

1 (2) court ordered restitution under AS 12.55.045 - 12.55.051 or 12.55.100;

2 (3) claims on defaulted scholarship loans under AS 43.23.067;

3 (4) court ordered fines;

4 (5) [OR (3)] a debt owed by an eligible individual to an agency of the state,
5 unless the debt is contested and an appeal is pending, or the time limit for filing an appeal has
6 not expired.

7 (c) Claims listed in (b) of this section have priority in the order listed over other claims
8 on a permanent fund dividend whether payments are sought through legal actions for the
9 collection of debts or through assignments from the debtor.

10 * Sec. 4. AS 43.23.065 is amended by adding a new subsection to read:

11 (d) An assignment of or levy, execution, garnishment, attachment, or other remedy for
12 the collection of debt applied to a dividend for a year may not be accepted by the department
13 before April 1 of that same year. AS 09.38.080(c) and 09.38.085 do not apply to a levy on a
14 permanent fund dividend. The department shall include the case number with a dividend or
15 portion of a dividend transmitted to the court in response to a writ of execution or other court
16 order. At the time payment is made to the court, the department shall send to the individual at
17 the address provided in the individual's dividend application and to the court that issued the writ
18 or order a notice that contains

19 (1) notification that all or part of the individual's dividend has been seized under
20 a writ of execution or court order;

21 (2) the name and address of the court that issued the writ or order;

22 (3) the case number for which the writ or order was issued;

23 (4) the amount seized under the writ or order; and

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

26 * Sec. 5. AS 43.23.067(b) is amended to read:

27 (b) The Alaska Commission on Postsecondary Education [UPON RECEIPT OF A
28 CLAIM UNDER (a) OF THIS SECTION THE DEPARTMENT] shall notify the individual of
29 a [THE] claim under (a) of this section. The notice shall be sent to the address provided in the
30 individual's permanent fund dividend application and must provide the following information:

31 (1) the amount of the claim; and

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

5 * Sec. 6. AS 43.23.067(c) is amended to read:

6 (c) AS 44.62.330 - 44.62.630 apply to a hearing requested by an individual under (b)(2)
7 of this section. [IF A REQUEST FOR A HEARING IS NOT RECEIVED BY THE
8 DEPARTMENT WITHIN THE REQUIRED TIME LIMIT, THE DEPARTMENT SHALL PAY
9 TO THE ALASKA COMMISSION ON POSTSECONDARY EDUCATION THE AMOUNT OF
10 THE PERMANENT FUND DIVIDEND THAT DOES NOT EXCEED THE AMOUNT OF THE
11 CLAIM.]

12 * Sec. 7. This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. CS SB 254 (JUDICIARY)

Revision Date: April 23, 1992
Title: An Act relating to claims on permanent fund dividends
Sponsor: Senate Judiciary Committee
Requestor: Senate Finance 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						

Estimate of current year impact: None.

ANALYSIS: None required.

Prepared By: for Thomas C. Williams

Phone: 465-2323

Division: Permanent Fund Dividend Division

Date: April 23, 1992

Approved by Commissioner: [Signature]

Agency: Revenue

Date: 4/23/92

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

4-28-92

New fiscal note



JUDICIARY CS FOR SENATE BILL 254

SECT 1: Amends AS 09.38.015 (a) which pertains to exemptions on property, to clarify that an individual is entitled to an exemption of a portion of a permanent fund dividend under AS 43.23.064 (a).

SECT 2: Amends AS 09.38.030 (b) to clarify that liquid assets exemptions do not apply to a permanent fund dividend.

SECT 3: Again clarifies that the liquid assets exemption does not apply to an individual's permanent fund dividend. Adds language to allow writs of execution on a dividend to be served on the Commissioner of the Department of Revenue by certified mail. Upon receipt of a writ, the commissioner will deliver that portion of the dividend executed upon to the Alaska Court System. Places claims on defaulted scholarship loans third in priority to execute on dividends. Adds court ordered fines to the same priority list of exemptions that are not included in those exemptions that are limited to a 45 percent limitation. Clarifies that the priorities listed in this subsection have priority over other claims whether payments are sought through legal actions or through assignments from debtors.

SECT 4: Maintains the existing practice of the Department of Revenue of not accepting assignments, executions, levys, garnishments, attachments before April 1 of the dividend year. Provides that AS 09.38.080 (c) and 09.38.085, relating to notices, do not apply to a levy on a dividend. Instead, the Department of Revenue will supply notice and this section delineates the information that will be included in the notice.

SECT 5: Clarifies that the Postsecondary Education Commission rather than to the Department of Revenue will notify an individual of a claim against a dividend and that requests for hearings related to these matters will be sent to the Commission rather than the Department of Revenue.

SECT 6: Conforms changes in Section 5 to AS 43.23.067 (c).

SECT 7: Effective date.

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.

SECTIONAL ANALYSIS

- SB 254 "An Act relating to the exemption for permanent fund dividends from the collection of debts, to the collection of debts by execution on dividends, and to claims on 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. Conforms AS 14.43.120(i) with the change made in section 4 of the bill, by renumbering the statutory reference from AS 43.23.065(b)(3) to (b)(4).
- Section 4. Amends AS 43.23.065 in three 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 listed in AS 43.23.065(b) have priority over other debts whether payment is sought through legal action or through assignment.
- Section 5. 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.
- Section 6. 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 7. Amends AS 43.23.067(c) to conform with the amendment made by section 6.
- Section 8. 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

April 30, 1992

The Honorable Jay Kerttula, Co-Chair
The Honorable Pat Pourchot, Co-Chair
Senate Finance Committee
P.O. Box V
Juneau, Alaska 99811

Dear Senator Kerttula and Senator Pourchot:

I am writing to request that the Finance 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

The Honorable Jay Kerttula
The Honorable Pat Pourchot
April 28, 1992
Page 2

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

The Honorable Jay Kerttula
The Honorable Pat Pourchot
April 28, 1992
Page 3

case of execution, or if the listed priorities also apply to 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

Memorandum

Alaska Court System

TO: Chris Christensen
Staff Counsel

DATE: April 10, 1991

FROM: Susan Miller
Special Projects

SUBJ: Brief Description of
PFD Executions Bill

This bill has two main purposes:

1. to improve the procedure for giving notice to debtors when their permanent fund dividends are seized, and
2. to resolve a question concerning the exemptions to which the debtors are entitled.

The first purpose is accomplished in Section 5 of the bill by requiring the Department of Revenue, rather than the creditor, to send notice of the seizure to the person whose dividend is seized. The department is already sending a similar notice. This bill merely increases the amount of information in the notice. This notice will be more likely to reach the right person because the department is much more likely to have the most current address for the person than the creditor is.

The second purpose is accomplished in Sections 2 and 4 of the bill. These sections confirm that the only exemption available for the PFD is the 45% exemption granted by the PFD exemption statute, AS 43.23.065. That is, the liquid assets exemption in AS 09.38.030(b) does not apply to these dividends. I understand that this is the position currently taken by most, but possibly not all, judges.

In addition, the bill does the following:

3. Section 4 will:
 - a. allow a person's entire dividend (not just 55% of it) to be seized to pay a court ordered fine, whether the fine is owed to the state or to a municipality, and
 - b. give court ordered fines priority over other debts owed to state agencies when a PFD is seized.
4. Section 4 of the bill also amends the statute which establishes the priority of claims against the PFD to make it clear that a voluntary assignment to pay one of the listed debts has the same priority as an involuntary seizure to satisfy the debt.

Bill Analysis

TO: Chris Christensen
RE: PFD Bill

Page 2

5. Section 6 and 7 of the bill make a minor revision in AS 43.23.067, the statute which defines the procedure for seizing a PFD for nonpayment of a student loan. These changes will merely conform the statute to the current practice of the Department of Revenue and the Commission on Postsecondary Education. Specifically, the changes make it clear that:
 - a. any request for hearing on the seizure of a dividend must be made to the commission, not to the department, and
 - b. the department need not hold the dividend for 30 days to see if a request for hearing will be filed.
6. Sections 1 and 3 of the bill make essentially "technical changes as follows:
 - a. Section 1 adds the AS 43.23.065 PFD exemption to the list of exemptions in the Exemptions Act, AS 09.38.015.
 - b. Section 3 conforms a statute citation in AS 14.43.120 to an amendment made in Section 4 of the bill.

SM:co

cc: Arthur H. Snowden, II

Susan



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
Page 2

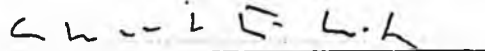
impact associated with Revenue's increased responsibility. Law will find it easier to recover debts owed to the state, and even debtors will benefit, in that it is more likely that they will receive notice of an impending execution.

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.

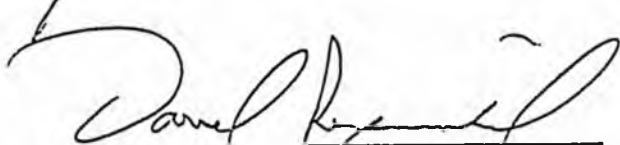
Sincerely,



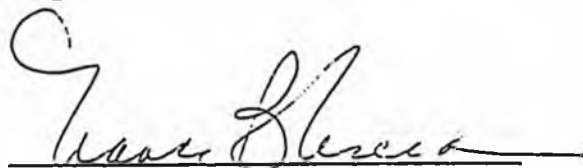
Arthur H. Snowden, II
Alaska Court System



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



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

January 17, 1992

The Honorable Rick Halford
Chairman, Senate Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

Dear Senator Halford:

I am writing to 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 of seizure 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 5).

2. As noted above, AS 43.23.065 provides that 45% of a dividend is exempt from execution for most debts. However, AS 9.38.030(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 exemptions does not apply to dividends (sections 2 and 4).
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 priority. While court-ordered fines (such as a fine imposed as the penalty in a criminal case) are owed to the state, some argue that they are not "a debt owed . . . to a state agency" and thus are subject to the exemption. Also, criminal fines imposed by a municipality are subject to the exemption. SB 254 corrects this problem by adding court-ordered fines for either state or municipal violations to the list of exemptionless debts (section 4).
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 voluntary assignments of a dividend. SB 254 provides that the priorities apply in both cases (section 4).

The Honorable Rick Halford
January 17, 1992
Page 3

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

CSC:bh

SENATE BILL NO. 254

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE BY REQUEST

Introduced: 4/17/91
Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the exemption for permanent fund dividends from the collection of
2 debts, to the collection of debts by execution on dividends, and to claims on a dividend;
3 and providing for an effective date."

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

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

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

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

8 (2) health aids reasonably necessary to enable the individual or a dependent to
9 work or to sustain health;

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

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

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

1 (6) compensation or benefits paid or payable and exempt under federal law;
2 (7) liquor licenses granted under AS 04;
3 (8) limited entry permits granted under AS 16.43, except as provided in that
4 chapter;

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

7 * Sec. 2. AS 09.38.030(b) is amended to read:

8 (b) An individual who does not receive earnings either weekly, semi-monthly or monthly
9 is entitled to a maximum exemption for the aggregate value of cash and other liquid assets
10 available in any month of \$1,400, except as provided in AS 09.38.050. The term "liquid assets"
11 includes deposits, securities, notes, drafts, accrued vacation pay, refunds, prepayments, and
12 receivables, but does not include permanent fund dividends before or after receipt by the
13 individual.

14 * Sec. 3. AS 14.43.120(i) is amended to read:

15 (i) If a loan is in default, the commission shall notify the borrower that repayment of the
16 remaining balance is accelerated and due by sending the borrower a notice by registered or
17 certified mail. The permanent fund dividend of a borrower may be taken under
18 AS 43.23.065(b)(4) [AS 43.23.065(b)(3)] to satisfy the balance due on the defaulted loan.

19 * Sec. 4. AS 43.23.065 is amended to read:

20 Sec. 43.23.065. EXEMPTION OF AND LEVY ON PERMANENT FUND DIVIDENDS.

21 (a) Except as provided in (b) of this section, 45 percent of the annual permanent fund dividend
22 payable to an individual is exempt from levy, execution, garnishment, attachment, or any other
23 remedy for the collection of debt. This exemption applies to an eligible individual's permanent
24 fund dividend both before and after payment is made to the individual. No other exemption
25 applies to a dividend.

26 (b) An exemption is not available under this section for permanent fund dividends taken
27 to satisfy

28 (1) child support obligations required by court order or decision of the child
29 support enforcement agency under AS 25.27.140 - 25.27.220;

30 (2) court ordered restitution under AS 12.55.045 - 12.55.051 or 12.55.100; [OR]

31 (3) court ordered fines; or

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

3 (c) Claims listed in (b) of this section have priority in the order listed over other claims
4 on a permanent fund dividend whether payments are sought through legal actions for the
5 collection of debts or through assignments.

6 * Sec. 5. AS 43.23.065 is amended by adding a new subsection to read:

7 (d) AS 09.38.080(c) and 09.38.085 do not apply to a levy on a permanent fund dividend.
8 The department shall include the case number with a dividend or portion of a dividend
9 transmitted to the court in response to a writ of execution. At the time payment is made to the
10 court, the department shall send to the individual at the address provided in the individual's
11 dividend application and to the court that issued the writ a notice that contains

12 (1) notification that all or part of the individual's dividend has been seized under
13 a writ of execution;

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

15 (3) the case number for which the writ was issued;

16 (4) the amount seized under the writ; and

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

19 * Sec. 6. AS 43.23.067(b) is amended to read:

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

23 (1) the amount of the claim; and

24 (2) notice that the amount of the permanent fund dividend that does not exceed
25 the amount of the claim shall be paid to the Alaska Commission on Postsecondary Education and
26 that the [UNLESS THE COMMISSION RELEASES THE CLAIM OR THE] individual
27 [REQUESTS A HEARING] within 30 days after the date the notice is sent by the department
28 may request the commission to hold a hearing on the claim.

29 * Sec. 7. AS 43.23.067(c) is amended to read:

30 (c) AS 44.62.330 - 44.62.630 apply to a hearing requested by an individual under (b)(2)
31 of this section. [IF A REQUEST FOR A HEARING IS NOT RECEIVED BY THE

1 DEPARTMENT WITHIN THE REQUIRED TIME LIMIT, THE DEPARTMENT SHALL PAY
2 TO THE ALASKA COMMISSION ON POSTSECONDARY EDUCATION THE AMOUNT OF
3 THE PERMANENT FUND DIVIDEND THAT DOES NOT EXCEED THE AMOUNT OF THE
4 CLAIM.]

5 * Sec. 8. This Act takes effect immediately under AS 01.10.070(c).

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 4/17/91

FURTHER Finance

Date of 5-Day Notice: 2/6/92
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 4-24-92

Judiciary Committee considered SB 254

Claims on permanent fund dividends
Exemption for permanent fund dividends from the collection of debts, to the collection of debts by execution on dividends, and to claims on a dividend; efd.

and a majority of the committee recommends it be replaced with

and recommended:

- replace with _____ CS SB 254 (JUD) same title
- attached amendment(s) new title
- _____ letter of intent adopted

- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to _____

2 of 1's

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

Department(s)/Date:

- fiscal note(s) _____
- _____
- _____

- zero fiscal note(s) _____
- REVIEW 2/11/92 _____
- CONF 2/12/92 _____

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING ~~DO~~ PASS:

[Signature]

[Signature]

OTHER RECOMMENDATIONS:

Rich Halford *do pass*

Chair: Signature and Recommendation