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## SENATE BILL NO. 327

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY SENATORS CRAFT and Pourchot

Introduced: 1/13/92  
Referred: STA, Finance

## A BILL

## FOR AN ACT ENTITLED

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

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

4 \* Section 1. AS 43.23.005(c) is amended to read:

5 (c) A parent, guardian, or other authorized representative may claim a permanent fund  
6 dividend on behalf of an unemancipated minor or on behalf of a disabled or an incompetent  
7 individual who is eligible to receive a payment under this section. A minor who is too young  
8 to establish eligibility for a dividend for a year under (a)(2) or (3) of this section is eligible  
9 for the dividend if on the date of application

10 (1) the minor is a state resident; and

11 (2) at least one of the minor's custodial parents or guardians is eligible for  
12 a dividend for that year, or the minor is in the custody of the state.

13 \* Sec. 2. AS 43.23.015(b) is amended to read:

14 (b) The department shall prescribe and furnish an application form for claiming a

1 permanent fund dividend. The application must include notice of the penalties provided for  
2 under AS 43.23.035 and contain a statement of eligibility and a certification of residency. [IN  
3 SUBSTANTIALLY THE FOLLOWING FORM:

4 I CERTIFY THAT

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

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

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

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

\* Sec. 3. 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. Unless the dividend is forfeited under (a) of this section, a [A] notice of an improperly paid dividend must be sent to the individual within two [10] years after the improper payment. If notice is not sent within the two-year [10-YEAR] period, proceedings may not be commenced in court for recovery of the improper payment.

\* Sec. 4. AS 43.23.095(8) is amended to read:

(8) "state resident" means, notwithstanding AS 01.10.055, an individual who is not claiming or accepting the benefits of residency in any other state, and is either physically present in the state or [WITH THE INTENT TO REMAIN PERMANENTLY IN THE STATE OR, IF THE INDIVIDUAL IS NOT PHYSICALLY PRESENT IN THE STATE, INTENDS TO RETURN TO THE STATE AND] is absent only for any of the following reasons:

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

(B) secondary or postsecondary education;

(C) military service;

(D) medical treatment;

(E) service in Congress;

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

(G) service in the Peace Corps;

\* Sec. 5. Notwithstanding permanent fund dividend application procedures or deadlines applicable by law or regulation to dividends for 1982 - 1992, a person who qualifies for one or more dividends for those years solely because of the amendment to AS 43.23.095(8) in sec. 4 of this Act may, by May 1, 1993, apply for the dividend or dividends. The Department of Revenue shall prepare a form for applications under this section.

\* Sec. 6. Section 4 of this Act is retroactive to January 1, 1982.

- 1 \* Sec. 7. Sections 4 - 6 of this Act take effect immediately under AS 01.10.070(c).
- 2 \* Sec. 8. Sections 1 - 3 of this Act take effect January 1, 1993.

— retroactive regulation - Jan. '82  
if law was "illegal" then it  
would seem reg. was invalid...  
perhaps should re-open applications  
period on ~~auto~~ retro basis —

Revision Date: January 29, 1992  
 Title: An Act relating to qualifica-  
 tions for permanent fund dividends  
 Sponsor: Craft  
 Requestor: State Affairs

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None.

ANALYSIS: See attached.

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

Phone: 465-2323  
 Date: January 29, 1992

Approved by Commissioner: James Reynolds  
 Agency: Revenue

Date: 1/29/92

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

ALASKA DEPARTMENT OF REVENUE  
PERMANENT FUND DIVIDEND DIVISION  
CS SB 327 ANALYSIS  
As of January 29, 1992

This bill would 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.

The division would prepare and mail amended forms for potentially eligible children under this provision. The division would incur most of these costs in FY92. However, the division expects to be able to absorb these costs as well as any related marginal processing cost with the current FY92 and FY93 budgets.

Printing Costs

15,000 envelopes and stationary	\$ 0.3
500 applications	0.2

Postage Costs

15,000 notification letters @ \$0.29	4.3
500 applications @ \$0.29	<u>0.2</u>

<u>Total Contractual Costs</u>	<u>\$ 5.0</u>
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STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. SB 327

Revision Date: \_\_\_\_\_  
Title: An Act relating to qualifica-  
tions for permanent fund dividends  
Sponsor: Craft  
Requestor: State Affairs

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	200.7	100.4				
TRAVEL						
CONTRACTUAL	179.4	31.9				
SUPPLIES	26.0					
EQUIPMENT						
LANDS & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	415.3	132.3	-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	415.3	132.3				
TOTAL	415.3	132.3	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None.

ANALYSIS: See attached.

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

Phone: 465-2323  
Date: January 24, 1992

Approved by Commissioner: [Signature]  
Agency: Revenue

Date: 1/24/92

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

ALASKA DEPARTMENT OF REVENUE  
 PERMANENT FUND DIVIDEND DIVISION  
SB 327 ANALYSIS

As of January 24, 1992

Assumptions:

1. There would be 10,000 people applying for every year from 1982-1992.

Cost Summary:

1. Personal Services

	<u>FY 93</u>	<u>FY 94</u>
9 non-permanent Document Processor I, R7 @ \$1,935/mo. for 3 months including salary and benefits.	\$ 34.8	\$ 17.4
12 non-permanent Data Processing Clerk I, R8 @ \$2,043/mo. for 3 months including salary and benefits.	49.0	24.5
10 PFT PFD Specialist I, R13 @ \$3,545/month for 3 months to work reviews.	70.9	35.5
4 PFT PFD Specialist I, R13 @ \$3,545/month for 3 months to work informal conference appeals.	28.4	14.2
2 PFT PFD Specialist II, R16 @ \$4,401/month for 3 months to work formal hearing appeals.	<u>17.6</u>	<u>8.8</u>
<u>Total Personal Services</u>	<u>200.7</u>	<u>100.4</u>

2. Contractual Services

A. Printing Costs

PFD Applications, 110,000	= \$ 27.5
Receipt Batch Cards, 110,000	= 6.6
Information Request Letters, 82,500	= 3.0
Review Contact Letters, 82,500	= 3.0
Appeal Forms, 20,000	= <u>1.0</u>

<u>Total Printing Costs</u>	41.1	-0-
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B. Postage Costs

110,000 applications X .29	= 31.9
110,000 receipt cards X .19	= 20.9
110,000 warrants X .29 (FY94 only)	= 31.9
82,500 Info. Request Letters X .29	= 23.9
82,500 Review Contact Letters X .29	= 23.9
20,000 Appeal forms X .29	= <u>5.8</u>

<u>Total Postage</u>	<u>106.4</u>	<u>31.9</u>
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<u>Total Contractual Expenses</u>	<u>179.4</u>	<u>31.9</u>
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3. Supplies

Envelopes	20.0	
Microfilm Supplies	<u>6.0</u>	
<u>Total Supplies</u>	<u>26.0</u>	<u>-0-</u>

TOTAL COST	<u>\$415.3</u>	<u>\$132.3</u>
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ALASKA DEPARTMENT OF REVENUE  
PERMANENT FUND DIVIDEND DIVISION  
RECOMMENDED AMENDMENTS TO PROPOSED CSSB 327 (7-LS1663/D)  
As of January 29, 1992

The Department recommends the Committee:

1. in Section 4, page 2, line 12, following "at least," substitute the calendar year for the phrase "one year" and on line 16, insert calendar between "two" and "years.";
2. In Section 6, page 3, line 5, insert the word "calendar" between "previous" and "year".

0497K

7-LS1663D ✓

Cook

11/18/92

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

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

5 \* Sec. 2. AS 34.45.370 is amended by adding a new subsection to read:

6 (c) A permanent fund dividend that is received by the state as abandoned property shall  
7 be deposited into the dividend fund established under AS 43.23.045 and may be expended or  
8 distributed according to regulations adopted by the commissioner of revenue.

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

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

1 transferred to the general fund, except where transfer is prohibited by the federal government for  
 2 state participation in a federal program or the warrant represents payment of a permanent  
 3 fund dividend. Money held for the payment of a permanent fund dividend warrant shall  
 4 be retained in or transferred to the dividend fund established under AS 43.23.045 and may  
 5 be expended or distributed according to regulations adopted by the commissioner of  
 6 revenue.

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 one year <sup>the calendar</sup>

13 [12 CONSECUTIVE MONTHS] immediately preceding January 1 [APRIL 1] of the current  
 14 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 years before the current dividend year;  
 17 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)(3) and  
 29 (4) of this section, a minor who is under two years of age on January 1 of the current  
 30 dividend year is eligible for the dividend if on the date of application at least one of the  
 31 minor's custodial parents or guardians is eligible for a dividend for that year, or the minor

1 is in the custody of the state.

2 \* Sec. 6. AS 43.23.005(d) is amended to read:

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

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

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

13 \* Sec. 8. AS 43.23.015(a) is amended to read:

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

22 \* Sec. 9. AS 43.23.015(b) is amended to read:

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

27 I CERTIFY THAT

28 ( ) I AM A STATE RESIDENT ON THE DATE OF THIS APPLICATION, I HAVE  
29 BEEN A STATE RESIDENT FOR AT LEAST 12 MONTHS IMMEDIATELY  
30 PRECEDING APRIL 1 OF THE CURRENT DIVIDEND YEAR, AND I HAVE BEEN  
31 PHYSICALLY PRESENT IN THE STATE OF ALASKA AT SOME TIME DURING

1 THE PERIOD BEGINNING JULY 1 TWO YEARS BEFORE THE DATE OF  
 2 APPLICATION AND ENDING ON THE DATE OF THIS APPLICATION UNLESS  
 3 THIS REQUIREMENT HAS BEEN WAIVED UNDER AS 43.23.005(f); OR

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

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

23 \_\_\_\_\_  
 24 (SIGNATURE OF INDIVIDUAL,  
 25 PARENT, GUARDIAN, OR OTHER  
 26 AUTHORIZED REPRESENTATIVE)]

27 \* Sec. 10. AS 43.23.035(b) is amended to read:

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

1 to the individual within

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

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

9 \* Sec. 11. AS 43.23.035 is amended by adding a new subsection to read:

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

15 \* Sec. 12. AS 43.23.055 is amended to read:

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

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

18 (2) adopt regulations under the Administrative Procedure Act (AS 44.62) that  
19 establish procedures and time limits for claiming a permanent fund dividend; the department shall  
20 set the time limit for applications for permanent fund dividends so that the number of eligible  
21 applicants is determined by October 1 of the year for which the dividend is declared and  
22 [PERMANENT FUND] dividends for a year are paid by December 31 of that year [BEFORE  
23 APRIL 30 OF THE YEAR FOLLOWING THAT YEAR];

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

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

31 (5) annually determine, in cooperation with the Department of Corrections, the

1 number and identity of individuals ineligible for a permanent fund dividend under  
2 AS 43.23.005(d);

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

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

8 \* Sec. 13. AS 43.23.095(8) is amended to read:

9 (8) "state resident" means an individual who is physically present in the state with  
10 the intent to remain permanently in the state under the requirements of AS 01.10.055 or, if the  
11 individual is not physically present in the state, intends to return to the state and remain  
12 permanently in the state under the requirements of AS 01.10.055, and is absent only for any  
13 of the following reasons:

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

16 (B) secondary or postsecondary education;

17 (C) military service;

18 (D) medical treatment;

19 (E) service in Congress;

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

21 (G) service in the Peace Corps;

22 \* Sec. 14. AS 43.23.005(b) is repealed.

23 \* Sec. 15. Notwithstanding permanent fund dividend application procedures or deadlines, a parent,  
24 guardian, or other authorized representative of a minor who qualified for a dividend for 1992 because  
25 of the amendment to AS 43.23.005(c), made in sec. 5 of this Act, may apply on behalf of the minor for  
26 the dividend by September 1, 1992. The Department of Revenue shall prepare a form for applications  
27 under this section.

28 \* Sec. 16. Sections 5 and 8 of this Act are retroactive to January 1, 1992.

29 \* Sec. 17. Sections 1 - 3, 5, 8, 10, 11, 13, 15, and 16 of this Act take effect immediately under  
30 AS 01.10.070(c).

31 \* Sec. 18. Sections 4, 6, 7, 9, 12, and 14 of this Act take effect January 1, 1993.

# ALASKA STATE LEGISLATURE

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Fairbanks, Alaska 99701  
(907) 452-4882  
Fax: 452-3254



Room 125, State Capitol  
Juneau, Alaska 99801-1182  
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Fax: 586-6246

**Shirley Craft**  
*Alaska State Senator*

## M E M O R A N D U M

To: Senator Pat Rodey  
Chair, Senate State Affairs Committee

From: Senator Shirley Craft *SC*

Date: January 13, 1991

Re: SB 327

I would appreciate your committee's prompt consideration of SB 327, an Act relating to qualification for permanent fund dividends, to dividend applications and to recovery of an improperly paid dividend: and providing for an effective date.

This legislation was necessitated by the current administration's reading of the statutes relating to the permanent fund dividend. The circumstances were such that spouses of military personnel, who had in the past applied and received checks, were denied due to their inability to show intent to remain in Alaska. The administration claimed that due to their marriage to military personnel and the transitory nature of military service, the spouse couldn't prove their intent to stay in Alaska. The administration argued that the applicant would be predisposed to move with the military spouse. When the spouse appealed the decision, they received notice that the department may look into past applications to determine whether or not they met the current administration's standards. If they were found to have erroneously received a permanent fund check, due to the fact that the prior administration had interpreted the eligibility requirements differently, they would be responsible for repayment.

SB 327 serves the purpose of clarifying this issue. While I believe that the permanent fund should benefit Alaskans, the question must be asked: "Which one of us can actually prove beyond a doubt that they will be in Alaska until they die?" It would take a seer to answer this question.

Thank you for your consideration of this legislation.

## BILL SUMMARY

"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."

Section 1. Amends AS 43.23.005(c) to provide that children born to Alaskan parents while the parents are out of state on an allowable absence will become eligible in the same fashion as children born to Alaskan parents in state. Now, because of the two year return statute, Alaskan babies born out of state do not become eligible for a PFD until they return to Alaska (i.e. physically present). This could be two years or more.

Section 2. Deletes the exact language of the statement of eligibility and certification of residency. This is a "clean-up" measure that allows the department to prescribe an appropriate statement without having to amend the statute every time criteria change due to regulation or court decisions. However, this new bill does require the department to include a notice of the penalties provided under AS 43.23.035. Recommended by Legislative Legal Services.

Section 3. The department has only two years to notify an individual that they received an improper payment of a PFD. If they fail to notify within two years, they cannot commence

proceedings to recover the payment. This means that if the department denies your PFD for the current year, and you want to appeal, they cannot threaten you with a request for repayment of the last 10 PFDs. IMPORTANT--the two year limitation does not apply to cases of false statement or intentional misrepresentation.

Section 4. Removes "intent" language from definition of "resident". For purposes of the PFD, a "resident" is an individual physically present for the eligibility period or on an allowable absence, who is "not claiming or accepting the benefits of residency in any other state..." If you live in Alaska and do not exercise the rights of citizenship in another state, then for purposes of the PFD program, you are an Alaska resident. The benefits of residency of another state are things like voting in that state's election, state guaranteed mortgages (i.e. CAL VET loan) or in-state tuition for yourself or a minor child etc. Allowable absences are retained as well as the requirement to return to Alaska every two years.

Section 5. Anyone denied a PFD between 1982 and 1992 solely because they were unable to prove "intent to remain" or "intent to return" may apply for the denied dividend by May 1, 1993. The Department of Revenue will prepare a form for such applications.

Section 6. Makes Section 4 (deletion of "intent" language) retroactive to January 1, 1982.

Section 7. Sections 4-6 ("intent" language, effective dates) take effect immediately upon passage and signing by Governor.

Section 8. Sections 1-3 (child born out of state, form, two year limitation) become effective January 1, 1993.

# 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. Usera  
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

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 January 22, 1991

In order to be eligible for a permanent fund dividend, AS 43.23.095(B) 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.

\*\*\*\*\*  
 FAX TRANSMITTAL MEMO  
 TO: Tom Bruce  
 DEPT Sec Care's Office FAX #: 586-6246  
 FROM: Tom Williams PHONE: 2223  
 CO: DOR PFD-D FAX #: 465-2006  
Post-it brand fax transmittal memo 7971

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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

**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>4,840</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.

## ALASKA STATE LEGISLATURE

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



Room 125, State Capitol  
Juneau, Alaska 99801-11  
(907) 465-36  
Fax: 586-62

**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.

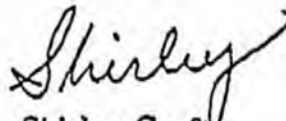
6. For FY 91, of 1990 PFD denials, how many led to a request for repayment of previous year's PFDs? How many of those have repaid past PFDs?

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

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.

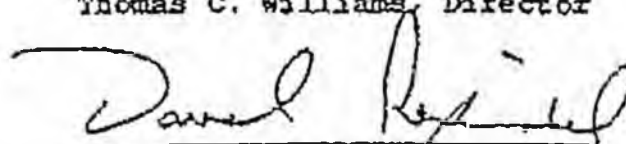
A nonresident who moves to Alaska with a nonresident spouse, more likely than not, intends to accompany their nonresident spouse when that spouse departs Alaska. The PFD Division will consider all relevant circumstances when evaluating whether such an individual claiming Alaska residency and living in 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

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

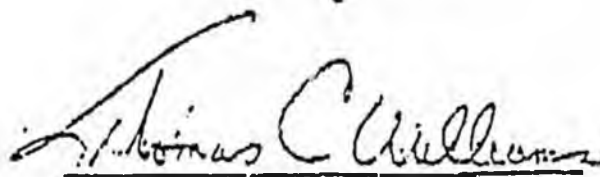
In order to be eligible for a permanent fund dividend, AS 43.23.095(8) requires an individual to have "the intent to remain permanently in the state."

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.

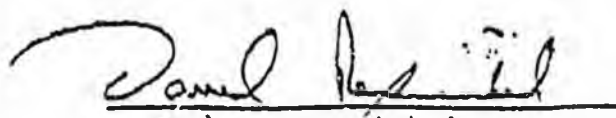
The eligibility of an Alaska resident who marries a non-resident while absent from Alaska is not necessarily changed by the fact they married a non-resident, as long as the Alaska resident is absent for an allowable reason.

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

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.

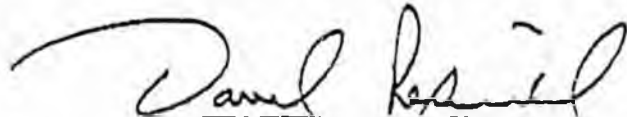
A nonresident who moves to Alaska with a nonresident spouse, more likely than not, intends to accompany their nonresident spouse when that spouse departs Alaska. The PFD Division will consider all relevant circumstances when evaluating whether such an individual claiming Alaska residency and living in 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