

H B

7 5

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CS HB 75(JUD) (8-LS0372W)

Revision Date: 01-18-94	Dept. Affected: Revenue
Title: Qualifications For PFD's By Military	BRU: Permanent Fund Dividend
	Component: Permanent Fund Dividend
Sponsor: MULDER, Martin	
Requestor: House Judiciary	COMPONENT SERIAL NO. 981

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: \$ -0-

ANALYSIS: (Attach a separate page if necessary.)

See Pages 2 and 3

Prepared by: <u>Thomas C. Williams</u> <i>Thomas C. Williams</i>	Phone: <u>465-2323</u>
Division: <u>Permanent Fund Dividend</u>	Date: <u>01-18-94</u>
Approved by Commissioner: <u>[Signature]</u>	Date: <u>1/18/94</u>
Agency: <u>Department of Revenue</u>	

PREPARER TO PROVIDE: ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office

ALASKA DEPARTMENT OF REVENUE
PERMANENT FUND DIVIDEND DIVISION
ANALYSIS OF CS HB 75 (JUD) (8-LS0372J)

January 18, 1994

This committee substitute substantially expands allowable absences to enable residents to remain eligible for a dividend while absent from Alaska to accompany an individual who, by virtue of their maintenance of residency in another state, has declared that they intend to go somewhere other than Alaska to remain permanently. The resident's departure with that non-resident spouse would strongly suggest that the resident would again follow the non-resident when the non-resident retired to their state of residency, making the resident's declared "intent" suspect.

Allowing residents to maintain eligibility for the dividend program based on accompanying a nonresident member of the military would likely increase the population of eligible applicants by as many as several thousand by:

- a. encouraging virtually all current non-resident spouses of non-resident military members living in Alaska to declare Alaska residency, knowing that they *and their children* will continue to remain eligible once they leave the state;
- b. substantially increasing the number of dividends issued to individuals living out of state;
- c. substantially increasing the likelihood of paying individuals who have taken all the proper steps to establish and maintain Alaska residency without truly having the actual requisite intent to remain permanently or to return to Alaska to remain permanently.

This committee substitute version would also generally eliminate the ability of a resident spouse to piggy-back onto the allowable absence of their resident spouse, except in those cases where an allowably absent individual is a member of the military. Section 1 would require the department to simply ignore certain facts relevant to confirming an individual's intent. This opens a wide door to fraudulent filings and compromises the ability of the Department to ensure compliance with the principal eligibility requirement, the intent to remain in Alaska permanently.

On December 16, 1993, Superior Court Judge Dana Fabe upheld the department's position that accompanying a non-resident military member on an absence does not in itself allow an individual to remain eligible for a dividend. Judge Fabe concluded that "there is a rational relationship between the expressed legitimate purposes of the Dividend program, on the one hand, and , on the other, ... for denying an "allowable absence" exception to residents who accompany their nonresident spouses on allowable absences." [p. 17, *Zeiler v. State of Alaska*, 3AN-92-1567 Civil] She went on to agree that, "It is reasonable to allow residents to "piggyback" onto an allowable absence of a resident spouse, because the fact that the spouse is still a resident is a factor tending to show "an intent to return to Alaska and remain permanently in the state". That factor

ALASKA DEPARTMENT OF REVENUE
PERMANENT FUND DIVIDEND DIVISION
ANALYSIS OF CS HB 75 (JUD) (8-LS0372\J)

January 18, 1994

does not exist for residents who accompany nonresident spouses out of state. For the same reason, it is reasonable to require additional proof of intent from a Dividend applicant whose spouse is not a resident. [pp.17-18, *Zeiler v. State of Alaska*, 3AN-92-1567 Civil]

In addition, as long as residency for purposes of the dividend program is defined in terms of allowable absences, the prohibition from considering the residency of an individual's spouse proposed in section 1 of this committee substitute conflicts with the "piggyback" amendment proposed in section 2, as pointed out by Judge Fabe in her decision.

As reflected in section 1(b), Chapter 21, SLA 1980, the original intention of the dividend program was in part "to encourage persons to maintain their residence (*not just residency*) in Alaska and to reduce population turnover in the state." [*emphasis and comment added*] Significantly expanding the allowable absence provisions, sending more and more dividend dollars to individuals living out of state, is not consistent with the stated intent of the program. Expanding allowable absence encourages individuals to declare Alaska residency while simply passing through Alaska simply to qualify for a unique economic benefit. This effect is also at odds with the intent of the program "to reduce population turnover in the state." It is clear from the intent in the enabling legislation that the dividend program was never intended to pay people who simply passed through Alaska.

Sponsor Statement CSHB 75 (JUD)

OVERVIEW

For the past few years, several Alaskan residents have been unfairly denied their permanent fund dividends or put into a lengthy review process due to the fact that they were married to a non-resident. Most often, these individuals got married to a member of the U.S. military while on assignment here in Alaska. After their marriage, the Permanent Fund Division considered their intent to remain to be in question. This led to the individual being put into the review process and usually being denied their dividend.

Substantial changes were made to the PFD application process and eligibility in 1992, when HCSCSSB 327 am H (Ch. 4 SLA 1992) passed the 17th Legislature. Included in this legislation were changes that were designed to correct this problem. In the bill, AS 43.23.015(a) was amended to state that the residency of an individual's spouse could not be a principal factor in determining the residency of an individual.

A suit was filed by five residents, Zeiler v. State, Permanent Fund Division, over this issue in 1992. A ruling was issued in late 1993 that rejected some portions of the plaintiffs' claims, but has been resubmitted for clarification.

In the suit, there is an estimated 800 people who were refused dividends for having a spouse who was a non-resident. Though changes were made to help correct this with HCSCSSB 327 am H, there is still some ambiguity in the statutes that continues to hamper applications from resident spouses and dependents of non-residents.

WHAT HB 75 DOES

CSHB 75 (JUD) begins by amending AS 43.23.015(a) to state that "the residency of an individual's spouse may not be a factor relied upon by the commissioner in determining the residency of the individual." Previously, this section stated that the residency of an individual's spouse may not be the **principal** factor relied upon by the commissioner for determination of residency.

In addition, the bill amends AS 43.23.095(8) dealing with the acceptable

reasons for absence from Alaska while still maintaining eligibility for the PFD. In subsection (C), instead of "military service", the section would read "service in the military forces of the United States or to accompany as a spouse or dependent a state resident or nonresident serving in the military forces." This should firmly establish the legislative intent of the changes made in 1992, namely that a resident of Alaska should not be denied their permanent fund simply because their spouse is a non-resident provided they meet all other qualifications. Naturally, these individuals would still be held accountable for all other PFD eligibility requirements, such as the two year return requirement, etc.

Military personnel and their families are an important part of Alaskan communities and the economy. The rights of these individuals as Alaskans should be protected as much as any other Alaskan resident.

8-LS0372E✓
Cook
4/18/93

CS FOR HOUSE BILL NO. 75()
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES MULDER, Martin

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to eligibility for permanent fund dividends for certain individuals
2 who are absent from the state; and providing for an effective date."

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

4 * Section 1. AS 43.23.015(a) is amended to read:

5 (a) The commissioner shall adopt regulations under the Administrative
6 Procedure Act (AS 44.62) for determining the eligibility of individuals for permanent
7 fund dividends. The commissioner may require an individual to provide proof of
8 eligibility, and the commissioner may use other information available from other state
9 departments or agencies to determine the eligibility of an individual. The commissioner
10 shall consider all relevant circumstances in determining the eligibility of an individual.
11 However, the residency of an individual's spouse may not be a [THE PRINCIPAL]
12 factor relied upon by the commissioner in determining the residency of the individual.

13 * Sec. 2. AS 43.23.095(8) is amended to read:

14 (8) "state resident" means an individual who is physically present in the state

1 with the intent to remain permanently in the state under the requirements of
2 AS 01.10.055 or, if the individual is not physically present in the state, intends to
3 return to the state and remain permanently in the state under the requirements of
4 AS 01.10.055, and is absent only for any of the following reasons:

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

7 (B) secondary or postsecondary education;

8 (C) [MILITARY] service in the military forces of the United
9 States or to accompany as a spouse or dependent a state resident or
10 nonresident serving in the military forces of the United States;

11 (D) medical treatment;

12 (E) service in Congress;

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

15 (G) service in the Peace Corps;

16 * Sec. 3. This Act takes effect January 1, 1994.

ALASKA DEPARTMENT OF REVENUE
PERMANENT FUND DIVIDEND DIVISION
PROCEDURAL DIFFERENCES IN PROCESSING APPLICATIONS
FROM MEMBERS OF THE UNIFORM SERVICES

As of August 6, 1993

Application Question

Question 9 on the 1993 Adult application asked whether or not the applicant was a member of the uniformed services.

Rationale: Members of the Uniform Services are required to declare to their employer their state of legal residency. This relatively unique declaration provides confirmable evidence of the individual's residency and intent. While there are many occupations in Alaska that may involve a relatively temporary duty assignment to Alaska, we are not aware of any other where the employer requires each employee to declare a state of residence.

Accordingly, the Department adopted 15 AAC 23.173(g)(3). That regulation states, "Proof bearing on an individual's intent to remain permanently in Alaska might be any proof acceptable to the department, including ... employment and unemployment records including a copy of the leave and earnings statement of a military member for (A) December of the year before the qualifying year; and (B) the most recent month."

Beginning in 1993 the PFD Division began independently confirming this declaration information directly with the U.S. Departments of Defense and Transportation, eliminating the need for 9,648 members of the Uniform Services to provide copies of their Leave and Earning Statements (LES) with their applications. The residency of the remaining 5,168 members of the Uniform Services could not be confirmed directly with the U.S. Departments of Defense and Transportation. Consequently, we asked those applicants to provide copies of their December 1991 and most recent LES. Of those, 2,866 applicants provided a December 1991 and current LES reflecting Alaska as their state of residency, 289 provided an LES showing another state of residency and 2,013 had yet to respond as of August 2, 1993.

Regulations

15 AAC 23.143(h) states "An individual who when signing an application knows the individual will be departing Alaska at a specific time to a specific destination for a reason other than one allowed by 15 AAC 23.163(c) does not have the intent to remain permanently in Alaska and is not eligible for a dividend. An individual whose ineligible spouse is a member of the uniformed services of the United States and whose spouse receives orders to depart Alaska dated on or before the date the individual signed an application is not eligible for a dividend if the individual departs within 180 days of signing an application".

ALASKA DEPARTMENT OF REVENUE
PERMANENT FUND DIVIDEND DIVISION
PROCEDURAL DIFFERENCES IN PROCESSING APPLICATIONS
FROM MEMBERS OF THE UNIFORM SERVICES

As of August 6, 1993

Rationale: While not all Alaska residents with non-resident spouses depart Alaska when their non-resident spouse departs, historically we have found that the vast majority do depart. Consequently, this regulation was adopted to establish a reasonably objective test of those residents' intent to remain. This test can be and is applied to the spouses of members of the Uniform Services because the Uniform Services members routinely receive written and dated transfer orders.

Follow-up Eligibility Questions

When a member of the Armed Forces is selected for an eligibility determination, the member will receive a copy of the attached eligibility questionnaire tailored specifically to the nature of their employment. In accordance with the provisions of 15 AAC 23.163(g)(5), this questionnaire includes a question regarding "the priority the individual gave Alaska on an employment assignment preference list, such as those used by military personnel."

Rationale: It makes sense to ask only specific questions relevant to an applicant's situation. Just as those individuals who are absent attending college are required to have their school registrar complete and return to the Department an education verification form, military members are asked for information pertinent to their particular situation.

Other Requirements and Questions

All other statutory and regulatory eligibility requirements, as well as eligibility inquiries, are applied in the same manner for members of the Uniformed Services as they are for other PFD applicants.

Attachment

ALASKA DEPARTMENT OF REVENUE
PERMANENT FUND DIVIDEND DIVISION
1993 ADULT ELIGIBILITY QUESTIONNAIRE

FOR INDIVIDUALS WHO WERE ABSENT FOR SERVICE IN THE UNITED STATES ARMED FORCES

First Name	M.I.	Last Name	Social Security Number
Address			Home Phone ()
City	State	Zip Code	Work Phone ()
Batch No.	DLN	Date	

Dear 1993 Permanent Fund Dividend Applicant:

Your permanent fund dividend application has been selected for an eligibility determination. To qualify for an Alaska permanent fund dividend while absent from Alaska an adult must have been a resident for six months immediately before leaving, be absent for an allowable reason, and must show at all times during the absence an intent to return to Alaska to remain permanently. An adult who has never lived in Alaska cannot claim residency.

The questions in this questionnaire pertain to calendar year 1992, the qualifying year for the 1993 dividend. Please carefully read the entire questionnaire, answer all questions and **provide copies of any documents requested**. If a question is not applicable to you, write "N/A" as your answer. You should include any additional documents that you think shows you are an eligible Alaskan resident. Please note that documents you send must either be the original or "certified true copies." Documentation *will not* be returned. After you have fully answered all questions on this questionnaire, **please sign and date the questionnaire or it will not be considered valid**.

Under 15 AAC 23.173(b), you are required to submit any information requested by the Department of Revenue in order to determine if you qualify for a 1993 permanent fund dividend. **If you do not provide the requested information within 30 days from the date of this questionnaire, 15 AAC 23.173(c) provides that your claim to a 1993 permanent fund dividend may be denied.**

Because we review thousands of applications each year, it may be several weeks before we will be able to review your application. Your timely response to this questionnaire is necessary to help complete your application file. It is our goal to finish our review of all timely filed and complete 1993 applications no later than December 31, 1993.

Please advise us **in writing** if you change your address or telephone number(s). Thank you for your cooperation and patience.

Sincerely,

Tracy Buck, Supervisor
Dividend Review Unit

RETURN COMPLETED QUESTIONNAIRE TO:

Alaska Department of Revenue
Permanent Fund Dividend Division
Dividend Review Unit
P.O. Box 110466
Juneau, AK 99811-0466

Five sue state over dividend rejection

By DON HUNTER
Daily News reporter

Five Alaskans who were denied permanent fund dividend checks because their husbands or wives are not state residents have sued the state Department of Revenue.

The suit filed in Anchorage on Thursday seeks to represent an estimated 800 people who have been refused dividends for similar reasons. A judge will decide later whether to certify the complaint as a class-action suit.

Plaintiffs Gloria Lynn Zeiler, Janele Bolls, John B. Howell, Joyce Herr and Sandra Broadnax claim the permanent fund division's eligibility rules violate state and U.S. constitutional equal rights guarantees as well as "the right to marry the individual of one's choice, the right to travel, economic rights and the right to serve in the U.S. military," the suit says.

The suit seeks to represent "Alaskans who have been denied PFDs, are at risk of being denied PFDs, or who can only obtain PFDs by providing information beyond that required of other Alaskans, because their spouses are non-residents."

Disputes about the eligibility for dividends of some residents, largely military spouses, first arose last year. In some cases, such as that of Zeiler, one of the plaintiffs in the current suit, the Revenue Department demanded repayment of dividends the family had received for seven years.

"They want \$18,200 in back checks for her and her children, when every year she completely and forthrightly told them exactly what her situation was," said attorney Kenneth Kirk, who filed the suit.

"One year, they even reviewed her eligibility. Then, in 1990, they suddenly decided to ask for reimbursement."

Kirk said other similarly affected people are also sponsoring the suit. The five named plaintiffs were picked because they represent different categories of people denied checks because their spouses are non-residents.

Recent efforts by lawmakers to protect such individuals may be too little or too late, he said.

"This will take awhile. These people could easily be delayed on next year's checks," Kirk said, "and frankly, we just don't trust the legislature to do anything."

"The case was ready to file, and we filed it. If the legislature fixes things, we'll be happy to dismiss it. I'm sure."

Tom Williams, director of the permanent fund division, said Friday he had not seen the suit and could not comment on it in detail. But he said the agency has already changed its policies to cure some of the complaints.

For example, the agency no longer rejects an applicant only because the applicant's wife or husband is a non-resident, Williams said. A bill passed by the state

Senate and awaiting action in the House writes the same policy into law, he said.

"It doesn't say we can't look at it," Williams said, but if the agency learns that an applicant's spouse is a non-resident, it has to consider other factors in deciding his or her eligibility for a dividend.

The recent changes clear up most problems for residents living in Alaska who happen to be married to people who are not residents, a category that many military dependents fit into, Williams said.

It does not, however, address situations where an Alaska resident moves out of state with a non-resident — for example, if a person who marries someone in the military here, then leaves with them when they are transferred. The permanent fund division might well consider the Alaskan not eligible for a dividend, according to Williams.

The plaintiffs in the Zeiler suit include Zeiler, a 30-year Alaska resident who lived outside Alaska from 1982 to 1989 with her Air Force husband; Bolls, who also lived outside Alaska with her military husband; Howell, who remained in Alaska after his wife had to leave the state for medical reasons; Herr, who moved to Alaska in 1989 but has been refused dividends because her husband is a non-resident; and Broadnax, a 26-year Alaskan who moved out of state with her military husband and was denied a dividend last year.

After first being denied a 1991 dividend, Howell was approved, but might have to provide additional information to get this year's dividend, the suit says.

5 Alaskans denied fund checks sue state

By BEN WEAR

TIMES WRITER

A group of Alaskans denied Permanent Fund checks because their spouses were not officially Alaska residents sued the state Thursday to get their checks and throw out regulations they say are unconstitutional.

The class-action lawsuit, filed by five people on behalf of several hundred others whose checks were delayed or withheld by the state, is the latest round in a controversy that began last fall. The Permanent Fund dividend division denied checks to 800 applicants and held up 845 more for review after a computerized cross-check showed they were married to non-residents.

Since then, the dividend division has admitted it erred in denying checks to longtime resi-

dents who married non-residents, usually soldiers stationed here temporarily who continue to vote in their home state. And Tom Williams, director of the dividend division in the Department of Revenue, issued a policy change designed to mollify another group: non-resident spouses who moved here with a non-resident, then applied for Permanent Fund checks after the one-year qualifying period.

The department had denied that group the \$931.34 checks last year on the assumption that their spouses' decision to maintain residency elsewhere was evidence they do not intend to be lifelong Alaskans. Williams changed the policy to remove that assumption.

Now, a bill is moving through the Legislature that would put that policy into law. Despite those

signs of progress, the attorney who filed the lawsuit said it is still necessary for several reasons.

"The division's policy can be changed very easily," Kenneth Kirk said Friday. As for the bill, Kirk said even good ideas often are lost in the legislative shuffle or horse-traded into oblivion.

"I don't think it's a very safe bet," Kirk said.

In addition, Kirk said, Alaskans married to non-residents are required to fill out complicated questionnaires and furnish financial information many consider confidential. And neither the policy change nor the legislation help yet another group denied checks, Kirk said.

Longtime residents who move temporarily to another state with a non-resident are not eligible, said Williams of the dividend division. But if they move with a resi-

dent under certain circumstances, they are eligible.

"The Legislature has specifically identified allowable absences," Williams said, which include military service, college and medical treatment. "We allow residents to piggyback only on resident spouses with allowable absences. We think that's very clear in the law."

Kirk and his clients say that distinction is unfair and unconstitutional because it makes one person's legal status dependent on their spouse's status. That same distinction, applied to Alaskans living in the state, is exactly what the state backed away from in Williams' policy change, Kirk said.

"The standard is whether you're an Alaskan at heart, not whether you're here putting money into the economy," Kirk said.



HEADQUARTERS
ALASKAN COMMAND (ALCOM)
ELMENDORF AIR FORCE BASE, ALASKA 99506

RECEIVED
14 JAN 1991
JAN 16 1991

Honorable Walter J. Hickel
Governor of Alaska
Suite 758, 3601 C Street
Anchorage, Alaska 99503

GOVERNOR'S OFFICE

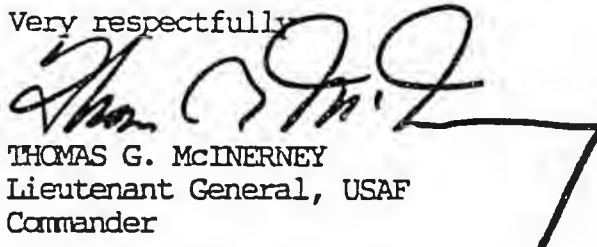
Dear Governor Hickel

As the senior U.S. military commander in Alaska, I want to express my concern over the state procedures for determining proper recipients for Alaska permanent fund dividends. My interest is simply this: residents of Alaska serving in the military forces of the United States should be fairly treated and should not be disadvantaged because they are absent from the state pursuant to military orders.

I understand the unique nature of the Alaska permanent fund and the necessity for strict procedures to avoid abuse. However, national requirements placed upon Alaskans to leave their homes to serve "outside" should not detrimentally affect their rights as citizens of this great State. Alaska residents are stationed around the world - throughout the lower 48, in Europe, in the Pacific, and in the Middle East. However well-intentioned the present requirements might be, asking all Alaskan military families to return every two years at great personal expense from the four corners of the world is, in my opinion, insensitive to the contributions and sacrifices that these Alaskans are making for their State and for their country.

I am encouraged by the concern I hear expressed by members of the state legislative and executive branches. Suggestions to allow application by representatives on behalf of absent military members, and suggestions to change the presence requirement from two years to four years seem particularly appropriate. I support any and all such efforts that take into consideration the special situation and special contributions of those Alaskans serving in the armed forces of the United States.

Very respectfully,


THOMAS G. McINERNEY
Lieutenant General, USAF
Commander