

HB

481

WORK DRAFT

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0-LS1716B
Cook
4/15/98

CS FOR HOUSE BILL NO. 481()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsors: HOUSE STATE AFFAIRS COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to application for and payment of permanent fund dividends of
2 certain deceased individuals; and providing for an effective date."

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

4 * Section 1. AS 43.23.005 is amended by adding a new subsection to read

5 (h) If an individual who would otherwise have been eligible for a permanent
6 fund dividend dies after applying for the dividend but before the dividend is paid, the
7 department shall pay the dividend to a personal representative of the estate or to a
8 successor claiming personal property under AS 13.16.680. If an individual who would
9 otherwise have been eligible for a dividend and who did not apply for the dividend
10 dies during the application period, a personal representative of the estate or a successor
11 claiming personal property under AS 13.16.680 may apply for and receive the
12 dividend. Notwithstanding AS 43.23.011, the application for the dividend may be filed
13 by the personal representative or the successor at any time before the end of the
14 application period for the next dividend year.

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1 * Sec. 2. AS 43.23.025(a) is amended to read:

2 (a) By October 1 of each year, the commissioner shall determine the value of
3 each permanent fund dividend for that year by

4 (1) determining the total amount available for dividend payments,
5 which equals

6 (A) the amount of income of the Alaska permanent fund
7 transferred to the dividend fund under AS 37.13.145(b) during the current year;

8 (B) plus the unexpended and unobligated balances of prior fiscal
9 year appropriations that lapse into the dividend fund under AS 43.23.045(d);

10 (C) less the amount necessary to pay prior year dividends from
11 the dividend fund in the current year under AS 43.23.005(h) and under
12 AS 43.23.055(3) and (7);

13 (D) less the amount necessary to pay dividends from the
14 dividend fund due to eligible applicants who, as determined by the department,
15 filed for a previous year's dividend by the filing deadline but who were not
16 included in a previous year's dividend computation;

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

20 (2) determining the number of individuals eligible to receive a dividend
21 payment for the current year and the number of estates and successors eligible to
22 receive a dividend payment for the current year under AS 43.23.005(h); and

23 (3) dividing the amount determined under (1) of this subsection by the
24 amount determined under (2) of this subsection.

25 * Sec. 3. Section 1 of this Act is retroactive to January 1, 1998

26 * Sec. 4. Sections 1 and 3 of this Act take effect immediately under AS 01.10.070(c).

27 * Sec. 5. Section 2 of this Act takes effect January 1, 1999.

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: April 3, 1998

FURTHER REFERRALS: Finance

Date of Committee Action: 4/16/98

The STATE AFFAIRS Committee considered:

HB 481

HOUSE BILL NO. 481

PERMANENT FUND DIVIDENDS FOR ESTATES

"An Act relating to application for and payment of permanent fund dividends of certain deceased individuals; and providing for an effective date."

recommends it be replaced with the following committee substitute CS HB 481 (STA) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
 fiscal note(s) _____ fiscal note(s) _____

zero fiscal note(s) REV _____ zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Jeanette James</i>	✓			
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
<i>[Signature]</i>	✓			
<i>[Signature]</i>			✓	
<i>[Signature]</i>	✓			

CHAIR'S SIGNATURE *Jeanette James*

Alaska State Legislature

CHAIR:
REPRESENTATIVE
JEANNETTE JAMES

State Capitol
Room 102
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House of Representatives

HOUSE STATE AFFAIRS

MEMBERS:
REPRESENTATIVES
IVAN IVAN
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FRED DYSON
MARK HODGINS
KIM ELTON
ETHAN BERKOWITZ

SPONSOR STATEMENT HOUSE BILL 481

"An Act relating to application for and payment of permanent fund dividends of certain deceased individuals; and providing for an effective date."

House Bill 481 corrects an inequity in the categories of individuals who may receive Permanent Fund Dividends (PFDs). Currently, eligible individuals fall under numerous categories. Besides those physically present in the state for the entire period of eligibility, categories include individuals absent from the state for military reasons, educational advancement or medical treatment. Additionally, individuals accompanying those who are absent from the state for medical treatment are also eligible to receive a dividend.

One category of eligible individuals, however, has been deprived of the opportunity to receive PFDs. Those are the individuals who, though eligible to receive a PFD, do not because they died during the application period before applying. In other words, they do not receive a permanent fund dividend simply because they died at the wrong time of the year.

The application deadline for permanent fund dividends is March 31 of the year following the year for which the dividend applies. This dividend is normally paid sometime the following October. If an eligible individual applies for and receives a dividend and then dies, the individual's estate has access to the permanent fund dividend. Similarly, although by regulation rather than statute, the PFD of an eligible individual who applies for a PFD but dies before receiving it, is also given to the individual's estate. However, if an eligible individual dies during the application period prior to applying, the estate's representative is unable to apply on the individual's behalf. This creates a class of individuals based solely on the date of their deaths.

House Bill 481 corrects this inequity. It puts into statute that the estate of an individual who applies for a PFD but dies before receiving it may keep the PFD. It also provides that as long as an individual was eligible for and would have received a permanent fund dividend had the individual continued to live, the individual's estate is eligible to apply for and receive the dividend. This correction could be a great assistance in many circumstances.

The dividend of an individual who died unexpectedly could be used by the family to help pay the funeral expenses and any medical expenses that may have been incurred. It could be used to pay for the support of an individual's offspring or to assist with other costs. The family of a deceased individual should not be deprived of the Permanent Fund Dividend simply because of the time of year during which the individual died. Nor, on a less compassionate note, should an individual's creditors be deprived if no heirs exist.

House Bill 481 requires no additional funding. Its effect on the amount of individual permanent fund dividends would be negligible; however the advantages to the family of the deceased individual would be great.

Alaska State Legislature

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REPRESENTATIVE
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SECTIONAL ANALYSIS

HOUSE BILL 481

"An Act relating to application for and payment of permanent fund dividends of certain deceased individuals; and providing for an effective date."

- Section 1: Adds a new subsection to AS 43.23.005, Eligibility, which provides that the permanent fund dividend of an individual eligible to receive a dividend who applied for, but died before receiving, the dividend may be paid to the deceased individual's estate. Also provides that the personal representative of the estate, or a successor claiming personal property under AS 13.16.680, Formal Testacy Proceedings Order, Foreign Will, may apply for the dividend of an individual eligible to receive a dividend who dies during the application period before applying for the dividend.
- Section 2: Amends AS 43.23.025(a), Amount of Dividend, to specify that the number of estates and successors eligible to receive a dividend payment for the current year be included with the number of individuals eligible to receive a dividend for that year.
- Section 3: Provides a type of transition to allow a personal representative of an estate that, or a successor who, qualifies for and has not received a dividend for 1997 or 1998 to apply for the dividend during the 1999 application period. Gives the Department of Revenue authorization to prescribe and furnish an application form for claiming a dividend under this section.
- Section 4: Makes Section 1 retroactive to January 1, 1997
- Section 5: Provides an immediate effective date for Sections 1, 3, and 4 of the bill.
- Section 6: Section 2 of the legislation becomes effective January 1, 1999.

Permanent Fund and the state's natural and mineral resources are not rationally related to the distinctions Alaska seeks to make in the dividend program between newer residents and those who have been in the state since 1959. *Zobel v. Williams*, 457 U.S. 55, 102 S. Ct. 2309, 72 L. Ed. 2d 672 (1982).

Objective to reward citizens for past contributions is not a legitimate state purpose since this reasoning could open the door to state apportionment of other rights, benefits and services according to length of residency and would permit the states to divide citizens into expanding numbers of permanent classes, a result which would be clearly impermissible. *Zobel v. Williams*, 457 U.S. 55, 102 S. Ct. 2309, 72 L. Ed. 2d 672 (1982).

This statute does not impose any threshold warning period on those seeking dividend benefits; persons with less than a full year of residency are entitled to share in the distribution. Nor does the statute purport to establish a test of the bona fides of state residence. Instead, the dividend statute creates fixed, permanent distinctions between an ever increasing number of perpetual classes of concededly bona fide residents, based on how long they have been in the state. *Zobel v. Williams*, 457 U.S. 55, 102 S. Ct. 2309, 72 L. Ed. 2d 672 (1982).

Permanent fund dividend payments were made for "public purpose" within the meaning of Alaska Const., Art. IX, § 6. *Beattie ex rel. Beattie v.*

United States, 635 F. Supp. 481 (D. Alaska 1986), aff'd sub nom. *Greisen ex rel. Greisen v. United States*, 831 F.2d 916 (9th Cir. 1987), cert. denied, 485 U.S. 1006, 108 S. Ct. 1469, 99 L. Ed. 2d 699 (1988).

Permanent fund dividend payments subject to federal income tax. — Permanent Fund dividend payments are income and, since these payments are not excludable from gross income as "gifts", they are therefore subject to the federal income tax. *Beattie ex rel. Beattie v. United States*, 635 F. Supp. 481 (D. Alaska 1986), aff'd sub nom. *Greisen ex rel. Greisen v. United States*, 831 F.2d 916 (9th Cir. 1987), cert. denied, 485 U.S. 1006, 108 S. Ct. 1469, 99 L. Ed. 2d 699 (1988).

Payments received under Alaska's Permanent Fund Dividend Program are subject to federal income tax. *Greisen ex rel. Greisen v. United States*, 831 F.2d 916 (9th Cir. 1987), cert. denied, 485 U.S. 1006, 108 S. Ct. 1469, 99 L. Ed. 2d 699 (1988).

Property of bankruptcy estate. — Debtor's permanent fund dividend, sent to IRS by the State of Alaska, is the property of the bankruptcy estate and subject to turnover by the IRS pursuant to 11 U.S.C. §§ 541 and 542. Interest of IRS in permanent fund dividend was no greater than that of any other levying creditor. If levy is valid, IRS holds a perfected lien against debtor's permanent fund dividend. *Camacho v. United States*, 177 Bankr. 667 (Bankr. D. Alaska 1994).

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 minor or on behalf of a disabled or an incompetent individual who is eligible to receive a payment under this section. Notwithstanding (a)(2) — (4) of this section, a minor is eligible for a dividend if, during the two calendar years immediately preceding the current dividend year, the minor was born to or adopted by an individual who is eligible for a dividend for the current dividend year.

(d) Notwithstanding the provisions of (a) — (c) of this section, an individual is not eligible for a permanent fund dividend for a dividend year when

- (1) during the calendar year immediately preceding that dividend year the individual was sentenced as a result of conviction in this state of a felony;
- (2) during all or part of the calendar year immediately preceding that dividend year, the individual was incarcerated as a result of the conviction in this state of a
 - (A) felony; or
 - (B) misdemeanor if the individual has been convicted of two or more prior crimes as defined in AS 11.81.900.

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(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.

(g) For purposes of applying (d)(1) of this section, the date the court imposes a sentence or suspends the imposition of sentence shall be treated as the date of conviction. For purposes of applying (d)(2)(B) of this section, multiple convictions arising out of a single criminal episode shall be treated as a single conviction. (§ 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 63 SLA 1990; am §§ 46, 62 ch 21 SLA 1991; am § 1 ch 68 SLA 1991; ara §§ 4 — 8, 18 ch 4 SLA 1992; am §§ 2, 3 ch 46 SLA 1996)

Revisor's notes. — Sections 2 and 3, ch. 99, SLA 1985, amend (c) and add a new subsection (d) of this section respectively. The amendments are effective if § 1, ch. 99, SLA 1985 is repealed (see § 25, ch. 99, SLA 1985). If the amendments become law, the subsections will read: "(c) A parent, guardian, or other authorized representative may claim a permanent fund dividend on behalf of an unemancipated minor or on behalf of an incompetent individual who is eligible to receive a dividend under this section.

"(d) A person who is eligible to receive a permanent fund dividend under this section, or who is authorized to claim a dividend on behalf of another under (c) of this section, may elect to receive the dividend either in cash or as an annuity credit. Alternatively, a person may elect to receive 25 percent, 50 percent, or 75 percent of the dividend in cash and the remainder as an annuity credit. A person who is 65 years of age on or before January 1, 1988 may only receive the permanent fund dividend in cash and may not elect to receive an annuity credit."

Cross references. — For legislative findings in connection with the 1989 amendment to (a) of this section, see § 1(a), ch. 107, SLA 1989 in the Temporary and Special Acts.

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.

For legislative purpose relating to the 1996 amendments amending subsection (d) and adding subsection (g), see § 1, ch. 46, SLA 1996 in the Temporary and Special Acts.

Effect of amendments. — The 1987 amendment in subsection (a) deleted "on the date of application the individual" at the end of the introductory language, added "on the date of application the individual" at the beginning of paragraph (1), and in paragraph (2) substituted "the individual was" for "has been" and at the end of the paragraph substituted "April 1 of the current dividend year" for "the date of application."

The first 1988 amendment added subsection (d).

The second 1988 amendment, in subsection (a), deleted "and" at the end of paragraph (1), added "and" at the end of paragraph (2), and added paragraph (3).

The 1989 amendment substituted "24 consecutive months" for "six consecutive months" in paragraph (a)(2) and added subsection (e).

The 1990 amendment, effective January 1, 1991, inserted "a disabled or" before "an incompetent" in subsection (c).

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).

The 1996 amendment, effective August 27, 1996, rewrote subsection (d) and added subsection (g).

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."

Section 6, ch. 46, SLA 1996 provides that the 1996 amendments that amended subsection (d) and added (g) "apply only to individuals convicted of crimes committed after December 31, 1996" and that "[c]onvictions for crimes committed before January 1, 1997, may not be considered in determining the number of prior convictions for purposes of applying AS 43.23.005(d)(2)(B)."

Legislative history reports. — For legislative letter of intent relating to the enactment of subsection (f) by § 1 ch. 68, SLA 1991 (HCS CSSB 98(FIN)), see 1991 Senate Journal, pages 256, 257.

NOTES TO DECISIONS

Constitutionality. — The 1989 amendment to paragraph (a)(2) of this section, imposing a two-year residency requirement for applicants, was unconstitutional; the one year requirement in subsection (e) is the applicable period, since no appeal is pending., (The 1991 amendment codified this decision.), Lindley, et al. v. Malone, Superior Court, 3rd Jud.

Dist. C.A. No. 90-2586 (1990).

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

Revision Date: _____ Dept. Affected: _____ Revenue _____
 Title: Permanent Fund Dividends for Estates BRU: Permanent Fund Dividend
 Component: Permanent Fund Dividend
 Sponsor: (H) STA
 Requestor: (H) STA COMPONENT SERIAL NO. 981

Expenditures/Revenues: (Thousands of Dollars)

	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
OPERATING EXPENDITURES						
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						
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1001 CBRF						
1048 University of AK receipts						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year cost \$ 0.0

POSITIONS:

FULL-TIME					
PART-TIME					
TEMPORARY					

ANALYSIS: (Attach a separate page if necessary)

This bill will allow the estate to receive the dividend of an individual who died after filing the PFD application. It also allows the personal representative of the estate to apply for a dividend on behalf of an individual who dies during the PFD application period. These estates must be included and accounted for in the annual calculation of the dividend. There is a one-time retroactivity that will allow estates to file for individuals who died in the 1997 and the 1998 filing periods, to file by March 31, 1999. Thereafter, an estate making an application under this provision must file an application by July 31 of the dividend year.

This bill will have no fiscal affect on the Permanent Fund Dividend Program.

Prepared by: Nanci Jones, Director
 Division: Permanent Fund Dividend Division
 Approved by Commissioner: Wilson L. Condon
 Agency: Revenue

Phone: 465-2323
 Date: April 14, 1998
 Date: April 14, 1998

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TO: Barbara Cotting at LAA_TRANS
Subject: Re: fiscal note

Request is in
thanks

Reply Separator

Subject: fiscal note
Author: Barbara_Cotting@legis.state.ak.us (Barbara Cotting) at CC2MHS1
Date: 4/9/98 11:44 AM

I have scheduled HB 481, Permanent Fund Dividends for Estates, in
State Affairs for Thursday, April 16, and need fiscal notes.

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