

SB

378

SFIN

FILE

No. 3

Bill Version: SB 378

(S) Publish Date: 4-21-94

STATE OF ALASKA
1994 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:	_____	Dept. Affected:	Corrections
Title:	Re. PFD for felons/misdemeanants	BRU:	All
Sponsor:	S. FIN	Component:	All
Requestor:	S.ST.A.	Component Serial #:	694-1884

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXP.	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS/CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXP	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGES IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other (1050 PFD)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0			

Estimate of any current year (FY94) cost \$ 0.0

Changes in CSSB378 (SA) have no fiscal impact. This fiscal note is appropriate.

POSITIONS

4/20/94 date [Signature] Comte Aide (initial)

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS:

FISCAL NOTE

No. 2

Bill Version: SB 378

(S) Publish Date: 4-21-94

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BIL

Revision Date: _____ Dept. Affected: Revenue
 Title: No PFD: Persons Jailed for Felony or Misdemeanor BRU: Permanent Fund Dividend
 Component: Permanent Fund Dividend
 Sponsor: SENATE FINANCE COMMITTEE
 Requestor: Senate State Affairs Committee 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	-0-	-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME			
PART-TIME			
TEMPORARY			

Changes in CSSB 378 (STA) have no fiscal impact. This fiscal note is appropriate.

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

4/20/94 [Signature]
Date Comptroller (initial)

ANALYSIS:

This fiscal note is predicated on the assumption that either the Department of Corrections or the Court System will annually provide the Department of Revenue with a computer tape file of all felons and misdemeanants as the Department of Corrections currently provides related to incarcerated felons.

This legislation would also reduce the pool of dividend applicants whose dividend could be attached or levied by various government agencies as well as private creditors. Please see the attached 1989-1993 summary of attachment and assignment activity.

Prepared by: Thomas C. Williams [Signature]
 Division: Permanent Fund Dividend
 Approved by Commissioner: [Signature]
 Agency: Department of Revenue

Phone: 465-2323
 Date: 04-18-94
 Date: 4/18/94

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ALASKA DEPARTMENT OF REVENUE
 PERMANENT FUND DIVIDEND DIVISION
1989 - 1993 PFD ATTACHMENT AND ASSIGNMENT ACTIVITY

As of January 18, 1994

<u>Services Held</u>	<u>5 Year</u>	<u>Permanent Fund Dividend Year (A)</u>				
	<u>Total</u>	<u>1993</u>	<u>1992</u>	<u>1991</u>	<u>1990</u>	<u>1989</u>
<u>Attachments (B)</u>						
IRS (Federal Taxes)	68,594	19,758	18,125	12,413	11,548	6,750
CSED (Child Support Delinquencies)	36,977	7,368	7,883	7,571	7,112	6,543
Non-municipal Writs (Judgements) (C)	34,740	7,251	6,749	8,218	6,462	6,060
ACPE (Student Loan Delinquencies)	34,355	7,684	8,568	7,282	5,997	4,824
Municipal Writs (Fines & Taxes)	5,938	294	1,200	1,224	1,323	1,897
Certified Services (Judgements) (C)	2,510	2,156	354	(D)	(D)	(D)
PFDD (Repayment of Dividends)	2,423	525	106	760	549	483
Department of Law (Judgements)	1,365	1,365	0	0	0	0
DOL (Employment Taxes)	811	267	113	121	127	190
IEAD (State Taxes)	191	0	20	34	52	85
Court Orders (Judgements)	27	0	5	1	20	1
<u>Total Attachments</u>	<u>187,938</u>	<u>47,168</u>	<u>43,123</u>	<u>37,624</u>	<u>33,190</u>	<u>26,833</u>
<u>Assignments (E)</u>	<u>21,867</u>	<u>5,907</u>	<u>4,628</u>	<u>3,753</u>	<u>4,502</u>	<u>3,077</u>
<u>Total Services Held</u>	<u>209,805</u>	<u>53,075</u>	<u>47,751</u>	<u>41,377</u>	<u>37,692</u>	<u>29,910</u>

Notes

- (A) The figures reported for 1989-1992 are for the period April 1 through March 31 of the year indicated. The 1993 figures are for the period April 1, 1993 through December 31, 1993.
- (B) The attachment figures represent the number of attachments that actually were held. Some of the attachments received are returned because they are for an individual who is not on file. Others correspond to individuals who are on file but are released by the individual or agency filing the attachment before the department makes payment. The figures reported correspond to unreleased attachments held during the periods indicated.
- Not all these attachments received funds. For example, an individual may have been attached by both CSED and the IRS. If the CSED attachment equaled or exceeded the amount of the dividend, CSED would receive the entire dividend, and IRS would receive nothing. However, the statistics would still reflect 2 attachments.
- (C) Until December 30, 1990 the exemption from attachment for these items was 50%. Effective January 1, 1991 the exemption from attachment for these items was reduced to 45% by § 3, Ch 198, SLA 1990. Non-municipal Writs are served by Process Servers.
- (D) Certified services were only available starting in 1992 as a result of amendments to AS 43.23.065 enacted by Ch 52, SLA 1992.
- (E) Since 1989 assignments can only be made to governmental agencies or a court.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Alaska Court System
 Title: No PFD: Persons jailed for felony or BRU: Trial Courts
misdemeanor Components: _____
 Sponsor: Finance
 Requestor: _____ COMPONENT SERIAL NO. 768

EXPENDITURES/REVENUES (Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

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

POSITIONS

FULL-TIME				
PART-TIME				
TEMPORARY				

Changes in CSB 378 (STA)
 reflect NO FISCAL CHANGE from the original
 fiscal note. This fiscal note is appropriate.
4-20-94 [Signature]
 date Comte Aide (initial)

Estimate of current year (FY 94) cost: \$ None

ANALYSIS: (Attach a separate page if necessary)
 * - see attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel Phone: 264-8228
 Agency: Alaska Court System Date: 04/19/94
 Approved by: Arthur H. Snowden, II, Administrative Director Date: 04/19/94
 Agency: Alaska Court System

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ALASKA COURT SYSTEM
CSSB 378 (STA)
FISCAL ANALYSIS

AS 43.23.005(d) provides that a person who is convicted of a felony is ineligible for a permanent fund dividend for a year when, during all or a part of the previous calendar year, the person is incarcerated. CSSB 378 (STA) amends this to provide that a person convicted of a felony is ineligible for a dividend during the following year, whether or not the person is incarcerated. It further provides that a person convicted of a misdemeanor is ineligible for a permanent fund dividend for a year when, during all or part of the previous calendar year, the person is incarcerated. The list of ineligible persons would be compiled by the Department of Revenue, working with the Department of Corrections and the Department of Public Safety.

CSSB 378 (STA) further provides that monies which would otherwise be paid to felons and misdemeanants may be appropriated to the court system. The court system will not be submitting requests to the legislature for appropriations from that fund, because of the conflict of interest that would be perceived if judges' sentencing practices had a direct effect on the court system's operating budget.

Minor changes in criminal law or procedure often have a significant impact on the trial rate. For example, felony trial rates doubled during the first year following the attorney general's ban on plea bargaining, and tripled during the second year. Similarly, trial rates increased following the enactment of presumptive sentencing laws. As a general rule, there is a direct relationship between the trial rate for a particular crime and the size or the certainty of a penalty for that crime. For example, crimes with a mandatory minimum penalty or presumptive sentence generally have a higher trial rate than do crimes of the same class without a minimum or presumptive penalty. CSSB 378 (STA) may increase misdemeanor trial rates by raising the penalty. A defendant who is willing to plead guilty to a crime for which the likely sentence is a \$100 fine and a day or two in jail may demand a trial if the penalty also includes loss of a dividend. Because any increase in trial rates is speculative, this note does not reflect the costs that would be incurred. If trial rates do increase significantly, the court system will need to request additional funds at a later time.

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR FRANK

TO: CSSB 378(STA)

Adopted

Page 3, after line 22:

Insert a new bill section to read:

"* Sec. 6. Notwithstanding the amendment to AS 43.23.028(b) made in sec. 3 of this Act, the notice requirements of AS 43.23.028(a) do not apply to appropriations from the dividend fund made for fiscal year 1995 to the crime victim compensation fund established under AS 18.67.162, to the Council on Domestic Violence and Sexual Assault established under AS 18.66.010, to the court system, or to the Department of Corrections to the extent that amounts appropriated do not exceed the total amount that would have been paid during fiscal year 1994 and fiscal year 1995 to individuals who are ineligible to receive dividends under AS 43.23.005(d) if they had been eligible."

Renumber the following bill sections accordingly.

Page 3, line 24:

Delete "1, 3, 4, and 6"

Insert "1, 3, 4, 6, and 7"

SENATE FINANCE
COMMITTEE

Amendment Number: ①
Bill Number: SB 378
Sponsor: FRANK Date: 4/30/94
Logged In By: [Signature]

final

CS FOR SENATE BILL NO. 378(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE FINANCE COMMITTEE

*Frank
writing for
Dane O'Id*

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to permanent fund dividend program notice requirements, to the
2 ineligibility for dividends of individuals convicted of felonies or incarcerated for
3 misdemeanors, and to the determination of the number and identity of certain
4 ineligible individuals; and providing for an effective date."

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

6 * Section 1. PURPOSES. The purposes of the amendments made to AS 43.23.005(d) and
7 43.23.028(b) in this Act are to obtain

8 (1) a source of additional funding for the state agencies listed in
9 AS 43.23.028(b); and

10 (2) full or partial reimbursement from individuals convicted of a felony or
11 misdemeanor for costs imposed on the state criminal justice system related to convictions and
12 incarcerations.

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

14 (d) Notwithstanding the provisions of (a) - (c) of this section, an individual

L

1 [WHO HAS BEEN CONVICTED OF A FELONY] is not eligible for a permanent
2 fund dividend for a dividend year when

3 (1) during the calendar year immediately preceding the dividend
4 year the individual was convicted of a felony; or

5 (2) [.] during all or part of the [PREVIOUS] calendar year immediately
6 preceding that dividend year, as a result of the conviction of a felony or
7 misdemeanor, the individual was [IS] incarcerated.

8 * Sec. 3. AS 43.23.028(b) is amended to read:

9 (b) The notice requirements of (a) of this section do not apply to
10 appropriations from the dividend fund to the crime victim compensation fund
11 established under AS 18.67.162, to the council on domestic violence and sexual assault
12 established under AS 18.66.010, to the court system, or to the Department of
13 Corrections to the extent that amounts appropriated for a fiscal year do not exceed the
14 total amount that would have been paid during that same [THE PREVIOUS] fiscal
15 year to individuals who are ineligible to receive dividends under AS 43.23.005(d) if
16 they had been eligible.

17 * Sec. 4. AS 43.23.055 is amended to read:

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

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

20 (2) subject to AS 43.23.011 and paragraph (8) of this section, adopt
21 regulations under AS 44.62 (Administrative Procedure Act) that establish procedures
22 and time limits for claiming a permanent fund dividend; the department shall determine
23 the number of eligible applicants by October 1 of the year for which the dividend is
24 declared and pay the dividends by December 31 of that year;

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

30 (4) assist residents of the state, particularly in rural areas, who because
31 of language, disability, or inaccessibility to public transportation need assistance to

1 establish eligibility and to apply for permanent fund dividends;

2 (5) use a list of individuals ineligible for a dividend under
3 AS 43.23.005(d) provided annually by [ANNUALLY DETERMINE, IN
4 COOPERATION WITH] the Department of Corrections and the Department of
5 Public Safety to determine [,] the number and identity of those individuals
6 [INELIGIBLE FOR A PERMANENT FUND DIVIDEND UNDER AS 43.23.005(d)];

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

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

12 (8) adopt regulations that establish procedures for an individual to apply
13 to have a dividend warrant reissued if it is returned to the department as undeliverable
14 or it is not paid within two years of the date of its issuance; however, the department
15 may not establish a time limit within which an application to have a warrant reissued
16 must be filed;

17 (9) adopt regulations establishing an optional longevity bonus program
18 to provide for the direct payment by the department of an individual's permanent fund
19 dividend to an annuity program selected by the individual.

20 * **Sec. 5.** Notwithstanding the amendment to AS 43.23.005(d) made in sec. 2 of this Act,
21 for purposes of determining eligibility for 1995 dividends, AS 43.23.005(d) shall be applied
22 as though it had not been amended by this Act.

23 * **Sec. 6.** Notwithstanding the amendment to AS 43.23.028(b) made in sec. 3 of this Act,
24 the notice requirements of AS 43.23.028(a) do not apply to appropriations from the dividend
25 fund made for fiscal year 1995 to the crime victim compensation fund established under
26 AS 18.67.162, to the Council on Domestic Violence and Sexual Assault established under
27 AS 18.66.010, to the court system, or to the Department of Corrections to the extent that
28 amounts appropriated do not exceed the total amount that would have been paid during fiscal
29 year 1994 and fiscal year 1995 to individuals who are ineligible to receive dividends under
30 AS 43.23.005(d) if they had been eligible.

31 * **Sec. 7.** Sections 3 and 4 of this Act are retroactive to January 1, 1994.

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

3 * Sec. 9. Sections 2 and 5 of this Act take effect January 1, 1995.

STATE OF ALASKA
1994 LEGISLATIVE SESSION

FISCAL NOTE

BILL NO.: CSSB 378(FIN) am

Revision Date: <u>May 7, 1994</u>	Dept. Affected: <u>Corrections</u>
Title: <u>Re. PFD for felons/misdemeanants</u>	BRU: <u>All</u>
Sponsor: <u>S. FIN</u>	Component: <u>All</u>
Requestor: <u>S. FIN</u>	Component Serial #: <u>694-1884</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXP.	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXP	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGES IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other (1050 PFD)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY94) cost \$ 0.0

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS:

Prepared by: Diane Schenker, Special Assistant
 Division: Office of the Commissioner
 Approved by: J. Frank Prewitt, Jr., Commissioner
 Agency: Department of Corrections

Phone: 465-4643/786-2147
 Date: 5/7/94
 Date: 5/7/94
 Page 1 of 1



Official Business

Alaska State Senate

Senate Finance Committee

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Juneau, Alaska 99801-1182

Sponsor Statement

Current statute provides that individuals who are incarcerated for a felony conviction are ineligible for a PFD in the next calendar year (AS 43.23.005(d)); the total amount that would have been paid to these individuals if they had been eligible is available for appropriation from the dividend fund during the next fiscal year to the crime victim compensation fund, the council on domestic violence and sexual assault, or the Department of Corrections (AS 43.23.028(b)).

SB 378 would change this process in two ways. First, it would increase the pool of individuals who are ineligible for a PFD to include convicted misdemeanants during a year in which they were incarcerated as a result of the conviction. Second, it would shorten the length of time necessary before the forfeited dividend funds are available for appropriation.

Misdemeanants impose a significant burden on the criminal justice system; in fact, the average misdemeanor costs the State at least \$1,559.60, based on the following estimates:

Department of Law	\$207.00
Department of Public Safety	\$300.00
Department of Corrections	\$852.60
Public Defender Agency	\$200.00
Court System	Unable to isolate costs

It is entirely appropriate that individuals convicted of a misdemeanor should forfeit the dividend and contribute towards the expenses incurred by the State's law enforcement, judicial, and correctional agencies.

Currently it takes three years before the forfeited dividend funds are available for appropriation; for example, the appropriation from the dividend fund for FY95 reflects convicted felons who were incarcerated in CY92. SB 378 would shorten this process to two years. This would have the effect of "bumping up" future appropriations by one year, thereby allowing a second appropriation from the dividend fund for FY95.

Additionally, SB 378 would add the court system to the list of agencies eligible to receive appropriations from the dividend fund; since every individual convicted of a felony or misdemeanor must appear before the court at some point, its inclusion should decrease the possibility of an equal protection challenge.

David,

The number of misdemeanors that we handle which result in conviction is roughly 14,000 each year. In addition, we handle roughly 3,000 probation revocations in misdemeanor cases. Because these revocation proceedings are usually simple and straightforward, we have not included them in the cost-per-case estimate calculated below.

The percentage of the attorney staff assigned to misdemeanor cases is roughly one-third, except in Anchorage where it is roughly one-quarter (most misdemeanor cases in Anchorage are handled by the municipal prosecutor's office).

The annual cost of misdemeanor prosecution is shown below, based on the FY 94 authorized budget. The costs fall into four components only, because misdemeanor cases are not handled by the components for special prosecutions and appeals or criminal justice litigation.

1st Jud. Dist.	$1074 \times 1/3 = 358$
2nd Jud. Dist.	$701 \times 1/3 = 234$
3rd -- Anch	$2905 \times 1/4 = 726$
3rd -- all other	$2784 \times 1/3 = 928$
4th Jud. Dist.	$1956 \times 1/3 = \underline{652}$
	$2898 \div 14 = \$207.00$

The misdemeanor cases fall into the following general categories. Next to each is the number of cases (rounded to the nearest hundred) that were sent to prosecution offices by police agencies in FY 93 to be reviewed for possible prosecution.

Assault	3300
Property Offens	2500
Disorderly Conduct/ Harrassment	700
Liquor Offenses	1700
Drug Offenses	500
Fish & Game	800
DVT	4200
Driv w/ Susp Lic	2400
Reckless/Neg Driv	200
Oth Driv Offenses	1900
All Other Misd Crimes	1600
Probation Revocation	<u>3300</u>
	23100

Attached is a listing of the crimes (and some other provisions) in Title 4 (alcohol), Title 11 (criminal code), Title 12 (criminal procedure), Title 16 (fish and game) and Title 28 (motor vehicles). The most common misdemeanors are highlighted. For your convenience, I have also included a copy of our criminal law manual, which contains all these provisions. In addition, however, there are a number of other offenses (usually punishable by fines only) that appear in regulations adopted by the Department of Fish and Game (related to hunting and fishing) and the Department of Public Safety (relating to motor vehicles, rules of the road, etc.)

Let me know if you have further questions.

Dean Guaneli

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY
DIVISION OF ADMINISTRATIVE SERVICES

Richard L. Burton
CommissionerP.O. BOX 111200
JUNEAU, ALASKA 99811-1200
PHONE (907) 465-4336

April 13, 1994

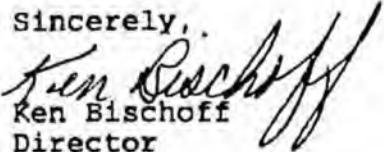
The Honorable Steve Frank
Co-chair, Senate Finance Committee
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Senator Frank:

In response to your staff's request to "estimate the average cost imposed on the Department of Public Safety by a misdemeanor arrest", a ballpark estimate is \$300 per arrest [5 hours X \$60 per hour]. The average time spent on a misdemeanor arrest can vary widely depending on whether it occurs in the bush or on a road system, the local court system's arraignment process, whether there is a state correctional institution or local contract jail nearby, and of course, the type of offense. The amount of time spent investigating a case can vary greatly. An "on sight" arrest can be very quick, but a theft case may take much time to investigate to the point of arrest. Also, violent offenses typically take much more time than a simple case.

Management reports are based on cases reported, and of course, not all cases result in an arrest, so it is not practical at this time to be definitive about the average time involved in a misdemeanor arrest. The most common misdemeanor arrest, Driving While Intoxicated, probably takes about three to four hours on the average. Some misdemeanor arrests take up to 60 hours of Trooper time. The 5 hour per arrest average is probably a low estimate.

The Alaska State Troopers currently contract with the US Forest Service to provide law enforcement in certain areas at a rate of \$60 per hour [which includes salary, benefits, and some support costs]. This rate has not been adjusted in recent years, and is due to be raised, but can be used as a rough estimate of the cost for an hour of Trooper time, a low estimate when all costs are taken into consideration.


Sincerely,

Ken Bischoff
Director

MEMORANDUM

STATE OF ALASKA

DEPARTMENT OF CORRECTIONS

TO: David Skidmore
Legislative Assistant to Senator Steve Frank

FROM: Diane Schenker 
Special Assistant to the Commissioner

DATE: April 13, 1994

This memorandum is in response to your question regarding the average length of stay in a correctional center for a misdemeanant. According to Steve Schwartz, our Research Analyst, the average length of incarceration for a misdemeanant is 8.7 days.

This average was calculated based upon a formula used by the National Institute of Corrections, using the Department's OBSCIS data from calendar year 1993, as follows:

559 (1993 average daily population of misdemeanants, both pretrial and sentenced) X 365 (days per year) divided by 23,468 (1993 total admissions for misdemeanants) = 8.7 days, average length of stay.

The average daily cost of care, including state correctional beds as well as community residential center beds, is \$98 per day. Therefore, incarceration for the average misdemeanant costs the department \$852.60 ($\98×8.7).

MEMORANDUM

DATE: 4-14-94
TO: Senator Steve Frank
FROM: John B. Salemi, Public Defender
RE: Average cost of Misdemeanor case

Per your 4-13-94 request, this memo contains the Alaska Public Defender Agency's best guess as to the average cost of providing legal representation for a client charged with a misdemeanor level offense. Please be advised that this estimate was prepared with less than one day's notice. It is also noteworthy that misdemeanor charges vary greatly, and therefore there really is no such thing as an average misdemeanor case. Finally, this estimate is not generated by computer number-crunching, but based on the collective experience of the attorneys presently handling misdemeanors in our Anchorage office. No information was gathered from our rural offices. Here goes:

ATTORNEY TIME

1. File review and client interview(s): 1.5 hours
 2. Pre-trial motion review, drafting, research: 1.0 hours
 3. Negotiations, phone calls, bail hearing(s): 1.0 hours
 4. Change of plea hearing (preparation and court): .75 hours
- TOTAL: 4.25 HOURS**

A staff attorney doing misdemeanor cases is paid a salary which is the equivalent of \$22.38/hour. $4.25 \times \$22.38 = \95.12 .

The remaining costs on an "on average basis" are even more speculative. Secretary time, photocopying, equipment costs, lease space expenses--the list of overhead items and allocation to misdemeanor work cannot be readily determined. Neither should it be ignored or minimized. So, a wild guess: \$100/case.

In summary, a quick, best guess, based on attorney-generated information (as opposed to statistical analysis) is approximately \$200 per case.

I hope this helps. Call if you would like to discuss this issue.

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1604
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FAIRBANKS, ALASKA 99701-4670
PHONE: (907) 451-2811
FAX: (907) 451-2848

P.O. BOX 110900 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-9600
FAX: (907) 465-8735

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 15, 1994

The Honorable Steve Frank
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: Senate Bill No. 378

Dear Senator Frank:

You asked me yesterday for a brief review of SB 378 to see if it raised any constitutional concerns. I do not believe SB 378 would be found unconstitutional; however, there are a few areas of concern.

SB 378 amends AS 43.23.005(d), which provides that incarcerated felons are ineligible for permanent fund dividends ("pfd's"). The amendments add misdemeanants to those who are ineligible for pfd's, and also provide that the ineligibility extends to the year of conviction as well as any year in which the individual is incarcerated.

The Alaska Supreme Court has issued two opinions on the constitutionality of the original version of AS 43.23.005(d): State v. Anthony, 810 P.2d 155 (Alaska 1991) ("Anthony I"); and State v. Anthony, 816 P.2d 1377 (Alaska 1991) ("Anthony II"). I enclose copies of those cases for your information.

In Anthony I, the Supreme Court discussed the purposes of the statute. The legislative history stated the purpose was to obtain money for the Crime Victim Compensation Fund. While both parties agreed another purpose for the statute was to obtain partial reimbursement for the cost of incarceration, the Court did not find any indication of this in the legislative history, so they did not discuss the statute in relation to that purpose. 810 P.2d at 159.

The Court held in Anthony I that AS 43.23.005(d) does not violate the equal protection provision of the Alaska or United States Constitution. Plaintiffs argued the statute made two improper classifications: between felons and misdemeanants, and between incarcerated and non-incarcerated felons. The Court, however, found that neither classification was improper. 810 P.2d at 161. In both cases, the class which lost eligibility for a

dividend (felons as opposed to misdemeanants, and incarcerated as opposed to non-incarcerated felons) may be deemed to have caused greater harm than the other class which retained eligibility (misdemeanants and non-incarcerated felons). Therefore the classifications drawn were sufficiently related to the purpose of obtaining funds for crime victims to meet equal protection requirements. 810 P.2d at 161-2.

It is unlikely, given the Anthony decision's discussion of this issue, that the amendment contained in SB 378 would be found violative of equal protection. The only classification it draws is between persons convicted of crimes and those not convicted of crimes. Depending upon the intent of the amendment, as shown through its legislative history, it is quite likely it would withstand a constitutional challenge based on equal protection.¹

Anthony II dealt with whether AS 43.23.005(d) is an ex post facto law, that is, a law which punishes as a crime an act previously committed which was innocent when done, or which imposes additional punishment after a crime was committed. The Court ruled the statute did not violate the ex post facto prohibition, since it was not intended as punishment. The Court noted, "It is significant that a person who is not sentenced to incarceration is not made ineligible for a permanent fund dividend. Since the purpose of the statute is compensatory rather than punitive, we conclude that it does not violate the ex post facto clause of either the United States or the Alaska Constitution." 816 P.2d at 1378.

If the purposes of the amendment are similar to those of the original enactment of AS 43.23.005(d), there should not be a problem with ex post facto. The intent would have to be broad enough to cover not only incarcerated but also convicted, non-incarcerated misdemeanants and felons. If the Court were to find the purposes punitive rather than compensatory, it should merely invalidate the statute's application to persons whose crimes were committed prior to the effective date.

¹ There is a potential equal protection problem. The effect of the amendment will be that a person who is convicted of an offense and serves his time for the conviction all in one calendar year will lose only one dividend, while a person who is convicted in December and who serves his time in January will be ineligible for two dividends. Cf., Anthony I, 810 P.2d at 162. The Court has clearly stated that perfection is not required in order to comply with equal protection, however, it is possible this might be considered to be outside the range of a reasonable means/ends fit.

Senator Steve Frank
State Senate

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As you can see from the Anthony decisions, it is important to make the purpose of the amendment clear, either through written language such as that found in Ch. 54, § 5, SLA 1988, or through oral testimony. If your intent is to raise additional funds to cover the cost of incarceration or other costs related to conviction, or if it is to raise funds for specific programs, it should be spelled out. All the various purposes for the amendment should be stated. If a constitutional challenge is raised, the courts will look to that history to determine the legislature's intent, which can be determinative of the outcome of the challenge.

I have not researched whether Section 2 of SB 378 violates the prohibition on dedicated funds, but it certainly raises the question. I assume this was researched when that section was initially enacted.

There is a potential double jeopardy problem if one of the purposes of the amendment is to obtain reimbursement for the cost of incarceration. AS 28.35.030(k) and AS 28.35.032(o) were recently amended to provide that persons convicted of DWI or refusal are required to pay the cost of their imprisonment. The Attorney General's Office collections unit is collecting on those judgments for the Department of Corrections. I have not had an opportunity to research this fully, but it certainly raises an issue is a person may be paying twice for the same purpose.

As we discussed, there may be concern that the misdemeanants' pfd's are no longer available for child support, restitution, criminal fines and other debts. This should not be a big problem since the misdemeanant would presumably be eligible the next year for the pfd and the creditors would simply be delayed a year in achieving eventual satisfaction.

Finally, there is a potential logistical problem in connection with finding out when people are convicted. As I understand it, the Departments of Corrections and Revenue have worked out a system to determine the number of incarcerated felons who would otherwise have been eligible. This bill extends ineligibility for the pfd to persons convicted but not incarcerated. I am unsure where that information would come from. If it needs to come from the courts, they are not all computerized, and the Department of Revenue would have to manually input the necessary data. Additionally, various municipalities as well as the state do criminal prosecutions; if this is intended to cover persons convicted of municipal offenses, somehow the Department of Revenue will need to obtain data from them. If it does not cover municipal offenses, perhaps that could be clarified.

Senator Steve Frank
State Senate

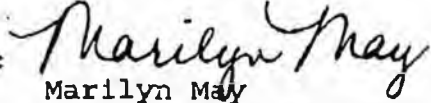
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These are the areas which come to mind in the brief time I have had to consider the bill. If you would like to discuss this further, or need more in-depth information, please feel free to call.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:


Marilyn May
Assistant Attorney General

MM:bld

cc: Raga Elim
Senior Legislative Liaison
Office of the Governor

Deborah E. Behr
Assistant Attorney General

Enclosures

REPRESENTATIVE LIST OF MISDEMEANORS

ALCOHOLIC BEVERAGES

Failure to obtain required license or permit
Possession or consumption of alcohol by persons under the age of 21
Furnishing or delivery of alcoholic beverages to persons under 21

CRIMINAL LAW

Assault in the fourth degree
Reckless endangerment
Theft in the third degree
Theft in the fourth degree
Criminal trespass in the first degree
Criminal trespass in the second degree
Criminal mischief in the third degree
Criminal mischief in the fourth degree
Escape in the fourth degree
Unlawful evasion in the first degree
Unlawful evasion in the second degree
Resisting or interfering with arrest
Violating a domestic violence restraining order
Disorderly conduct
Harassment
Misconduct involving weapons in the fourth degree
Misconduct involving weapons in the fifth degree
Misconduct involving a controlled substance in the fifth degree
Misconduct involving a controlled substance in the sixth degree
Violation of conditions

FISH AND GAME

Strict liability commercial fishing penalties
Misdemeanor commercial fishing penalties
Wanton waste of big game animals and wild fowl

MOTOR VEHICLES

Driving without a drivers license
Driving on a suspended, revoked, or limited drivers license
Operating a vehicle, aircraft, watercraft, or commercial motor vehicle while intoxicated
Refusal to submit to chemical test
Reckless driving
Negligent driving

ALASKA DEPARTMENT OF REVENUE
 PERMANENT FUND DIVIDEND DIVISION
1989 - 1993 PFD ATTACHMENT AND ASSIGNMENT ACTIVITY
 As of January 18, 1994

<u>Services Held</u>	<u>5 Year Total</u>	<u>Permanent Fund Dividend Year (A)</u>				
		<u>1993</u>	<u>1992</u>	<u>1991</u>	<u>1990</u>	<u>1989</u>
<u>Attachments (B)</u>						
IRS (Federal Taxes)	68,594	19,758	18,125	12,413	11,548	6,750
Non-municipal Writs (Judgements) (C)	34,740	7,251	6,749	8,218	6,462	6,060
CSED (Child Support Delinquencies)	36,977	7,868	7,883	7,571	7,112	6,543
ACPE (Student Loan Delinquencies)	34,355	7,684	8,568	7,282	5,997	4,824
Municipal Writs (Fines & Taxes)	5,938	294	1,200	1,224	1,323	1,897
PFDD (Repayment of Dividends)	2,423	525	106	760	549	483
Certified Services (Judgements) (C)	2,510	2,156	354	(D)	(D)	(D)
Department of Law (Judgements)	1,365	1,365	0	0	0	0
DOL (Employment Taxes)	818	267	113	121	127	190
IEAD (State Taxes)	191	0	20	34	52	85
Court Orders (Judgements)	27	0	5	.1	20	1
<u>Total Attachments</u>	<u>187,938</u>	<u>47,168</u>	<u>43,123</u>	<u>37,624</u>	<u>33,190</u>	<u>26,833</u>
<u>Assignments (E)</u>	<u>21,867</u>	<u>5,907</u>	<u>4,628</u>	<u>3,753</u>	<u>4,502</u>	<u>3,077</u>
<u>Total Services Held</u>	<u>209,805</u>	<u>53,075</u>	<u>47,751</u>	<u>41,377</u>	<u>37,692</u>	<u>29,910</u>

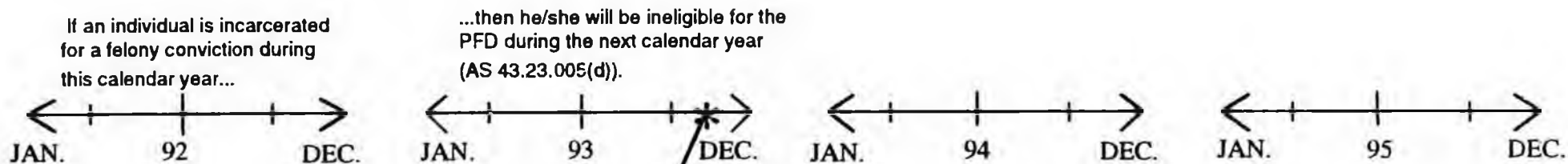
Notes

- (A) The figures reported for 1989-1992 are for the period April 1 through March 31 of the year indicated. The 1993 figures are for the period April 1, 1993 through December 31, 1993.
- (B) The attachment figures represent the number of attachments that actually were held. Some of the attachments received are returned because they are for an individual who is not on file. Others correspond to individuals who are on file but are released by the individual or agency filing the attachment before the department makes payment. The figures reported correspond to unreleased attachments held during the periods indicated.

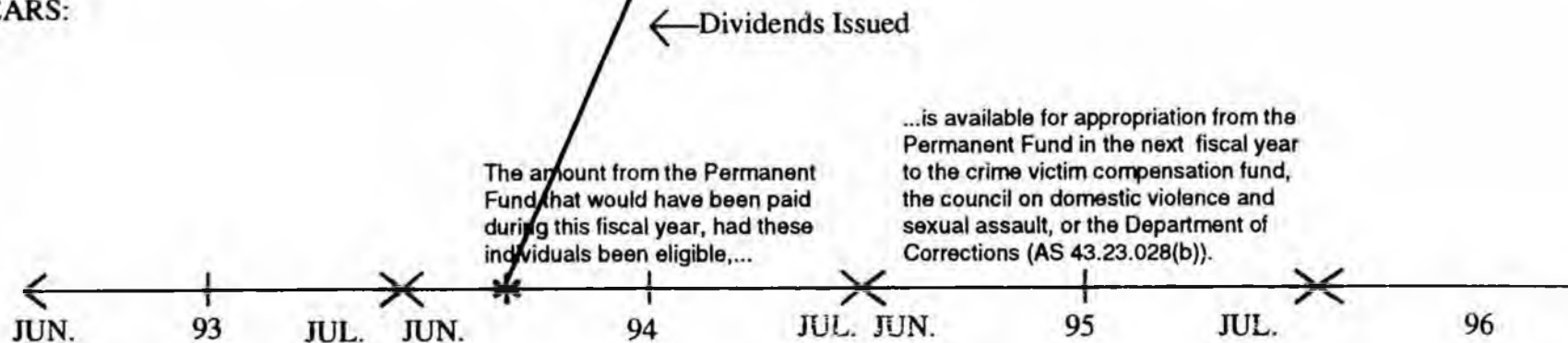
 Not all these attachments received funds. For example, an individual may have been attached by both CSED and the IRS. If the CSED attachment equaled or exceeded the amount of the dividend, CSED would receive the entire dividend, and IRS the would receive nothing. However, the statistics would still reflect 2 attachments.
- (C) Until December 30, 1990 the exemption from attachment for these items was 50%. Effective January 1, 1991 the exemption from attachment for these items was reduced to 45% by § 3, Ch 199, SLA 1990. Non-municipal Writs are served by Process Servers.
- (D) Certified services were only available starting in 1992 as a result of amendments to AS 43.23.065 enacted by Ch 52, SLA 1992.
- (E) Since 1989 assignments can only be made to governmental agencies or a court.

CURRENT PROCEDURE: Forfeiture of PFD by Individuals Convicted of Felony

CALENDAR YEARS:

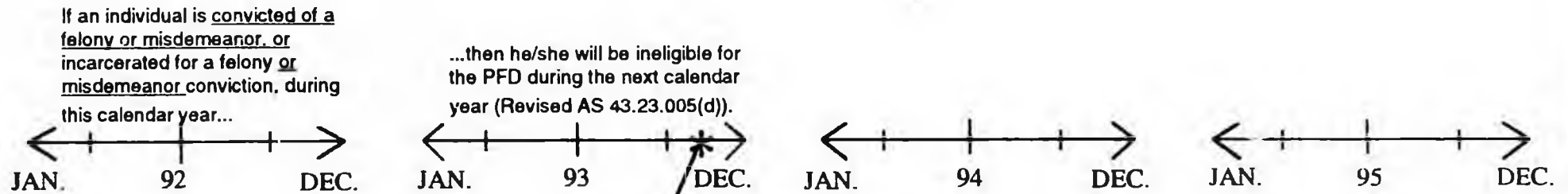


FISCAL YEARS:

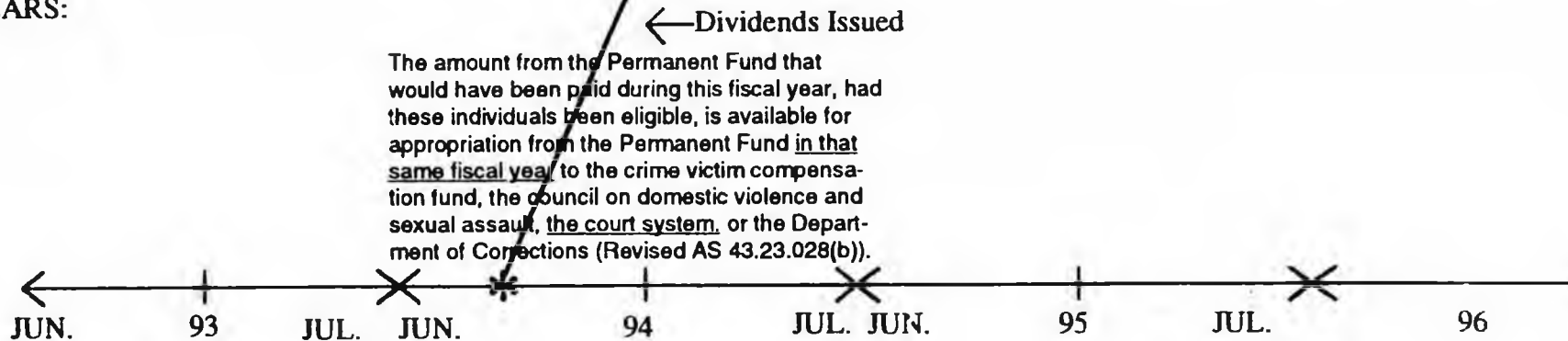


PROPOSED PROCEDURE: Forfeiture of PFD by Individuals Convicted of Felony or Misdemeanor

CALENDAR YEARS:



FISCAL YEARS:



SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERR.

Imp

DATE: 4/14/94

FURTHER: Finance

Date of 5-Day Notice: 4-14-94
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 4-20-94

State Affairs Committee considered SB 378

"An Act relating to permanent fund dividend program notice requirements and to dividends of individuals convicted of felonies or misdemeanors; and providing for an effective date."

and recommends:

replace with _____ CS. SB 378 (STA)

and recommends it be replaced with

same title
 new title
 technical title change (HB only)

attaches amendment(s) and report it back as follows

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

*OFFER'S
IN'S*

FISCAL NOTE INFORMATION

Department	Date	Zero	Fiscal
DOR - PFD	4-18-94	✓	
DOC	4-15-94	✓	
COURTS	4-20-94		✓

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

Governor's Bill with Previous Fiscal Notes (enter information above)

DO PASS:

OTHER RECOMMENDATIONS:

1 Mike Miller

2 Duncanson - No Rec

3 Edwin L. Taylor No Rec

1 Steven A. Lemaw Do Pass
Chair: Signature and Recommendation

*CS
CB
CB*