

SB327

# SENATE FINANCE COMMITTEE REPORT

DATE: 1/31/92

FURTHER: R/O SFC 2-11-92

DATE TURNED INTO OFFICE: 2-11-92

The Finance Committee considered SENATE BILL NO. 327

"An Act relating to qualifications for permanent fund dividends, to dividend applications, and to recovery of an improperly paid dividend; and providing for an effective date."

and recommends:

replace with \_\_\_\_\_ CS SB 327 (FINANCE)  
or  adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)  
 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 137.4 DOR 1-31-92

appropriation--no fiscal note

**PREVIOUS FISCAL NOTES:** Dept/Date

zero fiscal notes \_\_\_\_\_

fiscal notes \_\_\_\_\_

**DO PASS:**

Jim Duncan

Al Adams

Lynn Hoffman

Paul Stubby

Pat Funch

1. Pat Funch do pass  
Co-Chair: Signature/Recommendation

**OTHER RECOMMENDATIONS:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2. Pat Funch do pass  
Co-Chair: Signature/Recommendation

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. CS SB 327 (SA)

Revision Date: January 31, 1992  
Title: An Act relating to qualifica-  
tions for permanent fund dividends  
Sponsor: Craft, Pourchot  
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	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: This is an amended fiscal note. The fiscal impact of the provisions of Sections 4, 6, 12, and 14, which amend the eligibility period to a calendar year, were inadvertently omitted in the January 29, 1992 fiscal note. See attached for additional analysis.

Prepared By: Thomas C. Williams Phone: 465-2323  
Division: Permanent Fund Dividend Division Date: January 31, 1992

Approved by Commissioner: David Reynolds Date: 1/31/92  
Agency: Revenue

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

page 1 of 3

Changes in CS SB 327 (Fin)  
reflect NO FISCAL CHANGE from the original  
fiscal note. This fiscal note is appropriate.  
2-1-92 MU  
date Comte Aide (initial)

ALASKA DEPARTMENT OF REVENUE  
PERMANENT FUND DIVIDEND DIVISION  
CS SB 327 (SA) ANALYSIS  
As of January 31, 1992

I. FISCAL IMPACT OF CONVERTING TO A CALENDAR YEAR ELIGIBILITY PERIOD  
(SECTIONS 4, 6, 12 AND 14).

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 1993 and subsequent year filing periods up three months to January 2 through March 31, the 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  
CS SB 327 (SA) ANALYSIS  
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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 15.

Section 15 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-
500 applications	0.2	-0-
<u>Postage Costs</u>		
15,000 notification letters @ \$0.29	2.9	1.4
500 applications @ \$0.29	<u>-0-</u>	<u>0.2</u>
<u>Total Contractual Services</u>	<u>\$ 3.4</u>	<u>\$ 1.6</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.

Final

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

BY THE SENATE FINANCE COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATORS CRAFT, Pourchot, Rodey, Sturgulewski, Zharoff

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 is amended by adding a new section to article 3 to read:

6 Sec. 34.45.270. PERMANENT FUND DIVIDENDS. Notwithstanding other provisions  
7 of law, a permanent fund dividend warrant returned to the department as undeliverable or not  
8 presented for payment within the two-year period specified in AS 37.05.180 is considered  
9 abandoned and the money represented by the warrant shall be retained in the dividend fund  
10 established under AS 43.23.045 to be expended or distributed according to regulations adopted  
11 by the commissioner of revenue.

12 \* Sec. 3. AS 37.05.180 is amended to read:

13 Sec. 37.05.180. TWO-YEAR LIMITATION ON PAYMENT OF WARRANTS. A [NO]  
14 warrant upon the state treasury may not be [IS] paid unless presented at the office of the

1 commissioner of revenue within two years of the date of its issuance. A warrant [ALL  
2 WARRANTS] not presented within that time is [ARE] considered paid and money held at the  
3 expiration of that time in a special fund or account for the payment of the warrant shall be  
4 transferred to the general fund, except where the warrant is for the payment of a permanent  
5 fund dividend or where transfer is prohibited by the federal government for state participation  
6 in a federal program.

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

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

10 (1) the individual applies to the department;

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

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

15 (4) [(3)] the individual has been physically present in the state at some time  
16 during the prior [PERIOD BEGINNING JULY 1] two calendar years before the current  
17 dividend year; and

18 (5) the individual is

19 (A) a citizen of the United States;

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

21 States;

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

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

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

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

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

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

2 (c) A parent, guardian, or other authorized representative may claim a permanent fund  
3 dividend on behalf of an unemancipated minor or on behalf of a disabled or an incompetent  
4 individual who is eligible to receive a payment under this section. Notwithstanding (a)(2) - (4)  
5 of this section, a minor is eligible for a dividend if, during the 24 months immediately preceding  
6 the current dividend year, the minor was born to or adopted by an individual who is eligible for  
7 a dividend for the current dividend year.

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

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

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

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

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

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

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

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

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

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

5 I CERTIFY THAT

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

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

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

(SIGNATURE OF INDIVIDUAL,  
PARENT, GUARDIAN, OR OTHER  
AUTHORIZED REPRESENTATIVE)]

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

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

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

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

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

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

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

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

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

(2) subject to AS 43.23.011, adopt regulations under the Administrative Procedure Act (AS 44.62) that establish procedures and time limits for claiming a permanent fund dividend; the department shall determine [SET THE TIME LIMIT FOR APPLICATIONS FOR PERMANENT FUND DIVIDENDS SO THAT] the number of eligible applicants [IS DETERMINED] by October 1 of the year for which the dividend is declared and pay the

1 [PERMANENT FUND] dividends by December 31 of that year [FOR A YEAR ARE PAID  
2 BEFORE APRIL 30 OF THE YEAR FOLLOWING THAT YEAR];

3 (3) adopt regulations under the Administrative Procedure Act (AS 44.62) that  
4 establish procedures and time limits for an individual upon emancipation or upon reaching  
5 majority to apply for permanent fund dividends not received during minority because the parent,  
6 guardian, or other authorized representative did not apply on behalf of the individual;

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

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

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

14 (7) adopt regulations that establish procedures for the parent, guardian, or other  
15 authorized representative of a disabled individual to apply for prior year permanent fund  
16 dividends not received by the disabled individual because no application was submitted on behalf  
17 of the individual.

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.

7-LS1663S ✓  
Cook  
2/11/92

*FIN GS  
Adopted with  
amendment to  
change 1993  
application  
period and  
set application  
period for  
subsequent  
years.  
See highlights.*

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

**BY THE SENATE FINANCE COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): SENATORS CRAFT, Pourchot, Rodey, Sturgulewski, Zharoff**

**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:**

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**4 what the legislature has always intended the definition to be.**

**5 \* Sec. 2. AS 34.45 is amended by adding a new section to article 3 to read:**

**6 Sec. 34.45.270. PERMANENT FUND DIVIDENDS.** Notwithstanding other provisions  
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13 calendar year [12 CONSECUTIVE MONTHS] immediately preceding January 1 [APRIL 1]  
14 of the current dividend year; [AND]

15 (4) [(3)] the individual has been physically present in the state at some time  
16 during the prior [PERIOD BEGINNING JULY 1] two calendar years before the current  
17 dividend year; and

18 (5) the individual is

19 (A) a citizen of the United States;

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21 States;

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11 or part of the previous calendar year [FISCAL YEAR ENDING JUNE 30 OF THE CURRENT  
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13 APPLIES WHETHER OR NOT THE INDIVIDUAL HAS APPLIED FOR THE DIVIDEND.]

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9 PHYSICALLY PRESENT IN THE STATE OF ALASKA AT SOME TIME DURING  
10 THE PERIOD BEGINNING JULY 1 TWO YEARS BEFORE THE DATE OF  
11 APPLICATION AND ENDING ON THE DATE OF THIS APPLICATION UNLESS  
12 THIS REQUIREMENT HAS BEEN WAIVED UNDER AS 43.23.005(f); OR

13 ( ) (NAME), THE INDIVIDUAL ON WHOSE BEHALF I AM APPLYING, IS A  
14 STATE RESIDENT ON THE DATE OF THIS APPLICATION, HAS BEEN A STATE  
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17 THE STATE OF ALASKA AT SOME TIME DURING THE PERIOD BEGINNING  
18 JULY 1 TWO YEARS BEFORE THE DATE OF APPLICATION AND ENDING ON  
19 THE DATE OF THIS APPLICATION UNLESS THIS REQUIREMENT HAS BEEN  
20 WAIVED UNDER AS 43.23.005(f).

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

1

2

(SIGNATURE OF INDIVIDUAL,  
PARENT, GUARDIAN, OR OTHER  
AUTHORIZED REPRESENTATIVE)]

3

4

5

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

6

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

10

11

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

12

(2) six years after the improper payment is sent if the commissioner

13

determines that the individual exercised gross negligence or recklessly disregarded a

14

material fact in connection with a false statement made in an application [10 YEARS

15

AFTER THE IMPROPER PAYMENT. IF NOTICE IS NOT SENT WITHIN THE 10-YEAR

16

PERIOD, PROCEEDINGS MAY NOT BE COMMENCED IN COURT FOR RECOVERY OF

17

THE IMPROPER PAYMENT].

18

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

19

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

24

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

25

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

26

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

27

(2) subject to AS 43.23.011, adopt regulations under the Administrative

28

Procedure Act (AS 44.62) that establish procedures and time limits for claiming a permanent fund

29

dividend; the department shall determine [SET THE TIME LIMIT FOR APPLICATIONS FOR

30

PERMANENT FUND DIVIDENDS SO THAT] the number of eligible applicants [IS

31

DETERMINED] by October 1 of the year for which the dividend is declared and pay the

1 [PERMANENT FUND] dividends by December 31 of that year [FOR A YEAR ARE PAID  
2 BEFORE APRIL 30 OF THE YEAR FOLLOWING THAT YEAR];

3 (3) adopt regulations under the Administrative Procedure Act (AS 44.62) that  
4 establish procedures and time limits for an individual upon emancipation or upon reaching  
5 majority to apply for permanent fund dividends not received during minority because the parent,  
6 guardian, or other authorized representative did not apply on behalf of the individual;

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

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

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

14 (7) adopt regulations that establish procedures for the parent, guardian, or other  
15 authorized representative of a disabled individual to apply for prior year permanent fund  
16 dividends not received by the disabled individual because no application was submitted on behalf  
17 of the individual.

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 shall be the period that begins January 1, 1993, and ends June 30, 1993.

9 \* Sec. 18. Sections 5 and <sup>9</sup>10 of this Act are retroactive to January 1, 1992.

10 \* Sec. 19. Sections 1 - 3, 5, <sup>9</sup>10, <sup>9 11 12 14 16 17</sup>12, 13, 15, 17(a), and 18 of this Act take effect immediately under  
11 AS 01.10.070(c). <sup>8 10 13 15</sup>

12 \* Sec. 20. Sections 4, 6 - 9, 11, 14, 16, and 17(b) of this Act take effect January 1, 1993.

Adopted AS  
(FIN)CS 2-5-92

Proposed by Senator Craft,

CHANGES MADE  
TO THE STA CS  
ARE HIGHLIGHTED

7-LS1663M  
Cook  
2/4/92

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

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. 14 of this Act only clarifies  
4 what the legislature has always intended the definition to be.

5 \* Sec. 2. AS 34.45 is amended by adding a new section to article 3 to read:

6 Sec. 34.45.270. PERMANENT FUND DIVIDENDS. Notwithstanding other provisions  
7 of law, a permanent fund dividend warrant returned to the department as undeliverable or not  
8 presented for payment within the two-year period specified in AS 37.05.180 is considered  
9 abandoned and the money represented by the warrant shall be retained in the dividend fund  
10 established under AS 43.23.045 to be expended or distributed according to regulations adopted  
11 by the commissioner of revenue. [Clarifying language - does not change legal  
substance according to Tim Cook]

12 \* Sec. 3. AS 37.05.180 is amended to read:

13 Sec. 37.05.180. TWO-YEAR LIMITATION ON PAYMENT OF WARRANTS. A [NO]  
14 warrant upon the state treasury may not be [IS] paid unless presented at the office of the

1 commissioner of revenue within two years of the date of its issuance. A warrant [ALL  
 2 WARRANTS] not presented within that time is [ARE] considered paid and money held at the  
 3 expiration of that time in a special fund or account for the payment of the warrant shall be  
 4 transferred to the general fund, except where the warrant is for the payment of a permanent  
 5 fund dividend or where transfer is prohibited by the federal government for state participation  
 6 in a federal program. *[deleted redundant language NOW IN SECTION 2, NO legal substance change]*

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

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

10 (1) the individual applies to the department;

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

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

15 (4) [(3)] the individual has been physically present in the state at some time  
 16 during the prior [PERIOD BEGINNING JULY 1] two calendar years before the current  
 17 dividend year; and

18 (5) the individual is

19 (A) a citizen of the United States;

20 (B) an alien lawfully admitted for permanent residence in the United  
 21 States;

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

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

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

26 (c) A parent, guardian, or other authorized representative may claim a permanent fund  
 27 dividend on behalf of an unemancipated minor or on behalf of a disabled or an incompetent  
 28 individual who is eligible to receive a payment under this section. Notwithstanding (a)(1) - (3)  
 29 of this section, a minor is eligible for a dividend if, during the 24 months immediately  
 30 preceding the current dividend year, the minor was born to or adopted by an individual  
 31 who is eligible for a dividend for the current dividend year. *[deleted previous language of minor eligibility - clarifies eligibility and broadens to include adoptees]*

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

2 (c) A parent, guardian, or other authorized representative may claim a permanent fund  
3 dividend on behalf of an unemancipated minor or on behalf of a disabled or an incompetent  
4 individual who is eligible to receive a payment under this section. Notwithstanding (a)(2) - (4)  
5 of this section, a minor is eligible for a dividend if, during the 24 months immediately preceding  
6 the current dividend year, the minor was born to or adopted by an individual who is eligible for  
7 a dividend for the current dividend year.

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

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

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

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

19 \* Sec. 9. AS 43.23.015(a) is amended to read:

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

28 \* Sec. 10. AS 43.23.015(b) is amended to read:

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

1 SUBSTANTIALLY THE FOLLOWING FORM:

2 I CERTIFY THAT

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

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

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

29 \_\_\_\_\_  
30 (SIGNATURE OF INDIVIDUAL,  
31 PARENT, GUARDIAN, OR OTHER

1

AUTHORIZED REPRESENTATIVE)]

2 \* Sec. 11. AS 43.23.035(b) is amended to read:

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

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

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

15 \* Sec. 12. AS 43.23.035 is amended by adding a new subsection to read:

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

21 \* Sec. 13. AS 43.23.055 is amended to read:

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

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

24 (2) adopt regulations under the Administrative Procedure Act (AS 44.62) that  
25 establish procedures and time limits for claiming a permanent fund dividend; the department shall  
26 set the time limit for applications for permanent fund dividends so that the number of eligible  
27 applicants is determined by October 1 of the year for which the dividend is declared and  
28 [PERMANENT FUND] dividends for a year are paid by December 31 of that year [BEFORE  
29 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 \* Sec. 14. AS 43.23.095(8) is amended to read:

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

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

22 (B) secondary or postsecondary education;

23 (C) military service;

24 (D) medical treatment;

25 (E) service in Congress;

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

27 (G) service in the Peace Corps;

28 \* Sec. 15. AS 43.23.005(b) is repealed.

29 \* Sec. 16. Notwithstanding permanent fund dividend application procedures or deadlines, a parent,  
30 guardian, or other authorized representative of a minor who qualified for a dividend for 1992 because  
31 of the amendment to AS 43.23.005(c), made in sec. 5 of this Act, may apply on behalf of the minor for

Leg. Finance-House & Senate Finance Comte Files (1991-1992) 886

1 the dividend by September 1, 1992. The Department of Revenue shall prepare a form for applications  
2 under this section.

3 \* Sec. 17. Sections 5 and 9 of this Act are retroactive to January 1, 1992.

4 \* Sec. 18. Sections 1 - 3, 5, 9, 11, 12, 14, 16, and 17 of this Act take effect immediately under  
5 AS 01.10.070(c).

6 \* Sec. 19. Sections 4, 6 - 8, 10, 13, and 15 of this Act take effect January 1, 1993.

*Sections renumbered to reflect changes in this version.*

submitted by Senator Craft

PROPOSED AMENDMENTS TO  
CS SB 327 (STA)

The blank CS in your bill packets reflect the following proposed amendments to CS SB 327 (STA):

1) The placement in statute of Section 2 is changed from AS 34.45.370 to AS 34.45.270, which was a question of organization. This section also subsumes some language from the State Affairs' CS Section 3.

2) Section 3 reflects the changes made in Section 2.

- Changes 1 & 2 were made at the request of the Department of Law for purposes of organization. They make no substantive changes to the State Affairs CS.

3) Section 5 makes the necessary drafting changes to include language exempting adopted children. This necessitates the addition of another section, Section 6, for technical reasons.

Delete language on Page 2, Section 5, Line 28 through Page 3, Section 5, Line 1 replacing it with: "Notwithstanding (a)(1) - (3) of this section, a minor is eligible for a dividend if, during the 24 months immediately preceding the current dividend year, the minor was born to or adopted by an individual who is eligible for a dividend for the current dividend year."

Add a new Section 6 to read: "AS 43.23.005(c) is repealed and reenacted to read: (c) A parent, guardian, or other authorized representative may claim a permanent fund dividend on behalf of an unemancipated minor or on behalf of a disabled or an incompetent individual who is eligible to receive a payment under this section. Notwithstanding (a)(2)-(4) of this section, a minor is eligible for a dividend if, during the two calendar years immediately preceding the current dividend year, the minor was born to or adopted by an individual who is eligible for a dividend for the current dividend year."

By adding this section all the other sections are moved to reflect this change.

# Alaska State Legislature

Sen. Pat Pourchot, Co-Chairman  
Sen. Jay Kerttula, Co-Chairman

Sen. Al Adams  
Sen. Jim Duncan  
Sen. Lyman F. Hoffman  
Sen. Dick Shultz  
Sen. Rick Uehling



State Capitol  
Juneau, Alaska 99801-1182  
907-465-3712

## Senate Finance Committee

### LETTER OF INTENT

### CSSB 327 (FIN)

### SENATE FINANCE COMMITTEE

An Act relating to permanent fund dividends.

It is the intent of the Legislature that the Department of Revenue, when setting deadlines for applications for the Permanent Fund Dividend, give due consideration to areas of Alaska where normal media avenues are not readily available. The purpose of this letter is to ensure that the Department does not exclude applicants who, for reasons beyond their control, might not receive notification of the change in application dates as spelled out in SB 327.

Senator Pourchot 2/11/92  
Co-Chair

Senator Kerttula 2/11/92  
Co-Chair

02/22/92 H(R/S)

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
<b>OPERATING</b>						
PERSONAL SERVICES	84.4					
TRAVEL						
CONTRACTUAL	53.0					
SUPPLIES						
EQUIPMENT						
LANDS & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	137.4	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>REVENUE</b>	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (DIVIDEND FUND)	137.4					
<b>TOTAL</b>	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 Reardon  
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 .992

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.

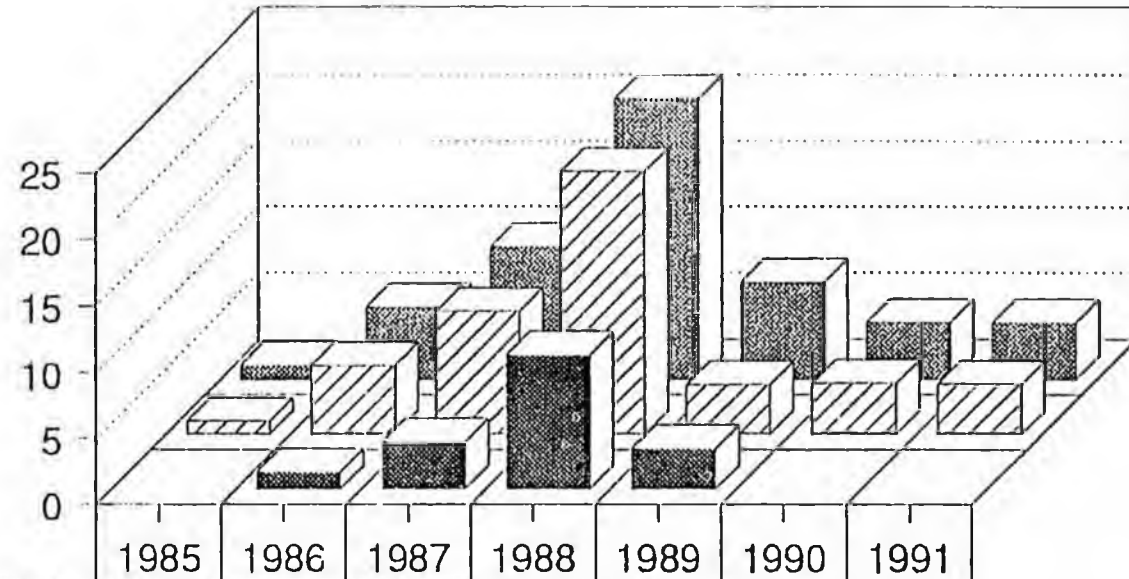
Without such legislation we face a significant disruption to the 1992 and subsequent year programs. The PFD Division would be faced with the task of trying to process an extremely large number of assignments and to respond to more public inquiries regarding applicants' ability to make assignments. In 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

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

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

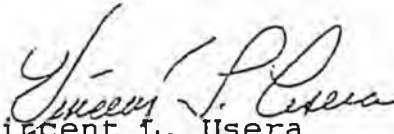
TEL. NO.:

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

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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." *Ec/les v. State*, 760 P.2d 846, 859 (Oregon 1988) (citing *Ogden v. Sanders*, 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

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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.*, 277 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

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. <sup>10/</sup> 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

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<sup>10/</sup> 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.

**DEPARTMENT OF REVENUE**

OFFICE OF THE COMMISSIONER

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

February 7, 1992

The Honorable Pat Pourchot  
Co-Chairman, Senate Finance Committee  
State Capitol  
Juneau, AK 99801-1182

Dear Senator Pourchot:

In last Wednesday's Senate Finance Committee's hearing on CSSB 327 (FIN), Senator Hoffman expressed some concerns that bush residents may not be familiar with the change in the 1993 filing period. As a result, they may file their application by the new March 31st filing deadline.

When CSSB 327 or similar legislation passes, the Department will take a variety of steps to advise residents across the state of the change in the 1993 eligibility and filing periods. The Department intends to:

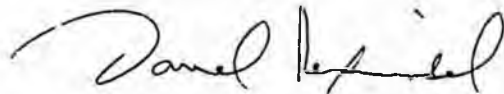
1. begin notifying individuals of the 1993 change during the 1992 filing period, depending when this legislation is enacted.
2. distribute public notice posters to Post Offices, Dividend Information Offices, Legislative Information Offices and Governor's Offices around the state and ask them to display the posters starting July 1, 1992.
3. print a notice on the 1992 dividend warrant envelopes and/or insert a notice with the applicants' 1992 dividend warrants;
4. starting in November, 1992, notify all rural communities that we will be offering rural assistance to correspond with the new January 2nd through March 31st filing period;
5. starting in December, 1992 and continuing through March 31, 1993, issue a number of press releases, public service information messages and RATNET announcements; and
6. starting in December, 1992 and continuing through March 31, 1993, advertise the change in newspapers and on radio across the state.

Senator Pat Pourchot  
February 7, 1992  
Page 2

In addition, for the 1993 dividend only, the Department will propose a regulation that will allow individuals who file applications after the normal March 31, 1993 filing deadline but by June 30, 1993 to be paid if they are otherwise eligible. All our publicity will emphasize the March 31, 1992 filing deadline. However, for this transition year only, this regulation will help ensure that those individuals who somehow didn't get word are not denied a dividend. In 1994, we do not intend to offer any such late filing provision.

Of course, the permanent fund dividend booklets will be distributed by mail starting January 2, 1993. We intend to display the new March 31st filing deadline very prominently on the 1993 booklet.

Sincerely,



Darrel J. Rexwinkel  
Commissioner

DJR:TCW:bro  
92-033

cc: Senator Lyman Hoffman

Senator Shirley Craft

Thomas C. Williams, Director  
Permanent Fund Dividend Division

## ALASKA STATE LEGISLATURE

119 North Cushman, #201  
Fairbanks, Alaska 99701  
(907) 452-4882  
Fax: 452-3254



Room 125, State Cap  
Juneau, Alaska 99801-1  
(907) 465-3  
Fax: 586-6.

**Shirley Craft**  
*Alaska State Senator*

November 25, 1991

Tom Williams, Director  
Permanent Fund Dividend Division  
Department of Revenue  
P.O. Box S-0462  
Juneau, Alaska 99811-0462

Dear Director Williams:

Thank you for the information you recently provided concerning the number of PFD applicants denied so far this year on the basis of the nonresidence of their spouse. I would like to have some clarification on this point and would like to request further statistical data.

1. You note that 787 applicants (727 female) have been denied so far this year. How many applications were "flagged" on the basis of the spouse not having applied?
2. How many are yet to be processed, based on replies to the spouse information questionnaire? When will this initial processing be finished?
3. Of those processed, what is the percentage denied?
4. Of those denied, how many have appealed the decision or requested an informal conference?
5. For FY 91, how many PFDs were denied? How many were denied based on "intent to remain" or "intent to return"? How many of those denied for reasons of "intent" were successfully appealed? How many are still being processed?

Williams  
11/25/91  
page 2.

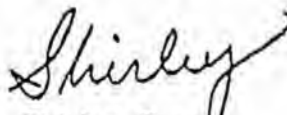
6. For FY 91, of 1990 PFD denials, how many led to a request for repayment of previous year's PFDs? How many of those have repaid past PFDs?

Also, some of my constituents have told me that they have only received notification of denial by telephone. Is it a common practice to notify applicants of denial by phone rather than mail? When do those notified by phone get an opportunity to request an informal conference? Must they wait until the denial is confirmed in writing? If so, when can they expect written notification?

Finally, individuals have related that when they indicated a desire to appeal the denial of their PFD, department personnel have told them that it could lead to a request for repayment of past PFDs with interest. As you may imagine, the implication of such a statement is that if one questions the department's decision, the department has the power to punish that person, and this is frightening. Is this type of intimidation sanctioned by the department?

It seems to me that we need to remember that the Permanent Fund Dividend is a benefit to which state residents are entitled, and that the Department of Revenue has the honor of serving Alaskans in delivery of this benefit. I hope that your division sees this function in that light and assists the public accordingly.

Sincerely,



Shirley Craft  
Alaska State Senator

SC:dga

WALTER J. HICKEL, GOVERNOR

STATE OFFICE BUILDING  
P.O. BOX S-0462  
JUNEAU, AK 99811-0462

**DEPARTMENT OF REVENUE**

*PERMANENT FUND DIVIDEND DIVISION*

December 12, 1991

The Honorable Shirley Craft  
Alaska State Senate  
119 North Cushman  
Fairbanks, AK 99701

Dear Senator Craft:

This is in response to your November 25, 1991 letter regarding the Division's nonresident spouse policy.

The following are my responses to your specifically enumerated questions.

1. We sent inquiries to 8,697 applicants who stated they had a spouse who had apparently not applied for a 1991 dividend.
2. As of December 10th, we had either not received or not yet processed responses from 1,779 applicants. Of those, we estimate that 70 have been received and are currently being processed. Processing will result in either an application being cleared for payment or placed into review.
3. Of those already processed 965 or 16% have been denied. However, recognizing that the Division incorrectly denied some applicants who were residents eligible for a PFD before they married a non-resident, the Division has taken steps to identify those individuals and overturn the original erroneous denials. Based on our initial review, relatively few of the original denials involved such individuals.

In addition, the Division is re-reviewing all other denials to determine if the applicant submitted sufficient evidence to support the assertion that they are a resident even though they have a non-resident spouse. The Division also intends to allow applicants who did not originally submit such evidence an opportunity to do so as part of the re-review/appeal process.

4. Of the 965 denied 346 or 36% have already appealed the denial requesting an informal conference. However, as indicated in my response to question #3, the Division will be re-reviewing all of those denials whether or not the applicant has already appealed.
5. As of December 10, 1991 the Division had denied 29,520 1990 PFD applications. Of those, we can only statistically identify 14 who were specifically denied for a lack of intent to remain permanently in Alaska. However, we only recently added the ability to identify denials for this particular reason. Consequently, we cannot statistically identify all such denials. None of these 14 we can identify have been successfully appealed. However, we do know of specific prior year cases which were successfully appealed.

POLICY - PFD DIVISION

Senator Shirley Craft  
December 12, 1991  
Page 2

6. As of December 10, 1991, 594 1990 applicants have been assessed for erroneously paid dividends. At least 2 of these assessments related to lack of an intent to remain in Alaska. Of those 594, 43 have been completely repaid.

While we may advise applicants who call and ask us about their status that they have been denied, all applicants who are denied a dividend are mailed a denial notice along with appeal forms. Since appeals must be in writing and should address the reason for denial, as a practical matter applicants need to wait until they actually receive a denial before they appeal.

With respect to your statement that some individuals are asserting that the Department is effectively intimidating people from appealing a denial of their dividend, neither I nor the Department sanction any such action. In fact, it is our policy to neither encourage or discourage people from appealing any denial. It is our policy to simply advise applicants of their right to appeal any denial.

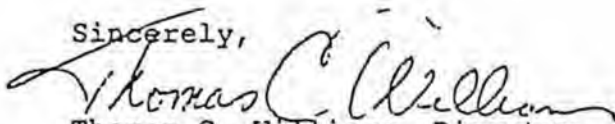
Given the seriousness of the assertion, I would very much appreciate it if you could provide me the name of any PFD Division employees who have made such statements. In addition, I have recently reiterated to my staff that such intimidating type statements are wholly inappropriate.

I concur the dividend is a very important benefit to which qualified state residents are entitled. The Division's role is two fold. First, we are to ensure all qualified residents receive a dividend as easily and expeditiously as possible. In addition, we are to ensure that those who are not eligible are not inappropriately paid. Our objective is to reasonably balance these two objectives.

For your reference, I have enclosed a copy of our revised December 12, 1991 Nonresident Spouse Policy, as well as a December 10, 1991 status summary of our spouse inquiry project.

Thank you for your concern on this issue.

Sincerely,



Thomas C. Williams, Director  
Permanent Fund Dividend Division

TCW;bro  
91-132

Enclosures (2)

cc: Darrel Rexwinkel  
Deputy Commissioner  
Department of Revenue

8302G

ALASKA DEPARTMENT OF REVENUE  
PERMANENT FUND DIVIDEND DIVISION  
STATUS OF SPOUSE INQUIRY PROJECT  
As of December 10, 1991

Inquiries Sent on 09/30/91 and 10/01/91	<u>8,697</u>
Unresolved Inquiries	
No response received	1,709
Response received, not yet processed	<u>70</u>
Total Unresolved Inquiries (A)	<u>1,779</u>
Processed, Cleared in Applicant's Favor	<u>4,940</u>
Selected for Review	
Missing other information	65
Denied for other reason	45
Postpayment review	2
Prepayment review	<u>1,001</u>
Total Selected for Review	<u>1,113</u>
Denied	
Only based on non-residency of spouse	944
Based on additional reason	<u>21</u>
Total Denied (B)	<u>965</u>

Notes

- A. On 11/19/91 2,243 applicants had either not responded or the Division had not yet processed their response. The number reported as received but not yet processed is an estimate.
- B. Recognizing that the Division incorrectly denied some applicants who were residents eligible for a PFD before they married a non-resident, the Division has taken steps to identify those individuals and overturn the original erroneous denials. Based on our initial review, relatively few of the original denials involved such individuals.

In addition, the Division is re-reviewing all other denials to determine if the applicant submitted sufficient evidence to support the assertion that they are a resident even though they have a non-resident spouse. The Division also intends to allow applicants who did not originally submit such evidence an opportunity to do so as part of the re-review/appeal process.

# MEMORANDUM

State of Alaska

Department of Law

TO: Steve Hole  
Administrator


DATE: December 11, 1991

FILE NO.:

TEL. NO.: 465-3600

SUBJECT: Nonresident Spouse Policy

FROM:

  
Gary I. Amendola  
Vincent L. Usara  
Assistant Attorneys General  
Commercial Section - Juneau

We have reviewed the November 15, 1991 version of the Nonresident Spouse Policy (the policy) adopted by the Permanent Fund Dividend Division. Paragraph 4 of the policy states:

The PFD Division presumes that a non-resident who moves to Alaska with a non-resident spouse intends to accompany their non-resident spouse when that spouse departs Alaska at some future time. An individual who upon moving to Alaska with a non-resident spouse is presumed to not be eligible for a permanent fund dividend until such time as their spouse also takes steps to establish Alaska residency.

In short, the policy says that the spouse of a nonresident is ineligible for a permanent fund dividend no matter how long the spouse remains in Alaska and no matter what or how many steps the spouse may individually take to become an Alaska resident. In our opinion, paragraph 4 of the policy creates a presumption of nonresident status that is not justified and is likely violative of the equal protection provision of the Alaska Constitution. See attached November 14, 1991 memorandum of D. Rebecca Snow. Therefore, the Division may not deny a permanent fund dividend on that basis alone.

On the other hand, the Division may properly investigate further. We think it permissible for the Division to consider the status of the partner of a spouse in determining (on a case-by-case) basis, whether further investigation is appropriate as to whether the spouse is in fact eligible for a permanent fund dividend. Thus, the Division may properly inquire into the other indicators of the spouse's eligibility in a situation where inquiries by the Division reveal that the spouse's partner

OPINION - DEPT. OF LAW

Steve Hole  
Administrator

December 11, 1991  
Page 2

continues to claim residency elsewhere. 1/ After investigation, and based on the facts, not a presumption, the Division can approve or deny the application for a permanent fund dividend.

If you have any questions, please let me know.

GIA:VLU/jp/prm

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1/ In short, the facts raise an inference of nonresidency that may be properly investigated further. The facts do not however, properly raise a presumption of nonresidency as a matter of law. In our opinion, further investigation is okay; denial without more is not. See, for example, *State v. Jackson*, 774 P.2d 1211, 1214 (Wash 1989) (Presumptions are one thing; inferences another. Presumptions are assumptions of fact which the law requires to be made from another fact or group of facts; inferences are logical deductions or conclusions from an established fact. Presumptions deal with legal processes, whereas inferences deal with mental processes.)

ALASKA DEPARTMENT OF REVENUE  
PERMANENT FUND DIVIDEND DIVISION  
NONRESIDENT SPOUSE POLICY  
As of November 15, 1991

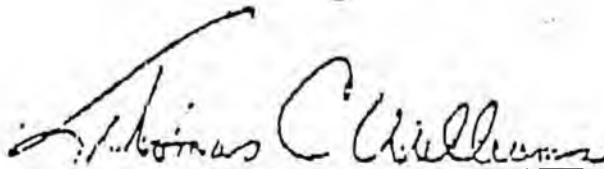
In order to be eligible for a permanent fund dividend, AS 43.23.095(8) requires an individual to have "the intent to remain permanently in the state."

The PFD Division presumes that an Alaska resident who is physically present in Alaska and marries a nonresident has the intent to remain permanently in the state until the Alaska resident takes steps or actions to depart the state with their nonresident spouse.

The eligibility of an Alaska resident who marries a non-resident while absent from Alaska is not necessarily changed by the fact they married a non-resident, as long as the Alaska resident is absent for an allowable reason.

The PFD Division presumes that a non-resident who moves to Alaska with a non-resident spouse intends to accompany their non-resident spouse when that spouse departs Alaska at some future time. An individual who upon moving to Alaska with a non-resident spouse takes steps to establish Alaska residency is presumed to not be eligible for a permanent fund dividend until such time as their spouse also takes steps to establish Alaska residency.

This policy supercedes all previously issued policies on this issue and is effective immediately.

  
Thomas C. Williams, Director

11-15-91  
Date

  
Darrel J. Rexwinkel  
Acting Commissioner

11/15/91  
Date

**DIVISION OF LEGAL SERVICES**

**LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

JUN 6 1991

LEGISLATIVE AUDIT

P.O. Box Y, Juneau, Alaska 99811  
(907) 465-3867 or 465-2450  
FAX (907) 465-2029

Deliveries to: 240 Main Street  
Court Plaza, Room 500  
Mail Stop 3101

MEMORANDUM

June 5, 1991

**SUBJECT:** Lapse of money in the National Petroleum Reserve - Alaska special revenue fund (Work Order No. 7-LS1412)

**TO:** Randy S. Welker  
Legislative Auditor

**FROM:** George Utermohle<sup>GU</sup>  
Legislative Counsel

You have asked what is the funding source for appropriations made from the National Petroleum Reserve - Alaska special revenue fund for purposes of implementing the lapse provisions of AS 37.05.530(g).<sup>1/</sup>

The National Petroleum Reserve - Alaska special revenue fund was established to hold oil and gas leasing revenues from the National Petroleum Reserve - Alaska that the federal government shares with the state under 42 U.S.C. 6508. Money received by the state under 42 U.S.C. 6508 is to be used for construction, maintenance, and operation of essential public facilities, planning, and other necessary provisions of public service. In using the money, the state must give priority to the needs of municipalities "directly or severely impacted by development of oil and gas" in the National Petroleum Reserve - Alaska. Municipalities affected by federal leasing activities in the petroleum reserve may apply for grants from the Department of Community and Regional Affairs. Grants to impacted municipalities are funded by appropriations from the special revenue fund. The unappropriated balance of the special revenue fund at the end of each fiscal year lapses under AS 37.05.530(g).

AS 37.05.530(g) states:

(g) Amounts received by the state under 42 U.S.C. 6508 and not appropriated for grants to municipalities under (d) of this section lapse at the end of each fiscal year as follows:

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<sup>1/</sup> The National Petroleum Reserve - Alaska special revenue fund was originally established in temporary law by ch. 94, SLA 1984. The special revenue fund was substantially rewritten by secs. 2 and 3, ch. 53, SLA 1986 and is currently codified in statute as AS 37.05.530.

- (1) 50 percent to the principal of the Alaska permanent fund;
- (2) .5 percent to the public school fund (AS 37.14.110); and
- (3) the remainder to the general fund for use by the state for the following facilities and services:
  - (A) planning;
  - (B) construction, maintenance, and operation of essential public facilities; and
  - (C) other necessary public services.

AS 37.05.530(g) clearly states that money remaining in the special revenue fund at the end of the fiscal year that has not been appropriated for grants to municipalities lapses into the permanent fund, public school fund, and general fund in the proportions set out. However, there is disagreement over how to determine what has been appropriated from the fund. The Department of Law finds that subsection (g) is ambiguous in regard to identifying what has been appropriated from the special revenue fund. 1990 Inf. Op. Att'y Gen., 3-4 (Sept. 6; 663-90-0175). As the result of the ambiguity, the Department of Law believes that the Department of Revenue may consider money to be appropriated from the special revenue fund in the fiscal year in which the appropriation is enacted, whether or not the appropriation takes effect during that fiscal year. Evidently, this approach has been followed by the Department of Revenue since the special revenue fund was enacted in 1984. In effect, this approach allows the Department of Revenue to reduce the amount of money that lapses under subsection (g) by attributing appropriations for subsequent fiscal years to the fiscal year in which the appropriation is enacted and to shift the funding source for the appropriations from the receipts of the special revenue fund in the fiscal year in which the appropriation takes effect to the receipts of the fund during the fiscal year in which the appropriation is enacted.

AS 37.05.530(g) was enacted in 1986 and took effect on May 31, 1986. Secs. 3 and 4, ch. 53, SLA 1986. Prior to May 31, 1986 money in the special revenue fund did not lapse. It did not make any difference what fiscal year an appropriation took effect because the unappropriated balance of the special revenue fund was carried forward from fiscal year to fiscal year. Money remained in the special revenue fund until it was appropriated out of the fund. After May 31, 1986, the unappropriated balance of the special revenue fund lapses at the end of each fiscal year.

The complete restructuring of the special revenue fund (including the addition of the lapse provision in subsection (g)) in 1986 indicates that the legislature intended to change the manner in which money was appropriated from and lapsed from the special revenue fund. Subsection (g) eliminated the ability to carry forward a surplus in the special revenue fund. After fiscal year 1986, appropriations from the special revenue fund are to be funded from annual receipts of the fund and not from the prior years' surplus, unless the legislature provides otherwise in the act making the appropriation. Any surplus in the special revenue fund is to lapse into other funds.

The approach followed by the Department of Revenue significantly undermines the intent of the legislature that surplus funds in the special revenue fund should lapse into the permanent fund, public school fund, and general fund by reducing the possibility that a surplus would occur.

The Department of Law finds some textual support for the position of the Department of Revenue in the first sentence of AS 37.05.530(d) which reads:

It is the intent of the legislature that each year all of the money in the National Petroleum Reserve - Alaska special revenue fund be made available for appropriation by the legislature to municipalities that demonstrate under (c) of this section present impact, or the need to determine or plan for future impact, from oil and gas development under 42 U.S.C. 6508.

The Department of Law focuses on the legislature's intent that each year all of the money in the special revenue fund be available for appropriation by the legislature to conclude that all of the money in the fund at the time that the legislature makes an appropriation from the fund should be used to fund that appropriation without regard to when the appropriation is to take effect.

The first sentence of subsection (d) is equivocal at best and must be read together with the remainder of that subsection, which goes on to state:

It is the intent of the legislature that an initial appropriation be made to the Department of Community and Regional Affairs to cover anticipated impact grants, and that additional funds be made available through supplemental appropriations if the impact is greater than anticipated and the legislature considers the additional grants proposed by the department to be meritorious.

Taken as a whole, subsection (d) provides that all of the money in the special revenue fund during a fiscal year be available for appropriation by the legislature to impacted municipalities, that the legislature appropriate money to cover anticipated grants to impacted municipalities, and that if additional grants are necessary then the legislature should make supplemental appropriations to fund these additional grants rather than wait till the next fiscal year to fund them.<sup>2/</sup> Through this mechanism

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<sup>2/</sup> Subsection (d) was completely rewritten in 1986 (sec. 2, ch. 53, SLA 1986) when the legislature changed the priority for use of the federal revenue sharing receipts so that the needs of the impacted communities be satisfied from the special revenue fund before obligations to the permanent fund and the public school fund are taken into consideration. The legislature changed the priority for use of those funds in response to a state superior court decision (Barrow v. State, No. 1JU-85-2634 Civ. (continued...))

the legislature seeks to give priority to the use of fiscal year receipts of the special revenue fund for grants to municipalities impacted by federal oil and gas exploration programs while providing that any surplus money remaining in the fund at the end of the fiscal year shall lapse into the permanent fund, public school fund, and general fund. Subsection (d) intends that the legislature make supplemental appropriations to prevent lapsing of surplus money in the fund. Subsection (d) does not authorize either the suspension of the lapse provision in subsection (g) or the carrying forward of surplus money in order to fund appropriations that take effect during subsequent fiscal years. Such a deviation from the usual procedure of funding appropriations out of current fiscal year receipts, as envisioned by subsection (g), must be based on a clearer authority than that contained in subsection (d).

As a general rule an appropriation is not legally effective until the act of the legislature making the appropriation takes effect. An appropriation is generally funded from current year receipts, i.e. money received by the state during the fiscal year in which the appropriation becomes effective. If an appropriation is to be funded from a source other than current year receipts, the legislature specifically identifies the source of money by specifying an appropriate effective date or a specific funding source for the appropriation. Subsection (g) does not explicitly provide that appropriations from the special revenue fund are to be funded from the receipts of the fund in the year in which the appropriation is enacted. Without substantive indication that the legislature intended to change the funding source for appropriations from the special revenue fund from current year receipts to prior year receipts, it must be presumed that the legislature meant to continue funding these appropriations from the receipts of the fund in the year in which the appropriation takes effect.

Thus, as the Department of Law states in its memorandum (*id.* at 3), the language of AS 37.05.530 does favor the conclusion that appropriations from the special revenue fund are to be funded from the money received by the fund in the fiscal year in which the appropriation takes effect. Though this conclusion is subject to reasonable debate, as the department suggests (*id.*), the strength of the position of the Department of Revenue for using prior year revenues to fund an appropriation from the special revenue fund (unless the legislature specifically provides for such funding) is much weaker than the memorandum from the Department of Law implies. In the absence of a clear statement from the legislature, contained in the appropriation itself or in AS 37.05.530, an appropriation from the special revenue fund should be funded out of receipts of the fund in the fiscal year in which it takes effect. And, as a consequence, the amount of money lapsed from the special revenue

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<sup>2</sup>/(...continued)

(Alaska Super., March 18, 1986)) which held that the former scheme for distribution of the funds was not consistent with the intent of federal law (42 U.S.C. 6508).

fund at the end of each fiscal year is the difference between the amount received by the state as federal revenue sharing from National Petroleum Reserve - Alaska and deposited into the fund<sup>3/</sup> and the amount of appropriations from the fund that take effect during the fiscal year or otherwise clearly identified by the legislature as being funded from the receipts of the fund during that fiscal year.<sup>4/</sup>

If the Department of Revenue intends to continue using prior year receipts to fund appropriations from the special revenue fund, the department should either seek an amendment to AS 37.05.530 that would clearly authorize such a practice or include the necessary language in appropriations from the fund. The latter alternative would seem to be the preferred alternative because it would allow the legislature to consider each request to use prior year receipts of the special revenue fund on a case-by-case basis.

If I may be of further assistance, please advise.

GU:mi  
91-112.mai

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<sup>3/</sup> In addition to federal revenue sharing receipts, the fund may also contain money that has lapsed from prior legislative appropriations and departmental grants to municipalities impacted by federal leasing activities in the National Petroleum Reserve - Alaska. The money that has lapsed back into the special revenue fund will at the end of the fiscal year be subject to further lapse under the provisions of AS 37.05.530(g).

<sup>4/</sup> This memorandum does not address the issues that would be raised by multi-year appropriations from the special revenue fund. A multi-year appropriation is an appropriation that cannot be funded by one year's receipts of the special revenue fund or that is intended to be funded out of the fund over a series of fiscal years. A cursory review of the appropriations from the special revenue fund, indicates that there have been no multi-year appropriations from the special revenue fund during the period from 1986 to the present.

ALASKA DEPARTMENT OF REVENUE  
PERMANENT FUND DIVIDEND DIVISION  
NONRESIDENT SPOUSE POLICY  
As of January 22, 1991

In order to be eligible for a permanent fund dividend, AS 43.23.095(S) requires an individual to have "the intent to remain permanently in the state."

An Alaska resident who is physically present in Alaska and marries a nonresident has the intent to remain permanently in the state until the Alaska resident takes steps or actions to depart the state.

The eligibility of an Alaska resident who marries a nonresident while absent from Alaska is not necessarily changed by the fact they married a nonresident, as long as the Alaska resident is absent for an allowable reason.

There shall be no presumption that an applicant is not an Alaska resident just because the applicant's spouse has not declared Alaska residency. No applicant may be denied a dividend solely because the spouse is a nonresident. In such cases, before making a determination, the division may conduct further reasonable investigation into the applicant's intent to remain an Alaskan resident. The PFD division will consider all relevant circumstances when evaluating whether such an individual claiming Alaska residency and living in Alaska with a nonresident spouse has demonstrated an intent to remain permanently in Alaska. The Division will consider whether or not such an individual has:

1. taken steps to establish Alaska residency and sever their previous residency;
2. ties to another state which indicate continued residency in the other state; and
3. taken other action that reasonably demonstrates an intent to remain in Alaska indefinitely.

This policy supercedes all previously issued policies on this issue and is effective immediately.

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 FAX TRANSMITTAL MEMO  
 TO: Tan Bruce  
 DEPT Sec. Gen's Office FILE #: 586-6246  
 FROM: Tan Williams PHONE: 3333  
 CO: DWR PFD-D FAX #: 465-2046  
 Post-it Fax Transmittal memo 2671

NO. OF PAGES
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Thomas C. Williams  
 Thomas C. Williams, Director

1-22-92  
 Date

Darrel J. Rowinkel  
 Darrel J. Rowinkel  
 Commissioner

1/22/92  
 Date

ALASKA DEPARTMENT OF REVENUE  
 PERMANENT FUND DIVIDEND DIVISION  
NONRESIDENT SPOUSE POLICY  
 As of December 12, 1991

In order to be eligible for a permanent fund dividend, AS 43.23.095(8) requires an individual to have "the intent to remain permanently in the state."


An Alaska resident who is physically present in Alaska and marries a nonresident has the intent to remain permanently in the state until the Alaska resident takes steps or actions to depart the state.

The eligibility of an Alaska resident who marries a nonresident while absent from Alaska is not necessarily changed by the fact they married a nonresident, as long as the Alaska resident is absent for an allowable reason.

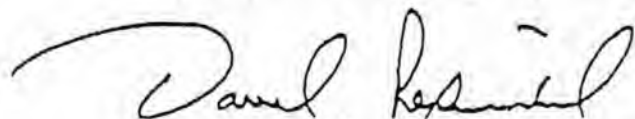
A nonresident who moves to Alaska with a nonresident spouse, more likely than not, intends to accompany their nonresident spouse when that spouse departs Alaska. The PFD Division will consider all relevant circumstances when evaluating whether such an individual claiming Alaska residency and living in Alaska with their nonresident spouse has demonstrated an intent to remain permanently in Alaska despite the nonresidency of their spouse. The Division will consider whether or not such an individual has:

1. taken steps to establish Alaska residency and sever their previous residency;
2. ties to another state which indicate continued residency in the other state;
3. purchased a home in Alaska;
4. entered into a long-term Alaska residential lease that extends significantly beyond the nonresident spouse's scheduled departure;
5. remained in Alaska when their nonresident spouse moved out of Alaska; or
6. taken other action that reasonably demonstrates an intent to remain in Alaska indefinitely even if their nonresident spouse were to depart Alaska.

This policy supercedes all previously issued policies on this issue and is effective immediately.

  
 Thomas C. Williams, Director

12-12-91  
 Date

  
 Darrel J. Rexwinkel  
 Acting Commissioner

12/12/91  
 Date

ALASKA DEPARTMENT OF REVENUE  
 PERMANENT FUND DIVIDEND DIVISION  
NONRESIDENT SPOUSE POLICY  
 As of December 16, 1991

In order to be eligible for a permanent fund dividend, AS 43.23.095(8) requires an individual to have "the intent to remain permanently in the state."


An Alaska resident who is physically present in Alaska and marries a nonresident has the intent to remain permanently in the state until the Alaska resident takes steps or actions to depart the state.

The eligibility of an Alaska resident who marries a nonresident while absent from Alaska is not necessarily changed by the fact they married a nonresident, as long as the Alaska resident is absent for an allowable reason.

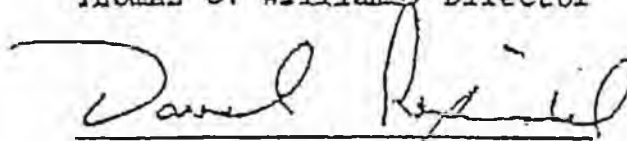
A nonresident who moves to Alaska with a nonresident spouse, more likely than not, intends to accompany their nonresident spouse when that spouse departs Alaska. The PFD Division will consider all relevant circumstances when evaluating whether such an individual claiming Alaska residency and living in Alaska with their nonresident spouse has demonstrated an intent to remain permanently in Alaska despite the nonresidency of their spouse. The Division will consider whether or not such an individual has:

1. taken steps to establish Alaska residency and sever their previous residency;
2. ties to another state which indicate continued residency in the other state; and
3. taken other action that reasonably demonstrates an intent to remain in Alaska indefinitely.

This policy supercedes all previously issued policies on this issue and is effective immediately.

  
 Thomas C. Williams, Director

12-16-91  
 Date

  
 Darrel J. Rexwinkel  
 Acting Commissioner

12/16/91  
 Date

2/27/92

~~Subject~~

House Finance Committee

Maclean (Co-Chairman)

Mavarris (Co-Chairman)

Boyer Vice-Chairman

Brown; Jacko; Koponen; Larson; Ulmer;

Barnes; Phillips; Sharp

Dear Legislators I oppose Senate Bill  
#327 (Finance)

Remember the draft dodgers of the Viet Nam war. They left the United States before they became of age and thus would have to register for the draft. After the war some came back and all were pardoned. Now they are getting the Dividend Checks plus State Loans.

Is that the way its going to be? Give them a parade a few medals; after the war then immediately those that are residents and in the Armed Forces be penalized for not being in the state to sign up for the dividends.

You want to treat them a 1<sup>st</sup> Class citizens when at war but not after the war, they and their dependents

(5)

automatically become second-class citizens.

I request that you Committee members hold this in Committee (bring it)

If an Alaska Resident in the Armed Forces is denied his or her dividend Checks and or their spouses I request the Secretary of Defense furnish all those in this category be furnished Gov't transportation back to Alaska to comply with this regulation because we don't care enough only when we need them.

Yours  
Led A Land

Box 151

James A E

Phone 766-2464

99857



OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301-1400

22 OCT 1990

PUBLIC AFFAIRS

Ref: 87-FOI-1025/L

Mr. Leo A. Land  
Box 122  
Haines, AK 99827

Dear Mr. Land:

This responds to your April 2, 1987, Freedom of Information Act (FOIA) request for information. It is Department of Defense (DoD) policy that the originator of DoD information will approve its release. The military services have been designated the DoD Component responsible for records you are requesting and we have, therefore, transferred your request and document (Army only) to the service FOIA offices for them to respond to you. Their address is:

Department of the Army  
USAISC-P (ASQNS-OP-F)  
Hoffman I, Rm 1146  
2461 Eisenhower Avenue  
Alexandria, VA 22331-0301

Department of the Navy  
Director, OPNAV Services and Security Division  
OP-09B30  
Pentagon, Rm 5E521  
Washington, DC 20350-2000

Secretary of the Air Force  
SAF/AAIS (FOIA)  
Pentagon, Rm 4A1088C  
Washington, DC 20330-1000.

There are no fees for this response.

Sincerely,

W. M. McDonald  
Director  
Freedom of Information  
and Security Review