

SB

135

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred: April 21, 1995

FURTHER REFERRALS:

Date of Committee Action: 4/27/95

The FINANCE Committee considered:

SB 135 am

SENATE BILL NO. 135 am

PI-D NOTICES AND ELIGIBILITY

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

recommends it be replaced with the following committee substitute HCS CSSR 135 (Fin) | | the same title | | a new title

| | additional referral to _____ Committee
| | attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Type)

APPROVES PREVIOUS: _____ (Type/Date)

| | fiscal note(s) _____ 31X fiscal note(s)

Rev, 3/30/95 (#1)
DPS 3/30/95 (#5)
DOE 4/11/95 (#5)

| | zero fiscal note(s) _____ 2X zero fiscal note(s)

DOC 3/30/95 (#2)
Law 4/11/95 (#4)

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
Richard Foster			X	
Kelly			X	
Thermain			X	
Chulder	X			
Hanley	X			
Martin	X			
Brown		X		
Crossen	X	X		
Dewar			X	

CHAIR'S SIGNATURE

Mark Hanley
Richard Foster

FISCAL NOTE

No. 1

Bill Version: SB135

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. (S) Publish Date: 3-30-95

Revision Date: _____ Dept. Affected: Department of Revenue
 Title: PFD Notices and Eligibility BRU: Permanent Fund Dividend Division
 Component: Permanent Fund Dividend Division
 Sponsor: SENATE FINANCE COMMITTEE
 Requester: SENATE STATE AFFAIRS COMPONENT SERIAL NO. 981

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	1.9	0.0	29.7	29.7	29.7	29.7
TRAVEL						
CONTRACTUAL	0.5	0.0	4.3	4.3	4.3	4.3
SUPPLIES	0.0	0.0	0.5	0.5	0.5	0.5
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	2.4	0.0	34.5	34.5	34.5	34.5

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 DIVIDEND FUND 1050	2.4	0.0	34.5	34.5	34.5	34.5
TOTAL	2.4	0.0	34.5	34.5	34.5	34.5

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

FULL-TIME	1	1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See pages 2, 3

Prepared by: Nanci A. Jones, Director Phone: 465-2323
 Division: Permanent Fund Dividend Division Date: 3/28/95
 Approved by Commissioner: Deborah Vogt Date: 3/28/95
 Agency: Department of Revenue

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ALASKA DEPARTMENT OF REVENUE
 PERMANENT FUND DIVIDEND DIVISION
ANALYSIS OF SENATE BILL 135

As of March 28, 1995

Section 2 of this legislation would add two additional conditions that would make individuals ineligible for the 1996 and subsequent dividends.

The effective dates of this bill allow two separate appropriations to be made from Permanent Fund Dividend funds in FY 96. This is done to supplement the Department of Corrections budget.

Assumptions:

1. The Department of Corrections and the Department of Public Safety will annually provide the Department of Revenue with a computer tape file of all incarcerated felons, convicted felons, and incarcerated third or subsequent convicted misdemeanants.
2. Programming changes will be a one-time cost. Ongoing maintenance of new programs would be accomplished by existing staff. The computer system will need to be changed to account for the change in the program, to establish new classes of ineligibles, and add computer generated denial letters for each class of ineligibles.
3. The cost of data processing chargebacks for mainframe will be continuing from FY 98. This will cover the cost associated with processing the computer tape with the PFD Masterfile, provide necessary printouts, and generate denial letters.
4. The cost of working an estimated 1,300 additional appeals. This is based on our history of appeals on presently incarcerated felons. One full-time Permanent Fund Dividend Specialist I will be required to work these additional appeals. It is estimated it will take until FY 98 for misdemeanants to accumulate the necessary convictions and incarceration.

Cost Summary:

1. <u>Personal Services</u>	<u>FY 96</u>	<u>FY 97</u>	<u>FY 98</u>	<u>FY 99</u>	<u>FY 00</u>	<u>FY 01</u>
a. 1 non-permanent Analyst Programmer IV, Range 19A, at \$3,748/mo., including salary and benefits, for two weeks.	1.9					
b. 1 PFT PFD Specialist I, Range 13A, at \$2,478/mo., including salary and benefits, for 12 months.			<u>29.7</u>	<u>29.7</u>	<u>29.7</u>	<u>29.7</u>
<u>Total Personal Services</u>	<u>1.9</u>		<u>29.7</u>	<u>29.7</u>	<u>29.7</u>	<u>29.7</u>

ALASKA DEPARTMENT OF REVENUE
PERMANENT FUND DIVIDEND DIVISION
ANALYSIS OF SENATE BILL 135

As of March 28, 1995

2. Contractual Services

a. Data Processing Charge-back	.5	.5	.5	.5	.5
b. Additional postage required for denial letters and appeal		<u>3.8</u>	<u>3.8</u>	<u>3.8</u>	<u>3.8</u>
<u>Total Contractual Services</u>	<u>.5</u>	<u>4.3</u>	<u>4.3</u>	<u>4.3</u>	<u>4.3</u>
3. <u>Supplies</u>					
a. Forms and envelopes		<u>.5</u>	<u>.5</u>	<u>.5</u>	<u>.5</u>
<u>Total Cost</u>	<u>\$2.4</u>	<u>\$34.5</u>	<u>\$34.5</u>	<u>\$34.5</u>	<u>\$34.5</u>

FISCAL NOTE

No. 2

Bill Version: SB135

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BI) (S) Publish Date: 3-30-95

Revision Date: 3/17/95 Dept. Affected: Corrections
 Title: An act relating to permanent fund dividend BRU: All
 programindividuals convicted or incarcerated....etc. etc. Component: All
 Sponsor: Senate Finance Committee
 Requester: State Finance COMPONENT SERIAL NO. 0694-2035

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
1050 PFD Funds	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 (FY95) cost: 3 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill increases the pool of individuals ineligible for PFD by adding non-incarcerated felons and individuals incarcerated for a third or subsequent misdemeanor offense. It is not clear how many offenders could potentially be denied, nor can one discern how many of these individuals may be ineligible for another reason and thus would not increase the available funds.

There is no certainty how much, if any, would be appropriated to an eligible agency in any given year. Further this bill makes no appropriation. One or more agencies will have to increase their reporting capability in order to make this bill operate efficiently. For example, the non-incarcerated felon group would not come to the attention of DOC.

Prepared by: Jerry Shiner Phone: 465-4640
 Division: Office of the Commissioner Date: 3/28/95
 Approved by Commissioner Margaret Pugh Date: 3/28/95
 Agency: Department of Corrections

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STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL A

No. 3

Bill Version: SB 135

(S) Publish Date: 3-30-95

Revision Date: _____
Title: An act relating to permanent fund dividend program notice requirements, to the ineligibility for dividends
Sponsor: Senate Finance
Requester: Senate Finance

Dept. Affected: Public Safety
BRU: All
Component: All
COMPONENT SERIAL NO. 523

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	5.0	3.0	3.0	3.0	3.0	3.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	5.0	3.0	3.0	3.0	3.0	3.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						
Revenue Code						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	5.0	3.0	3.0	3.0	3.0	3.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	5.0	3.0	3.0	3.0	3.0	3.0

Estimate of current year (FY 95) impact: 50 _____

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: (Attach a separate page if necessary.) This fiscal note is attributed to the responsibility assigned to DPS under Section 5 to report a list of ineligible who become 3d time misdemeanants or to identify felons who are not incarcerated. The list would be based upon adhoc computer programs, developed to run annually, that summarize court judgment information contained in APSIN criminal history records.

If it is determined that the Department of Law is more readily able to provide this information, then Public Safety's fiscal note would be reduced to zero for all years.

Prepared By: Kenneth E. Bischoff, Director Phone: 465-4336
 Division: Administrative Services Date: _____
 Approved by Commissioner: Ronald L. Otte Date: 3/21/95
 Agency: Dept. of Public Safety

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FISCAL NOTE

No. 4
 Bill Version: SSB 135 FIN
 (S) Public Date: 4-11-95

STATE OF ALASKA
 1995 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Department of Law
 Title: Permanent fund dividend program...ineligibility... BRU: Prosecution
of individuals convicted of felonies or incarcerated for misdemeanors... Component: All
 Sponsor: Senate Finance Committee
 Requester: Governors Office/OMB COMPONENT SERIAL NO. 0085-0090

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
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 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	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME	0.01	0.01	0.01	0.01	0.01	0.01
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 43.23 to enlarge the group of criminals made ineligible to receive permanent fund dividends to include persons who are convicted of a felony and who are not incarcerated, and to include persons convicted for a third or subsequent misdemeanor who are incarcerated. Currently only incarcerated felons are ineligible for PFDs each year that they are in prison.

Under existing law, the money that would have been given to the incarcerated felons for PFDs can instead be appropriated by the legislature to three agencies/funds: the violent crime compensation fund, the council on domestic violence and sexual assault, and the Department of Corrections. This past year, \$2.8 million was appropriated in this way: \$1.6 million to the Department of Public Safety for the violent crime compensation fund and the council on domestic violence; and \$ 3 million to the Department of Corrections. (\$1.4 million was undistributed.)

Prepared by: Richard I. Peaves, Director Phone: 465-3672
 Division: Administrative Services Division Date: 3/30/95
 Approved by Commissioner: Bruce M. Botwin, Attorney General Date: 3/30/95
 Agency: Department of Law

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ANALYSIS CONTINUATION:

It is difficult to estimate, but a best guess is that 2,000 new people will become ineligible for a PFD, if the bill is enacted. There are a number of persons and groups who rely upon these criminals' PFDs as a source of revenue that can be garnished who will be displaced if the ineligible criminal group is enlarged to include incarcerated third-time misdemeanants and convicted felons who are not incarcerated.

First in priority are those owed child support payments (there were over 9,000 PFD garnishments for child support last year). Next are those owed court-ordered restitution, then claims on defaulted school loans (over 6,500 last year), court-ordered fines (possibly over 7,000 last year), certain writs of execution, debts owed to the state, and then debts owed to other creditors, including federal and local taxes (over 30,000 last year). Furthermore, alcohol rehabilitation groups frequently garnish PFDs to get reimbursed for services provided to clients who undergo court-ordered treatment as a result of an alcohol related offense such as DWI or domestic violence. The Department of Corrections already garnishes DWI offenders' PFDs for the cost of the offenders' incarceration. To the extent that these criminals are made ineligible for PFDs, these groups will lose an important source of money for payment of these obligations.

The bill would also expand the list of agencies that may receive appropriations from the money "saved" by not giving it to criminals. In addition to the agencies listed above, the following new agencies would be allowed to receive appropriations from these funds: the Department of Revenue (for its operation of the child support enforcement agency), the Department of Public Safety, and the Department of Law.

The bill authorizes the legislature to make a one time appropriation from permanent fund earnings to the Department of Corrections. The Senate budget for Corrections is predicated on this bill passing; i.e., \$ 2.7 million of the total budget allocated in the Senate budget to Corrections comes from the permanent fund earnings account or presumably doesn't come at all.

Under existing law, the 1996 PFD is being used to make appropriations to the crime victims fund, the council on domestic violence and sexual assault, and the Department of Corrections from those criminals who were ineligible for PFDs in 1994 (i.e., the amount represented by the PFDs that were "forfeited" by criminals in 1994). The bill would shorten this "lag time" by having each year's PFD earnings account used to make the special appropriations correlate to the prior year's "forfeited" PFDs. An effective date clause in the bill initiates this new system this year. This means that there will be two appropriations from the 1996 earnings account -- one for allocations based on the 1994 forfeited PFDs (which as usual will go to the violent crime compensation fund, the council on domestic violence and sexual assault, and to the Department of Corrections) -- and a second time for a once-only extra appropriation to the Department of Corrections based on 1995's forfeited PFDs. This latter amount is estimated to be \$ 2.7 million, or about the same as last year's sum. Appropriations of this nature need not be disclosed to the public under AS 43.23.028.

It is problematic whether funds will ever be available for distribution to the Department of Law, the Department of Public Safety, or the Department of Revenue. The effective date of the section that makes incarcerated third-time or subsequent misdemeanants ineligible for PFDs is January 1, 1996, and offenses committed before the effective date may not be considered in determining the number of prior convictions for the purpose of applying ineligibility. So it appears that it will be some years before the amount appropriated in 1996 is reached again. As a consequence, any fiscal impact for the Department of Law is uncertain at this time.

FISCAL NOTE

No. 5
 Bill Version: CSSB 135 F
 (S) Publish Date: 4-11-95

STATE OF ALASKA
 1995 LEGISLATIVE SESSION

Revision Date: 4/4/95 Dept. Affected: ACPE
 Title: An Act relating to PFD notice requirements,
ineligibility of incarcerated misdemeanors, etc. BRU: ACPE
 Component: Student Loan Operations
 Sponsor: ISISFIN
 Requester: ISISFIN COMPONENT SERIAL NO. 213

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
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 EXPENDITURES

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CHANGE IN REVENUES

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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

POSITIONS	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The provisions in this bill would incrementally impact the Alaska Student Loan program. The Alaska Commission on Postsecondary Education places claims on approximately 6,500 PFD's annually. In the last few years, only 2-5 PFD's have been released to the Department of Corrections due to the ineligibility of an incarcerated borrower. This amount could increase as the population of third-time offenders increase (the Department of Public Safety estimates an annual 17% increase in this population), however it would have a minimal impact on the total dollars collected through this method.

Prepared by: Gillian R. Hays, Legislative Liaison Phone: 485-6718
 Division: Alaska Commission on Postsecondary Education Date: 4/4/95
 Approved by Executive Director: Joe L. McCormick Date: 4/4/95
 Agency: Alaska Commission on Postsecondary Education

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Official Business

Alaska State Senate

Senate Finance Committee

Mail Stop 3000
State Capitol
Juneau, Alaska 99801-3000

MEMORANDUM

TO: Senator Steve Frank, SFC Co-Chairman
FROM: David Skidmore, Staff Aide
RE: SB 135: Bill Analysis
DATE: 25 April 1995

Current statute provides that an individual who is incarcerated for a felony conviction is ineligible for a PFD in the next calendar year (AS 43.23.005(d)); the total amount that would have been paid to such 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 without being noticed on the dividend stub (AS 43.23.028(b)). SB 135 would change this process in four ways:

- It would increase the pool of individuals who are ineligible for a PFD to include those persons who in a given year are either convicted of a felony or incarcerated for their third or subsequent misdemeanor conviction (Sec. 2).
- It would shorten the length of time necessary before the forfeited dividend funds are available for appropriation (Sec. 3).
- It would require that the dividend stub provide public notice of the amount and use of dividend monies denied to criminals (Sec. 3).
- It would make three additions to the list of governmental entities that are eligible to receive such appropriations from the dividend fund: the Departments of Law, Public Safety, and Revenue (for operations of the child support enforcement agency; Sec. 3).

1. PFD Forfeiture

There are currently two types of offenders which constitute a significant burden on the criminal justice system but retain eligibility for the PFD: chronic misdemeanants (three or more convictions) and convicted felons that are not incarcerated as part of their sentence. One of the purposes of SB 135 is to obtain reimbursement for some of the costs imposed on the State by such offenders (Sec. 1).

Misdemeanants in general impose a significant burden on the criminal justice system; in fact, the average misdemeanor costs the State \$2,275.05 per conviction, based on the following 1995 departmental estimates:

- Department of Law: \$205.00
- Department of Public Safety \$500.00
- Department of Corrections \$875.05
- Public Defender Agency \$200.00
- Court System \$495.00 (FY94 ave. cost/case excl. traffic filings)

The court system reports that misdemeanor convictions represented 92% of all criminal convictions during FY94. Beyond this, the Department of Corrections has calculated that the 1,550 individuals who were incarcerated during 1993 for their third or subsequent misdemeanor had been collectively convicted of 6,589 misdemeanors. Repeat misdemeanants are thus a heavy burden on the State.

Although an offender's sentence following a felony conviction may not require incarceration, such felons still impose considerable costs on the state criminal justice system which may relate to apprehension, booking, pre-sentence incarceration, prosecution, public defender, conviction, or probation. DPS reports that the average felony investigation costs \$5,000. According to the court system, 23% of individuals convicted of felonies in FY94 did not serve jail time as part of their sentence.

It is entirely appropriate that these two types of offenders should forfeit the dividend (Sec. 2) and reimburse the State for expenses incurred by law enforcement and correctional agencies.

2. Appropriation Process

Currently it takes three years before the forfeited dividend funds are available for appropriation; for example, the appropriation from the dividend fund for FY96 reflects convicted felons who were incarcerated in 1993. SB 135 would amend this process such that the denied dividends would be appropriated for use by state agencies during the same fiscal year the funds are available, providing a more accurate linkage between denial and appropriation of these funds and eliminating the artificial one-year lag that currently exists. This would allow a second appropriation from the dividend fund in FY96 (the transition year), reflecting 1995 dividends denied to criminals incarcerated in 1994. It is estimated that \$2,703,700 (2,846 otherwise eligible felons--same as in 1993--incarcerated during 1994 x \$950 dividend) will be available for this second appropriation, and the Senate's FY96 DOC operating budget is predicated on the availability of these one-time funds.

3. New Public Notice Requirements

In response to concern over public awareness of this process, SB 135 was amended on the Senate floor to require that the dividend stub provide public notice of the total amount that would otherwise have been paid to ineligible criminals; the grounds for ineligibility; the legislative purpose in making criminals ineligible; and the amount appropriated to each of the government entities eligible to receive such appropriations.

4. Appropriations of Forfeited Dividends to Agencies

Since another purpose of SB 135 is to obtain reimbursement for the costs imposed on the criminal justice system by felons and chronic misdemeanants (Sec. 1), this bill would add the Departments of Law and Public Safety to the list of agencies that are eligible to receive appropriations from the dividend fund (Sec. 3).

In addition, SB 135 would also add the Department of Revenue ("for operations of the child support enforcement agency") to the list of eligible agencies (Sec. 3) in response to

concerns over the potential impact of this legislation on PFD garnishment for child support obligations. (It should be noted that even if an individual were convicted and imprisoned for a third or subsequent misdemeanor and thereby became ineligible for the PFD in a given year, he would presumably be eligible in the next dividend year; hence, the CSED would simply be delayed one year in achieving eventual satisfaction.)

Following the second appropriation during FY96, the amount available for appropriation will not increase markedly until FY98 when the expanded pool of ineligible inmates takes effect. SB 135 provides that the legislature may consider recommendations from the governor as to how this additional money should be allocated among eligible agencies (Sec. 4).

NOTE: It has been implied by some that the revised appropriation process represents a "double-dip" of the same monies; however, this is simply not the case. As stated above, the first FY96 appropriation (made under the existing procedure) is for '94 dividends that were denied to criminals incarcerated in 1993; the second appropriation (made possible by SB 135's correction of the artificial one-year lag) is for '95 dividends that were denied to criminals incarcerated in 1994. These are two different pools of ineligible criminals, denied dividends for two different years. It is erroneous to say that the "same" criminals are losing the "same" dividend twice. In general, the State has two options for these criminals' dividends: either give them to the offenders or take them to offset the costs imposed on the criminal justice system. Regardless of which policy is chosen, neither option reduces anyone else's dividend.



Official Business

Alaska State Senate

Senate Finance Committee

Mail Stop 3000
State Capitol
Juneau, Alaska 99801-0302

MEMORANDUM

TO: Representative Richard Foster, Co-Chairman
Representative Mark Hanley, Co-Chairman
House Finance Committee

FROM: Senator Steve Frank, Co-Chairman
Senate Finance Committee

RE: Senate Bill 135: Request for Hearing

DATE: 24 April 1995

I respectfully request that you schedule SB 135 for a hearing. This bill closely resembles SB 378 from last year which passed the Senate by a vote of 19-0 but died in the House at the end of session.

Current statute provides that an individual who is incarcerated for a felony conviction is ineligible for a PFD in the next calendar year (AS 43.23.005(d)); the total amount that would have been paid to such 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 without being noticed on the dividend stub (AS 43.23.028(b)).

SB 135 would change this process in four ways.

1. It would increase the pool of individuals who are ineligible for a PFD to include those persons who in a given year are either convicted of a felony or incarcerated for their third or subsequent misdemeanor conviction.
2. It would shorten the length of time necessary before the forfeited dividend funds are available for appropriation, providing a more accurate linkage between denial and appropriation of these funds and eliminating the artificial one-year lag that currently exists. This would allow a second appropriation from the dividend fund in FY96, reflecting '95 dividends denied to criminals incarcerated in 1994. The Senate's FY96 DOC operating budget is predicated on the availability of these one-time funds (roughly \$2.7 million).
3. It would require that the dividend stub provide public notice of the total amount that would otherwise have been paid to ineligible criminals; the grounds for ineligibility; the legislative purpose in making criminals ineligible; and the amount appropriated to each of the government entities eligible to receive such appropriations.
4. It would make three additions to the list of government entities that are eligible to receive such appropriations from the dividend fund: the Departments of Law, Public Safety, and Revenue (for operations of the child support enforcement agency).

INDIVIDUALS INELIGIBLE FOR A PFD
UNDER AS 43.23.005(d)

Current Law

SB 135

Incarcerated during the qualifying
year for a:

Felony Conviction

Incarcerated during the qualifying
year for a:

Felony Conviction

or

3rd or Subsequent Misdemeanor
Conviction

[only considering misdemeanor convictions occurring
after January 1, 1996, the effective date of section
2 of the legislation]

Convicted during the qualifying
year (without being incarcerated)

of a:

Felony

**FISCAL YEAR APPROPRIATIONS OF AMOUNTS DENIED INDIVIDUALS UNDER
AS 43.23.005(d)**

<u>Current Law</u>				<u>SB 135</u>			
<u>Qualifying Year</u>	<u>PFD</u>	<u>Dividends Denied in</u>	<u>Appropriated to Agencies for</u>	<u>Qualifying Year</u>	<u>PFD</u>	<u>Dividends Denied in</u>	<u>Appropriated to Agencies for</u>
1993	1994	FY 95	FY 96	1993	1994	FY 95	FY 96
1994	1995	FY 96	FY 97	1994	1995	FY 96	FY 96
1995	1996	FY 97	FY 98	1995	1996	FY 97	FY 97
1996	1997	FY 98	FY 99	1996	1997	FY 98	FY 98

Total amount of denied dividends is appropriated for use by state agencies during the *fiscal year after* the funds are available.

The size of the current year dividend is *artificially inflated* since the amount denied incarcerated felons in the current fiscal year is included in the calculation of the current year dividend.

Able to determine with certainty the amount available for appropriation.

Total amount of denied dividends is appropriated for use by state agencies during the **same fiscal year** the funds are available.

FY 96 "catch-up" provision eliminates the **artificial inflation** of the current year dividend by appropriating the amount denied in the current fiscal year to state agencies for the same fiscal year.

Must *rely on estimate* of PFD amount to determine the amount available for appropriation.

**STATE AGENCIES TO WHICH PFDs DENIED UNDER
AS 43.23.005(d) CAN BE APPROPRIATED**

Current Law

Department of Corrections

Department of Public Safety

Violent Crimes Compensation Fund

or

**Council on Domestic Violence and
Sexual Assault**

SB 135

Department of Corrections

Department of Public Safety

Violent Crimes Compensation Fund

or

**Council on Domestic Violence and
Sexual Assault**

or

Any other program in the Department

Department of Law

Department of Revenue

Child Support Enforcement Operations

[cannot be used for obligor payments since a public
appropriation cannot be used for a private purpose]

**EXAMPLE OF DISCLOSURE LANGUAGE ADDED BY
AS 43.23.028(a)(4)-(5)**

Total amount of dividends denied under AS 43.23.005(d) to individuals who, during the calendar year immediately preceding the dividend year, were:

1. convicted of a felony; or
2. incarcerated at any time as a result of
 - a. a third or subsequent misdemeanor conviction; or
 - b. a felony conviction.

1994 permanent fund dividends	\$2,800,179
1995 permanent fund dividends	<u>2,703,700</u>
<u>Total amount of dividends denied</u>	<u>\$5,503,879</u>

Total amount of denied dividends that were appropriated for the FY 96 operation of the following state agencies to defray some of the costs imposed on the state criminal justice system related to the apprehension, prosecution, conviction, incarceration, and/or probation of those individuals denied dividends under AS 43.23.005(d):

Department of Public Safety	
Council on Domestic Violence and Sexual Assault	\$1,215,000
Violent Crimes Compensation Fund	<u>758,700</u>
Total Department of Public Safety	1,973,700
Department of Law	0
Department of Corrections	3,508,600
Department of Revenue	
Child Support Enforcement Division	<u>0</u>
<u>Total appropriated to defray criminal justice system costs</u>	<u>\$5,480,300</u>

Cross references. — For legislative purpose and intent in enacting this section, see §§ 1, 2, ch. 11, SLA 1991 in the Temporary and Special Acts.

Effective dates. — Section 3, ch. 11, SLA 1991, which enacted this section,

took effect on August 28, 1991.

Editor's notes. — Section 4, ch. 11, SLA 1991 provides that this section applies to tax years beginning after December 31, 1991.

Article 5. General Provisions.

Section

310, 320. (Repealed)

Secs. 43.20.310, 43.20.320. Taxable years to which applicable; arrangement and classification. (Repealed, § 62 ch 21 SLA 1991.)

Chapter 23. Permanent Fund Dividends.

Section

- 05. Eligibility
- 11. Application period
- 15. Application and proof of eligibility
- 16. Voter registration
- 25. Amount of dividend
- 28. Public notice
- 35. Penalties and enforcement
- 45. Dividend fund

Section

- 55. Duties of the department
- 65. Exemption of and levy on permanent fund dividends
- 67. Claims of defaulted scholarship loans
- 69. Assignments
- 95. Definitions

Sec. 43.23.005. Eligibility. (a) An individual is eligible to receive one permanent fund dividend each year in an amount to be determined under AS 43.23.025 if

- (1) the individual applies to the department;
 - (2) on the date of application the individual is a state resident;
 - (3) the individual was a state resident for at least the calendar year immediately preceding January 1 of the current dividend year;
 - (4) the individual has been physically present in the state at some time during the prior two calendar years before the current dividend year; and
 - (5) the individual is
 - (A) a citizen of the United States;
 - (B) an alien lawfully admitted for permanent residence in the United States;
 - (C) an alien with refugee status under federal law; or
 - (D) an alien that has been granted asylum under federal law.
- (b) *(Repealed, § 18 ch 4 SLA 1992.)*
- (c) A parent, guardian, or other authorized representative may claim a permanent fund dividend on behalf of an unemancipated

year, the minor was born to or adopted by an individual who is eligible for a dividend for the current dividend year.

(d) Notwithstanding the provisions of (a) — (c) of this section, an individual who has been convicted of a felony is not eligible for a permanent fund dividend for a year when, during all or part of the previous calendar year, as a result of the conviction, the individual is incarcerated.

(e) *(Repealed. § 64 ch 21 SLA 1991.)*

(f) In a time of national military emergency, the commissioner may waive the requirement of (a)(4) of this section for an individual absent from the state under military orders while serving in the armed forces of the United States, or for the spouse and dependents of that individual. (§ 1 ch 102 SLA 1982; am § 1 ch 57 SLA 1987; am § 1 ch 54 SLA 1988; am § 1 ch 159 SLA 1988; am §§ 2, 3 ch 107 SLA 1989; am § 1 ch 68 SLA 1990; am §§ 46, 62 ch 21 SLA 1991; am § 1 ch 68 SLA 1991; am §§ 4 — 8, 18 ch 4 SLA 1992)

Cross references. — For the application deadlines for minors who qualified for a dividend for 1992 because of the 1992 amendment to (c) of this section, see § 19, ch. 4, SLA 1992 in the Temporary and Special Acts.

Effect of amendments. — The first 1991 amendment, effective June 11, 1991, substituted "12 consecutive months" for "24 consecutive months" in paragraph (a)(2) and repealed subsection (e).

The second 1991 amendment, effective June 20, 1991, added subsection (f).

The 1992 amendment, effective January 1, 1993, rewrote subsections (a), (c), and (d), repealed subsection (b), and made a paragraph reference substitution in subsection (f).

Editor's notes. — Under §§ 5 and 20, ch. 4, SLA 1992, from April 1, 1992, to January 1, 1993, and retroactive to January 1, 1992, the last sentence of (c) of this section read "Notwithstanding (a)(1)-(3) of this section, a minor is eligible for a dividend if, during the 24 months immediately preceding the current dividend year, the minor was born to or adopted by an individual who is eligible for a dividend for the current dividend year."

Legislative history reports. — For legislative letter of intent relating to the enactment of subsection (f) by § 1 ch. 68, SLA 1991 (HCS CSSB 96(FIN)), see 1991 Senate Journal, pages 256, 257.

NOTES TO DECISIONS

Constitutionality.

Subsection (d) does not violate the equal protection clause of the United States Constitution and/or the Alaska Constitution. *State v. Anthony*, 810 P.2d 155 (Alaska 1991).

Subsection (d), which makes incarcerated felons ineligible for permanent fund

dividends, does not violate the ex post facto clause of either the United States or the Alaska Constitution. *State v. Anthony*, 816 P.2d 1377 (Alaska 1991).

Cited in *Morgan v. Department of Revenue*, 813 P.2d 298 (Alaska 1991); *Handley v. State, Dep't of Revenue*, 838 P.2d 1231 (Alaska 1992).

filed for a previous year's dividend by the filing deadline but who were not included in a previous year's dividend computation;

(E) less appropriations from the dividend fund during the current year, including amounts to pay costs of administering the dividend program and the hold harmless provisions of AS 43.23.075;

(2) determining the number of individuals eligible to receive a dividend payment for the current year; and

(3) dividing the amount determined under (1) of this section by the amount determined under (2) of this section.

(b) *(Repealed, § 5 ch 68 SLA 1991.)* (§ 1 ch 102 SLA 1982; am § 1 ch 55 SLA 1983; am § 2 ch 43 SLA 1984; am § 2 ch 57 SLA 1987; am § 2 ch 54 SLA 1988; am § 4 ch 68 SLA 1990; am § 1 ch 198 SLA 1990; am § 5 ch 68 SLA 1991; am § 27 ch 134 SLA 1992)

Effect of amendments. — The 1991 amendment, effective June 20, 1991, repealed subsection (b).

The 1992 amendment, effective July 1, 1992, made a section reference substitution in subparagraph (a)(IXA).

Sec. 43.23.028. Public notice. (a) By October 1 of each year the commissioner ~~shall~~ give public notice of the value of each permanent fund dividend for that year. The notice and the stub attached to each individual dividend check must disclose the amount

(1) of each dividend attributable to income earned by the permanent fund from deposits to that fund required under art. IX, sec. 15, Constitution of the State of Alaska;

(2) of each dividend attributable to income earned by the permanent fund from appropriations to that fund and from amounts added to that fund to offset the effects of inflation; and

(3) by which each dividend has been reduced due to each appropriation from the dividend fund, including amounts to pay the costs of administering the dividend program and the hold harmless provisions of AS 43.23.075.

(b) The notice requirements of (a) of this section do not apply to appropriations from the dividend fund to the crime victim compensation fund established under AS 18.67.162, to the council on domestic violence and sexual assault established under AS 18.68.010, or to the Department of Corrections to the extent that amounts appropriated for a fiscal year do not exceed the total amount that would have been paid during the previous fiscal year to individuals who are ineligible to receive dividends under AS 43.23.005(d) if they had been eligible. (§ 2 ch 198 SLA 1990; am § 3 ch 68 SLA 1991; am § 1 ch 82 SLA 1992)

appropriation act, the un-
 appropriation to implement the
 e 30 of the fiscal year
 l be used in determining
 ar's dividend as provid
 982; am § 24 ch 99 SL
 38 SLA 1989)

transmittal letter related
 ment to (b) of this section by
 1989 (CSHB 276 Fin) am)
 ase Journal 933-934.

8

d. [Repealed, § 22 ch 102

ent. The department shall
 da from the dividend fund
 rative Procedure Act (AS
 limits for claiming a perma
 et the time limit for appl
 hat the number of eligib
 he year for which the div
 idends for a year are pai
 at year.

strative Procedure Act (AS
 e limits for an individua
 rity to apply for permanen
 rity because the parent
 ve did not apply on behalf

ularly in rural areas, wh
 ability to public transport
 and to apply for permanen

with the Department of Co
 ividuals ineligible for a p
 005(d);

ecessary to implement

procedures for the paren
 tive of a disabled individ

ly for prior year permanent fund dividends not received by the
 individual because no application was submitted on behalf of
 individual. (§ 1 ch 102 SLA 1982; am § 2 ch 55 SLA 1983; am § 3
 SLA 1984; am § 3 ch 54 SLA 1988; am § 5 ch 68 SLA 1990)

notes. — Section 11, ch. 99,
 amends this section. The
 is effective if § 1, ch. 99, SLA
 repealed (see § 25, ch. 99, SLA
 the amendment becomes law, the
 read: "The department shall
 annually make payments to indi-
 who elect to receive cash under
 005(d);

cept regulations under the Admin-
 Procedure Act (AS 44.62) that es-
 tablish procedures and time limits for
 claiming a permanent fund dividend or for
 an annuity credit, the depart-
 shall set the time limit for applica-
 for permanent fund dividends so
 the number of eligible applicants is
 by October 1 of the year for
 the dividend is declared and perma-
 nent dividends for a year are paid
 April 30 of the year following that

cept regulations under the Admin-
 Procedure Act (AS 44.62) that es-
 tablish procedures and time limits for an

individual upon emancipation or upon
 reaching majority to apply for permanent
 fund dividends not credited or received
 during minority because the parent,
 guardian, or other authorized representa-
 tive did not apply on behalf of the individ-
 ual.

"(4) assist residents of the state, partic-
 ularly in rural areas, who because of lan-
 guage, disability, or inaccessibility to pub-
 lic transportation need assistance to es-
 tablish eligibility and to apply for perma-
 nent fund dividends; and

"(5) provide the commissioner of admin-
 istration with information necessary to
 maintain individual annuity account
 records and administer the annuity pro-
 gram."

Effect of amendments. — The 1988
 amendment deleted "and" at the end of
 paragraph (3), and added paragraphs (5)
 and (6).

The 1990 amendment, effective Janu-
 ary 1, 1991, added paragraph (7).

§ 43.23.060. Duties of the department. [Repealed, § 22 ch 102
 1982.]

§ 43.23.065. Exemption of permanent fund dividends.
 Except as provided in (b) of this section, 45 percent of the annual
 permanent fund dividend payable to an individual is exempt from
 execution, garnishment, attachment, or any other remedy for the
 collection of debt. This exemption applies to an eligible individual's
 permanent fund dividend both before and after payment is made to
 the individual.

An exemption is not available under this section for permanent
 fund dividends taken to satisfy

child support obligations required by court order or decision of
 child support enforcement agency under AS 25.27.140 —
 25.27.220;

court ordered restitution under AS 12.55.045 — 12.55.051 or
 12.55.100; or

a debt owed by an eligible individual to an agency of the state,
 if the debt is contested and an appeal is pending, or the time limit
 for filing an appeal has not expired.

(c) Claims listed in (b) of this section have priority in the order listed over other claims on a permanent fund dividend. (§ 1 ch 102 SLA 1982; am § 1 ch 157 SLA 1984; am § 1 ch 57 SLA 1985; am § 67 ch 138 SLA 1986; am § 3 ch 26 SLA 1989; am § 3 ch 198 SLA 1990)

Revisor's notes. — Sections 12 and 13, ch. 99, SLA 1985, amend this section and add new (b) and (c). The amendments are effective if § 1, ch. 99, SLA 1985 is repealed (see § 25, ch. 99, SLA 1985). If the amendments become law, the section will read: "(a) Fifty percent of a cash permanent fund dividend payment is exempt from levy, execution, garnishment, attachment, or any other remedy for the collection of debt. This exemption applies to an eligible individual's permanent fund dividend both before and after payment is made to the individual. An exemption is not available under this section for cash permanent fund dividend payments taken to satisfy (1) child support obligations required by court order or decision of the child support enforcement agency under AS 47.23.140 — 47.23.220; (2) a debt owed by an eligible individual to an agency of the state, unless the debt is contested and an appeal is pending, or the time limit for filing an appeal has not expired, or (3) court ordered restitution under AS 12.55.045 — 12.55.051 or 12.55.100. A child support obligation under (1) of this section has priority over a debt owed to an agency of the state, and a permanent fund dividend may not be taken to satisfy a debt under (2) of this section until any portion of the dividend necessary to satisfy a child support obligation has been taken.

"(b) The department shall require an individual to take 100 percent of the permanent fund dividend in cash if the department receives a levy, execution, garnishment, attachment or other legal remedy for the collection of a past due debt described in (a)(1) or (2) of this section.

"(c) The courts of this state may, as a condition of any civil judgment or restitution order under AS 12.55.045 — 12.55.051 or 12.55.100, require the defendant to take the defendant's permanent fund dividend in cash."

Cross references. — For property exempt from execution generally, see AS 09.38.

Effect of amendments. — The 1986 amendment rewrote this section.

The 1989 amendment repealed former paragraph (b)(3), relating to the court ordered probation fee, and redesignated former paragraph (b)(4) as present (b)(3).

The 1990 amendment, effective January 1, 1991, in subsection (a), substituted "45 percent" for "50 percent" in the first sentence.

Editor's notes. — Section 5, ch. 26, SLA 1989 provides that the amendments to (b) of this section by § 3, ch. 26, SLA 1989 "do not affect the collection of probation fee payments ordered by a court under AS 12.55.105, repealed by § 4 of this Act, after June 30, 1986, and before May 12, 1989."

NOTES TO DECISIONS

Cited in *Lauber v. Alaska* (In re Browne), 101 Bankr 168 (Bankr D Alaska 1989).

Sec. 43.23.067. Claims of defaulted scholarship loans. (a) AS 09.38 does not apply to permanent fund dividends taken under AS 14.43.120(i). Notwithstanding AS 09.35, execution on a claim under AS 14.43.120(i) is accomplished by delivering a certified claim to the department containing the following information:

- (1) the name and social security number of the individual whose dividend is being claimed;
- (2) the amount the individual owes on the scholarship loan; and
- (3) a statement that

(A) the debt has not been completely resolved in favor of the Department of Education; and

(B) if the debt has been completely resolved in favor of the Department of Education, the Commission on Postsecondary Education

shall, at the time limit for filing an appeal, resolve the debt in favor of the individual.

(b) Upon receipt of a claim under this section, the department shall notify the individual of the amount of the claim and the address provided in the individual's claim and must provide the following information:

- (1) the amount of the claim;
- (2) notice that the amount of the claim may not exceed the amount of the permanent fund dividend.

(c) The Commission on Postsecondary Education shall, at the time the claim or the individual's appeal is filed, resolve the claim or the individual's appeal in favor of the individual.

(d) AS 44.62.330 — 44.62.335 shall not apply to an individual under (b)(2) of this section.

(e) The amount of the permanent fund dividend shall pay to the Alaska Council on Postsecondary Education the amount of the permanent fund dividend.

(f) The amount of the permanent fund dividend shall be the amount of the claim. (§ 16 ch 102 SLA 1982)

(g) The amount of the permanent fund dividend shall be the amount of the claim. (§ 16 ch 102 SLA 1982)

(h) The amount of the permanent fund dividend shall be the amount of the claim. (§ 16 ch 102 SLA 1982)

Sec. 43.23.070. Exemption from taxation. AS 43.23.070 is repealed, § 22 ch 102 SLA 1982.

Sec. 43.23.075. Eligibility for assistance. (a) An individual who is eligible for assistance under the Department of Health and Social Services shall not be eligible for assistance under the Department of Health and Social Services if the individual is receiving a permanent fund dividend as income or as a result of assistance or by a member of the household.

(b) An individual who is eligible for assistance under the Department of Health and Social Services shall not be eligible for assistance under the Department of Health and Social Services if the individual is receiving a permanent fund dividend as income or as a result of assistance or by a member of the household.

(c) An individual who is eligible for assistance under the Department of Health and Social Services shall not be eligible for assistance under the Department of Health and Social Services if the individual is receiving a permanent fund dividend as income or as a result of assistance or by a member of the household.

(d) An individual who is eligible for assistance under the Department of Health and Social Services shall not be eligible for assistance under the Department of Health and Social Services if the individual is receiving a permanent fund dividend as income or as a result of assistance or by a member of the household.

(e) An individual who is eligible for assistance under the Department of Health and Social Services shall not be eligible for assistance under the Department of Health and Social Services if the individual is receiving a permanent fund dividend as income or as a result of assistance or by a member of the household.

(f) An individual who is eligible for assistance under the Department of Health and Social Services shall not be eligible for assistance under the Department of Health and Social Services if the individual is receiving a permanent fund dividend as income or as a result of assistance or by a member of the household.

(g) An individual who is eligible for assistance under the Department of Health and Social Services shall not be eligible for assistance under the Department of Health and Social Services if the individual is receiving a permanent fund dividend as income or as a result of assistance or by a member of the household.

(h) An individual who is eligible for assistance under the Department of Health and Social Services shall not be eligible for assistance under the Department of Health and Social Services if the individual is receiving a permanent fund dividend as income or as a result of assistance or by a member of the household.

(i) An individual who is eligible for assistance under the Department of Health and Social Services shall not be eligible for assistance under the Department of Health and Social Services if the individual is receiving a permanent fund dividend as income or as a result of assistance or by a member of the household.

(j) An individual who is eligible for assistance under the Department of Health and Social Services shall not be eligible for assistance under the Department of Health and Social Services if the individual is receiving a permanent fund dividend as income or as a result of assistance or by a member of the household.

(k) An individual who is eligible for assistance under the Department of Health and Social Services shall not be eligible for assistance under the Department of Health and Social Services if the individual is receiving a permanent fund dividend as income or as a result of assistance or by a member of the household.