

HB

2

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 2/26/97

REPORTED OUT OF
FURTHER: SSC 2/9/98

DATE TURNED
IN TO OFFICE: 2/10/98

Finance Committee considered CS FOR HOUSE BILL NO. 2(FIN)

PERMANENT FUND DIVIDEND ELIGIBILITY

and recommends:

be replaced with S CS CS HB 2 (FIN)

adopt previous CS ()

attached amendment(s)

adopt Letter of Intent by Committee

further referral to the Committee

- Senate Bill:**
 same title
 new title
House Bill:
 same title
 technical change
 new: SCR#

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Kell. E. Kelly</i>	✓	<i>Paul Powell</i>	✓		
<i>W. H. ...</i>	✓	<i>Earl Adams</i>	✓		
		<i>James ...</i>	✓		
		...			
Co-Chair: <i>...</i>		Co-Chair: <i>...</i>			✓
Co-Chair: <i>...</i>	✓	Co-Chair: <i>...</i>			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

DOR, Perm. Fund	2/10/98	Ø	

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

0-LS0040\R
Cook
2/2/98

*moved by Sen. Phillips.
Sen. Adams objection
withdrawn - adopted*

**SENATE CS FOR CS FOR HOUSE BILL NO. 2(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - SECOND SESSION**

BY THE SENATE FINANCE COMMITTEE

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES KOTT AND MULDER, Kubina, Martin, Davies, Williams, Hudson, Rokeberg, Ryan, James, Elton, Croft

A BILL

FOR AN ACT ENTITLED

1 "An Act requiring, for purposes of permanent fund dividend eligibility, an
2 individual to have been physically present in the state for at least 72 consecutive
3 hours during the prior two years before the current dividend year; relating, for
4 purposes of permanent fund dividend eligibility, to allowable absences for
5 secondary and postsecondary education on a full-time basis, vocational, professional,
6 or other education on a full-time basis when a comparable program is not
7 reasonably available in the state, serving on active duty as a member of the
8 armed forces of the United States, receiving continuous medical treatment or
9 convalescing if the treatment or convalescence is not based on a need for climatic
10 change, providing care for certain relatives with critical life-threatening illnesses,
11 providing care for certain terminally ill relatives, settling the estates of certain
12 relatives, serving as a member of the United States Congress, serving on the staff

1 of a member from this state of the United States Congress, serving as an
2 employee of the state, serving as a full-time volunteer in the Peace Corps,
3 accompanying certain ill minors, accompanying another eligible resident who is
4 absent for an allowable reason as the spouse, minor dependent, or disabled
5 dependent of the eligible resident, or for any reason consistent with an
6 individual's intent to remain a state resident; requiring, for purposes of permanent
7 fund dividend eligibility, an eligible individual who is absent for more than 180
8 days during a qualifying year to have been a resident for at least six consecutive
9 months immediately before leaving the state; making ineligible, for purposes of
10 permanent fund dividend eligibility, certain individuals who are absent for more
11 than 180 days during each of 10 qualifying years; requiring, for purposes of
12 permanent fund dividend eligibility, a state resident to have the intent to remain
13 indefinitely; relating to the qualifying year and defining that term for purposes
14 of the permanent fund dividend program; relating to the eligibility for 1998
15 permanent fund dividends of certain spouses and dependents of eligible individuals;
16 and providing for an effective date."

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

18 * Section 1. AS 23.40.210(e) is amended to read:

19 (e) In this section, "state resident" means an individual who is physically
20 present in the state with the intent to remain permanently in the state under the
21 requirements of AS 01.10.055 or, if the individual is not physically present in the state,
22 intends to return to the state and remain permanently in the state under the
23 requirements of AS 01.10.055 [,] and is absent only temporarily for reasons allowed
24 under AS 43.23.008 [AS 43.23.095(8)] or a successor statute.

25 * Sec. 2. AS 43.23.005(a) is amended to read:

1 (a) An individual is eligible to receive one permanent fund dividend each year
2 in an amount to be determined under AS 43.23.025 if the individual

3 (1) [THE INDIVIDUAL] applies to the department;

4 (2) [ON THE DATE OF APPLICATION THE INDIVIDUAL] is a
5 state resident on the date of application;

6 (3) [THE INDIVIDUAL] was a state resident during [FOR AT
7 LEAST] the entire qualifying [CALENDAR YEAR IMMEDIATELY PRECEDING
8 JANUARY 1 OF THE CURRENT DIVIDEND] year;

9 (4) [THE INDIVIDUAL] has been physically present in the state for
10 at least 72 consecutive hours at some time during the prior two [CALENDAR] years
11 before the current dividend year; [AND]

12 (5) [THE INDIVIDUAL] is

13 (A) a citizen of the United States;

14 (B) an alien lawfully admitted for permanent residence in the
15 United States;

16 (C) an alien with refugee status under federal law; or

17 (D) an alien that has been granted asylum under federal law;

18 and

19 (6) was, at all times during the qualifying year, physically present
20 in the state or, if absent, was absent only as allowed in AS 43.23.008.

21 * Sec. 3. AS 43.23.005(d) is amended to read:

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

24 (1) during the qualifying [CALENDAR YEAR IMMEDIATELY
25 PRECEDING THAT DIVIDEND] year the individual was sentenced as a result of
26 conviction in this state of a felony;

27 (2) during all or part of the qualifying [CALENDAR YEAR
28 IMMEDIATELY PRECEDING THAT DIVIDEND] year, the individual was
29 incarcerated as a result of the conviction in this state of a

30 (A) felony; or

31 (B) misdemeanor if the individual has been convicted of two or

1 more prior crimes as defined in AS 11.81.900.

2 * Sec. 4. AS 43.23 is amended by adding a new section to read:

3 **Sec. 43.23.008. Allowable absences.** (a) Subject to (b) and (c) of this
4 section, an otherwise eligible individual who is absent from the state during the
5 qualifying year remains eligible for a current year permanent fund dividend if the
6 individual was absent

7 (1) receiving secondary or postsecondary education on a full-time basis;

8 (2) receiving vocational, professional, or other specific education on a
9 full-time basis for which, as determined by the Alaska Commission on Postsecondary
10 Education, a comparable program is not reasonably available in the state;

11 (3) serving on active duty as a member of the armed forces of the
12 United States;

13 (4) receiving continuous medical treatment recommended by a licensed
14 physician or convalescing as recommended by the physician that treated the illness if
15 the treatment or convalescence is not based on a need for climatic change;

16 (5) providing care for a parent, spouse, sibling, child, or stepchild with
17 a critical life-threatening illness whose treatment plan, as recommended by the
18 attending physician, requires travel outside the state for treatment at a medical
19 specialty complex;

20 (6) providing care for the individual's terminally ill parent, spouse,
21 sibling, child, or stepchild;

22 (7) settling the estate of the individual's deceased parent, spouse,
23 sibling, child, or stepchild, provided the absence does not exceed 220 cumulative days;

24 (8) serving as a member of the United States Congress;

25 (9) serving on the staff of a member from this state of the United States
26 Congress;

27 (10) serving as an employee of the state in a field office or other
28 location;

29 (11) serving as a full-time volunteer in the Peace Corps;

30 (12) accompanying a minor who is absent under (4) of this subsection;

31 (13) accompanying another eligible resident who is absent for a reason

1 permitted under this subsection as the spouse, minor dependent, or disabled dependent
2 of the eligible resident;

3 (14) for any reason consistent with the individual's intent to remain a
4 state resident, provided the absence or cumulative absences do not exceed

5 (A) 180 days if the individual is not claiming an absence under
6 (1) - (13) of this subsection;

7 (B) 120 days in addition to any absence or cumulative absences
8 claimed under (1) or (2) of this subsection if the individual is not claiming an
9 absence under (3) - (13) of this subsection; or

10 (C) 45 days in addition to any absence or cumulative absences
11 claimed under (1) - (13) of this subsection.

12 (b) An individual who is otherwise eligible, and who is absent for more than
13 180 days during the qualifying year remains eligible for a current year dividend only
14 if the individual was a resident of the state for at least six consecutive months
15 immediately before leaving the state.

16 (c) An otherwise eligible individual who has been eligible for the immediately
17 preceding 10 dividends despite being absent from the state for more than 180 days in
18 each of the related 10 qualifying years is only eligible for the current year dividend
19 if the individual was absent 180 days or less during the qualifying year. This
20 subsection does not apply to an absence under (a)(8) or (9) of this section or to an
21 absence under (a)(13) of this section if the absence is to accompany an individual who
22 is absent under (a)(8) or (9) of this section.

23 * Sec. 5. AS 43.23.028(a) is amended to read:

24 (a) By October 1 of each year, the commissioner shall give public notice of
25 the value of each permanent fund dividend for that year and notice of the information
26 required to be disclosed under (3) of this subsection. In addition, the stub attached to
27 each individual dividend check and direct deposit advice must:

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

31 (2) disclose the amount of each dividend attributable to income earned

1 by the permanent fund from appropriations to that fund and from amounts added to
2 that fund to offset the effects of inflation;

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

6 (4) include a statement that an individual is not eligible for a dividend
7 when

8 (A) during the qualifying [CALENDAR YEAR
9 IMMEDIATELY PRECEDING THAT DIVIDEND] year the individual was
10 convicted of a felony;

11 (B) during all or part of the qualifying [CALENDAR YEAR
12 IMMEDIATELY PRECEDING THAT DIVIDEND] year, the individual was
13 incarcerated as a result of the conviction of a

14 (i) felony; or

15 (ii) misdemeanor if the individual has been convicted of
16 two or more prior crimes;

17 (5) include a statement that the legislative purpose for making
18 individuals listed under (4) of this subsection ineligible is to

19 (A) obtain reimbursement for some of the costs imposed on the
20 state criminal justice system related to incarceration or probation of those
21 individuals;

22 (B) provide funds for payments to crime victims and for grants
23 for the operation of domestic violence and sexual assault programs;

24 (6) disclose the total amount that would have been paid during the
25 previous fiscal year to individuals who were ineligible to receive dividends under
26 AS 43.23.005(d) if they had been eligible;

27 (7) disclose the total amount appropriated for the current fiscal year
28 under (b) of this section for each of the funds and agencies listed in (b) of this section.

29 * Sec. 6. AS 43.23.095(8) is amended to read:

30 (8) "state resident" means an individual who is physically present in the
31 state with the intent to remain indefinitely [PERMANENTLY] in the state under the

1 requirements of AS 01.10.055 or, if the individual is not physically present in the state,
2 intends to return to the state and remain indefinitely [PERMANENTLY] in the state
3 under the requirements of AS 01.10.055 [, AND IS ABSENT ONLY FOR ANY OF
4 THE FOLLOWING REASONS:

5 (A) VOCATIONAL, PROFESSIONAL, OR OTHER SPECIFIC
6 EDUCATION FOR WHICH A COMPARABLE PROGRAM WAS NOT
7 REASONABLY AVAILABLE IN THE STATE;

8 (B) SECONDARY OR POSTSECONDARY EDUCATION;

9 (C) MILITARY SERVICE;

10 (D) MEDICAL TREATMENT;

11 (E) SERVICE IN CONGRESS;

12 (F) OTHER REASONS WHICH THE COMMISSIONER MAY
13 ESTABLISH BY REGULATION;

14 (G) SERVICE IN THE PEACE CORPS;

15 (H) TO CARE FOR THE INDIVIDUAL'S TERMINALLY ILL
16 PARENT, SPOUSE, SIBLING, CHILD, OR STEPCHILD;

17 (I) FOR UP TO 220 DAYS TO SETTLE THE ESTATE OF
18 THE INDIVIDUAL'S DECEASED PARENT, SPOUSE, SIBLING, CHILD,
19 OR STEPCHILD; OR

20 (J) TO CARE FOR A PARENT, SPOUSE, SIBLING, CHILD,
21 OR STEPCHILD WITH A CRITICAL LIFE-THREATENING ILLNESS
22 WHOSE TREATMENT PLAN, AS RECOMMENDED BY THE ATTENDING
23 PHYSICIAN, REQUIRES TRAVEL OUTSIDE THE STATE FOR
24 TREATMENT AT A MEDICAL SPECIALTY COMPLEX];

25 * Sec. 7. AS 43.23.095 is amended by adding a new paragraph to read:

26 (10) "qualifying year" means the year immediately preceding January 1
27 of the current dividend year.

28 * Sec. 8. APPLICATION. AS 43.23.008(c), enacted by sec. 4 of this Act, applies only to
29 periods of absence during January 1, 1998, and thereafter.

30 * Sec. 9. PERMANENT FUND DIVIDENDS FOR CERTAIN SPOUSES AND
31 DEPENDENTS. (a) Notwithstanding the provision in AS 43.23.015(a) that the residency of

1 an individual's spouse may not be the principal factor relied upon in determining the residency
2 of the individual, an individual is eligible for a 1998 dividend if the individual was absent
3 from the state while accompanying, as the spouse, minor dependent, or disabled dependent,
4 another person who was eligible for that dividend and was absent for a reason permitted
5 under AS 43.23.095(8), as that statute read at the time of the absence. An individual is
6 eligible for a 1998 dividend under this subsection only if the individual would have been
7 otherwise eligible for the 1998 dividend and

8 (1) applied for the 1998 dividend during the 1998 application period; or
9 (2) if the individual did not apply during the 1998 application period, applies
10 for the 1998 dividend during the 1999 application period.

11 (b) The Department of Revenue shall prescribe and furnish an application form for
12 claiming a 1998 dividend under (a)(2) of this section.

13 * **Sec. 10.** Section 9 of this Act is retroactive to January 1, 1998.

14 * **Sec. 11.** Sections 9 and 10 of this Act take effect immediately under AS 01.10.070(c).

15 * **Sec. 12.** Sections 1 - 8 of this Act take effect January 1, 1999.

*moved Sen. Pearce
w/o objection, adopted.*

AMENDMENT

OFFERED IN THE SENATE

TO: SCS CSHB 2(FIN), Draft version "R"

SENATE FINANCE
COMMITTEE

Amendment Number: 1

Bill Number: HB2

Sponsor: Pearce Date: 2/9/98

Logged In By: Galvani
0

1 Page 5, lines 12 - 15:

2 Delete all material and insert:

3 "(b) An individual may not claim an allowable absence under (a)(1) - (13) of
4 this section unless the individual was a resident of the state for at least six consecutive
5 months immediately before leaving the state."

AMENDMENT

moved Sen. Pearce
w/o objection, adopted

OFFERED IN THE SENATE

TO: SCS CSHB 2(FIN), Draft version "R"

SENATE FINANCE
COMMITTEE

Amendment Number: 2

Bill Number: HB 2

Sponsor: Pearce Date: 2/9/98

Logged In By: Goltani

- 1 Page 8, line 10:
- 2 Delete "during"
- 3 Insert "before the end of"

SENATE FINANCE
COMMITTEE

Amendment Number: 3
Bill Number: HB 2
Sponsor: Torgerson Date: 2/9/98
Logged In By: MBRowland

0-LS0040\R.1
Cook
2/6/98

moved by Sen. Torgerson
adopted

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR TORGERSON

TO: SCS CSHB 2(FIN), Draft version "R"

- 1 Page 2, line 3, following "minors,":
- 2 Insert "serving as a volunteer with the Federal Emergency Management Agency,"

- 3 Page 4, following line 30:
- 4 Insert a new paragraph to read:
- 5 "(13) serving as a volunteer with the Federal Emergency Management
- 6 Agency;"

- 7 Renumber the following paragraphs accordingly.

- 8 Page 5, line 6:
- 9 Delete "(1) - (13)"
- 10 Insert "(1) - (14)"

- 11 Page 5, line 9:
- 12 Delete "(3) - (13)"
- 13 Insert "(3) - (14)"

- 14 Page 5, line 11:
- 15 Delete "(1) - (13)"
- 16 Insert "(1) - (14)"

- 17 Page 5, line 21:
- 18 Delete "(a)(13)"
- 19 Insert "(a)(14)"

SUBJECT: HB 2 amend # 5 (Parnell)
DATE: _____

SUBJECT: _____
DATE: _____

	YEA	NAY
SENATOR PHILLIPS	✓	
SENATOR DONLEY		✓
SENATOR TORGERSON		✓
SENATOR PARNELL	✓	
SENATOR ADAMS	✓	
SENATOR SHARP	✓	
SENATOR PEARCE	✓	
TOTAL:	<u>5</u>	<u>2</u> passed

	YEA	NAY
SENATOR DONLEY		
SENATOR TORGERSON		
SENATOR PARNELL		
SENATOR ADAMS		
SENATOR PHILLIPS		
SENATOR SHARP		
SENATOR PEARCE		
TOTAL:	<u> </u>	<u> </u>

SUBJECT: HB 2 amend # 4 (Pearce)
DATE: 9 Feb 1998

SUBJECT: HB 2 amend # 3 (Torgerson)
DATE: 9 Feb 1998

	YEA	NAY
SENATOR TORGERSON	✓	
SENATOR PARNELL		✓
SENATOR ADAMS		✓
SENATOR PHILLIPS		✓
SENATOR DONLEY pass		✓
SENATOR SHARP		✓
SENATOR PEARCE	✓	
TOTAL:	<u>2</u>	<u>4</u> 5 failed

	YEA	NAY
SENATOR PARNELL	✓	
SENATOR ADAMS		✓
SENATOR PHILLIPS	✓	
SENATOR DONLEY	✓	
SENATOR TORGERSON	✓	
SENATOR SHARP		✓
SENATOR PEARCE	✓	
TOTAL:	<u>5</u>	<u>2</u> passed

SENATE FINANCE
COMMITTEE
Amendment Number: 1
Bill Number: HB 2
Sponsor: Torgerson Date: 5/7
Logged In By: Joltane

5/7/97

AMENDMENT

Offered in the Senate

By Senator Torgerson

TO: CSHB 2(FIN)

- 1 Page 3, line 9:
- 2 insert:
- 3 **(7) service as a volunteer with the Federal Emergency**
- 4 **Management Agency:"**
- 5
- 6 Renumber the following subsections accordingly.

2/9/98

Revision Date: February 10, 1998 Dept. Affected: Revenue
 Title: Permanent Fund Dividend Eligibility BRU: Revenue Operations
 Component: Permanent Fund Dividend Division
 Sponsor: Representative Kott
 Requestor: Senate Rules COMPONENT SERIAL NO. 981

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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 1050 PFD Fund						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year cos: \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)

No fiscal effects on the PFD program. See attached analysis.

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

Phone: 907/465-2323
 Date: February 10, 1998
 Date: February 10, 1998

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information call the Governor's Legislative Office

Alaska Department of Revenue
Permanent Fund Dividend Division

Analysis of SCS CS HB 2(FIN)

This amended bill is the fourth iteration of legislation designed to pay spouses who are absent from Alaska accompanying their spouse who is on an allowable absence. In addition to adding an allowable absence for these spouses who have been previously denied, the bill extends the 1998 dividend application period from March 31, 1998 to March 31, 1999 in order to give every spouse in this category the opportunity to file for the 1998 dividend after the passage of this bill.

Other provisions of this amended bill include separating the list of allowable absences from the section that defines a state resident; eliminating redundant language; adding a 72 hour minimum stay to the two-year return rule; eliminating absences for athletic team participation, and the Commissioner's current statutory authority to adopt new absences by regulation; placing in statute the current regulatory requirement that residency exist for six months prior to departing on an allowable absence; limiting to ten the number of consecutive dividends a person can receive while being absent from the state for more than 180 days per year; substituting the term "indefinitely" for the word permanently in the definition of a state resident.

The department is in favor of this bill. There will be no fiscal effects on the Permanent Fund Dividend Program.

Revision Date: _____ Dept. Affected: Revenue
 Title: Permanent Fund Dividend Eligibility BRU: Revenue Operations
 Component: Permanent Fund Dividend Division
 Sponsor: Representative Kott
 Requestor: House Finance COMPONENT SERIAL NO. 981

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	11.0					
TRAVEL						
CONTRACTUAL						
SUPPLIES	2.5					
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	13.5	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						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other Permanent Fund Dividend	13.5					
TOTAL	13.5	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY	2.0					

ANALYSIS: (Attach a separate page if necessary)

(See Attached Analysis)

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

Phone: 907/465-2323
 Date: January 15, 1997
 Date: January 15, 1997

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Alaska Department of Revenue
Permanent Fund Dividend Division

Fiscal Analysis of HB 2 - Permanent Fund Dividend Eligibility
As of January 15, 1997

This bill adds an additional allowable absence for applicants who accompany another eligible resident out of state as the spouse, minor dependent, or disabled dependent of the eligible resident. In addition to adding the allowable absence for spouses, it retroactively reopens the filing period from 1997 back to 1992 for applicants who were previously denied for being absent to accompany their spouse. This bill also makes clerical changes by replacing the word "permanently" with "indefinitely" in reference to remaining in the state. It also separates the list of allowable absences from the definition of a state resident.

We estimate that 11,000 applicants in years 1992 through 1998, in addition to 3,000 applicants who were not previously on file for any prior dividend year (section 4), may be made eligible for dividends by the passage of this bill.

No additional costs will be incurred for applicants filing for the 1998 dividend. The division will have to redetermine eligibility for years 1992 through 1997. Since 1992, we have denied applicants who have accompanied their spouses without going further to see if an applicant otherwise qualifies. Additional costs will also be incurred due to re-opening the filing period for those applicants who did not file in any of those years.

The applications will fall into three basic categories: 1) applicants eligible in all other respects, 2) applicants who must supply additional information before their eligibility can be determined, and 3) applicants who have other items that need verification and review in order to determine eligibility.

Because the bill specifically makes eligibility for any prior year dividends directly dependent upon whether the applicant qualifies for the 1998 dividend, we will not be able to begin the process of determining eligibility until May of 1998, once the 1998 file is complete. This process will require two temporary Specialist's One positions for 60 days in order to research the current and prior files to determine eligibility. The cost for two temporary positions are \$11,000.

The amount of supplies and additional postage will be minimal at \$2500.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 3, 1998

SUBJECT: Permanent fund dividend program (SCS CSHB 2(FIN))

TO: Senator Bert Sharp, Co-Chair
Senate Finance Committee
Attn: Tom Williams

FROM: Tamara Brandt Cook *TBC*
Director

Under AS 43.23.008(c), added in bill section 3, an individual who receives a dividend for ten years and, during each of those ten years, has been absent from the state for more than 180 days is no longer eligible for a current year dividend until the individual has been absent for no more than 180 days during a qualifying year. This restriction applies to all allowable absences except absences while (1) serving as a member of Congress; (2) serving on the staff of a member of Congress from this state; or (3) accompanying as a spouse or dependent a person described in (1) or (2). You ask whether carving out this U. S. Congress exception violates the equal protection clause of the state constitution.

Under the state equal protection clause, a statute is evaluated on a sliding scale under which the goal of the legislation and the importance of the individual rights affected are considered. (State v. Anthony, 810 P.2d 155 (Alaska 1991)) As the importance of the individual rights affected increases, the burden increases on the state to show that the state's goal justifies the intrusion on the individual's interests in equal treatment and that the state's goal is rationally related to the means chosen to achieve the goal.

An individual's interest in receiving a permanent fund dividend is accorded a low level of protection under the state equal protection clause because only an economic interest is implicated and that interest is not based on the need of the applicant. (Underwood v. State, 881 P.2d 322 (Alaska 1994)) Applying that low level of protection, I think the state should be able to justify the U. S. Congress exception in the face of an equal protection attack, because the state has a clear interest in encouraging its representatives in Congress to gain the seniority and advantage to the state that entails and to keep career staff necessary to make them effective.

TBC:glc
98-047.glc

SENATE FINANCE COMMITTEE
DRAFT SCS CS HB 2 (FIN) (0-LS00401R) SECTIONAL ANALYSIS

February 2, 1998

- Sec. 1:* Amends AS 23.40.210(e), the definition of state resident for determination of employee cost of living adjustments, to update the statutory reference to allowable absences.
- Sec. 2:* Amends AS 43.23.005(a) by
- a) eliminating redundant language;
 - b) substituting the term "qualifying year" for the technical description of that period;
 - c) adding a 72 consecutive hour minimum to the current two year return rule; and
 - d) adding to the list of eligibility criteria the requirement that an individual must have been physically present or only absent for a reason specifically allowed by law, referencing the new section of law that addresses allowable absences.
- Sec. 3:* Amends AS 43.23.005(d) by substituting the term "qualifying year" for the technical description of that period.
- Sec. 4:* Establishes a new allowable absences section AS 43.23.008
- a) minimally narrowing allowable absences by re-enacting all existing statutory and regulatory absences into statute (using the more explicit language currently in regulation) except the
 - i) Commissioner's current statutory authority to adopt new absences by regulation;
 - ii) athletic team participation absence currently allowed by regulation;
 - iii) State of Alaska employment in a field office absence currently allowed by regulation; and
 - iv) currently proposed regulatory absence for employment by the Public Health Service.
 - b) placing in statute the current regulatory requirement that an individual must have been a state resident for 6 months immediately before departing on an allowable absence of more than 180 days; and

SENATE FINANCE COMMITTEE
DRAFT SCS CS HB 2 (FIN) (0-LS0040\R) SECTIONAL ANALYSIS

February 2, 1998

- c) Limiting to 10 the number of consecutive dividends an applicant could receive based on qualifying years during which the applicant was absent more than 180 days per year. To re-establish eligibility the applicant would have to return to the state and live for a year without being absent more than 180 days during that year. This limitation would not apply to the
 - i) Alaska Congressional delegation;
 - ii) Alaska delegation staff; and
 - iii) spouses and dependants of the Alaska Congressional delegation and the delegation's staff.

Sec. 5: Amends AS 43.23.028(. .) by substituting the term "qualifying year" for the technical description of it at period.

Sec. 6: Amends AS 23.23.095 by

- a) removing all existing allowable absences from the definition of state resident; and
- b) substituting the term "indefinitely" for the word permanently in the definition of state resident to conform with the statutory definition of state resident that appears in AS 01.10.055.

Sec. 7: Amends AS 23.23.095 by adding a new subsection (10) to define the term "qualifying year" consistent with existing law.

Sec. 8: Enacts temporary law that makes the 10 consecutive year limitation on absences greater than 180 days per year prospective starting January 1, 1998.

Sec. 9: Enacts temporary law that

- a) allows "piggybacking" spouses to qualify for the 1998 dividend; and
- b) provides a method for the department to accept applications from those spouses.

Sec. 10: Establishes a January 1, 1998 effective date for the "piggybacking" spouse provision of section 9.

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February 2, 1998

- Sec. 11: Establishes an immediate effective date for sections 9 and 10.
- Sec. 12: Establishes a January 1, 1999 effective date for the rest of the bill, making those changes effective for the 1999 dividend.

0-LS0040\R

Cook

2/2/98

SENATE CS FOR CS FOR HOUSE BILL NO. 2(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES KOTT AND MULDER, Kubina, Martin, Davies, Williams, Hudson, Rokeberg, Ryan, James, Elton, Croft

A BILL

FOR AN ACT ENTITLED

1 "An Act requiring, for purposes of permanent fund dividend eligibility, an
2 individual to have been physically present in the state for at least 72 consecutive
3 hours during the prior two years before the current dividend year; relating, for
4 purposes of permanent fund dividend eligibility, to allowable absences for
5 secondary and postsecondary education on a full-time basis, vocational, professional,
6 or other education on a full-time basis when a comparable program is not
7 reasonably available in the state, serving on active duty as a member of the
8 armed forces of the United States, receiving continuous medical treatment or
9 convalescing if the treatment or convalescence is not based on a need for climatic
10 change, providing care for certain relatives with critical life-threatening illnesses,
11 providing care for certain terminally ill relatives, settling the estates of certain
12 relatives, serving as a member of the United States Congress, serving on the staff

1 of a member from this state of the United States Congress, serving as an
2 employee of the state, serving as a full-time volunteer in the Peace Corps,
3 accompanying certain ill minors, accompanying another eligible resident who is
4 absent for an allowable reason as the spouse, minor dependent, or disabled
5 dependent of the eligible resident, or for any reason consistent with an
6 individual's intent to remain a state resident; requiring, for purposes of permanent
7 fund dividend eligibility, an eligible individual who is absent for more than 180
8 days during a qualifying year to have been a resident for at least six consecutive
9 months immediately before leaving the state; making ineligible, for purposes of
10 permanent fund dividend eligibility, certain individuals who are absent for more
11 than 180 days during each of 10 qualifying years; requiring, for purposes of
12 permanent fund dividend eligibility, a state resident to have the intent to remain
13 indefinitely; relating to the qualifying year and defining that term for purposes
14 of the permanent fund dividend program; relating to the eligibility for 1998
15 permanent fund dividends of certain spouses and dependents of eligible individuals;
16 and providing for an effective date."

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

18 * Section 1. AS 23.40.210(e) is amended to read:

19 (e) In this section, "state resident" means an individual who is physically
20 present in the state with the intent to remain permanently in the state under the
21 requirements of AS 01.10.055 or, if the individual is not physically present in the state,
22 intends to return to the state and remain permanently in the state under the
23 requirements of AS 01.10.055 [,] and is absent only temporarily for reasons allowed
24 under AS 43.23.008 [AS 43.23.095(8)] or a successor statute.

25 * Sec. 2. AS 43.23.005(a) is amended to read:

1 (a) An individual is eligible to receive one permanent fund dividend each year
2 in an amount to be determined under AS 43.23.025 if the individual

3 (1) [THE INDIVIDUAL] applies to the department;

4 (2) [ON THE DATE OF APPLICATION THE INDIVIDUAL] is a
5 state resident on the date of application;

6 (3) [THE INDIVIDUAL] was a state resident during [FOR AT
7 LEAST] the entire qualifying [CALENDAR YEAR IMMEDIATELY PRECEDING
8 JANUARY 1 OF THE CURRENT DIVIDEND] year;

9 (4) [THE INDIVIDUAL] has been physically present in the state for
10 at least 72 consecutive hours at some time during the prior two [CALENDAR] years
11 before the current dividend year; [AND]

12 (5) [THE INDIVIDUAL] is

13 (A) a citizen of the United States;

14 (B) an alien lawfully admitted for permanent residence in the
15 United States;

16 (C) an alien with refugee status under federal law; or

17 (D) an alien that has been granted asylum under federal law;

18 and

19 (6) was, at all times during the qualifying year, physically present
20 in the state or, if absent, was absent only as allowed in AS 43.23.008.

21 * Sec. 3. AS 43.23.005(d) is amended to read:

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

24 (1) during the qualifying [CALENDAR YEAR IMMEDIATELY
25 PRECEDING THAT DIVIDEND] year the individual was sentenced as a result of
26 conviction in this state of a felony;

27 (2) during all or part of the qualifying [CALENDAR YEAR
28 IMMEDIATELY PRECEDING THAT DIVIDEND] year, the individual was
29 incarcerated as a result of the conviction in this state of a

30 (A) felony; or

31 (B) misdemeanor if the individual has been convicted of two or

1 more prior crimes as defined in AS 11.81.900.

2 * Sec. 4. AS 43.23 is amended by adding a new section to read:

3 **Sec. 43.23.008. Allowable absences.** (a) Subject to (b) and (c) of this
4 section, an otherwise eligible individual who is absent from the state during the
5 qualifying year remains eligible for a current year permanent fund dividend if the
6 individual was absent

7 (1) receiving secondary or postsecondary education on a full-time basis;

8 (2) receiving vocational, professional, or other specific education on a
9 full-time basis for which, as determined by the Alaska Commission on Postsecondary
10 Education, a comparable program is not reasonably available in the state;

11 (3) serving on active duty as a member of the armed forces of the
12 United States;

13 (4) receiving continuous medical treatment recommended by a licensed
14 physician or convalescing as recommended by the physician that treated the illness if
15 the treatment or convalescence is not based on a need for climatic change;

16 (5) providing care for a parent, spouse, sibling, child, or stepchild with
17 a critical life-threatening illness whose treatment plan, as recommended by the
18 attending physician, requires travel outside the state for treatment at a medical
19 specialty complex;

20 (6) providing care for the individual's terminally ill parent, spouse,
21 sibling, child, or stepchild;

22 (7) settling the estate of the individual's deceased parent, spouse,
23 sibling, child, or stepchild, provided the absence does not exceed 220 cumulative days;

24 (8) serving as a member of the United States Congress;

25 (9) serving on the staff of a member from this state of the United States
26 Congress;

27 (10) serving as an employee of the state in a field office or other
28 location;

29 (11) serving as a full-time volunteer in the Peace Corps;

30 (12) accompanying a minor who is absent under (4) of this subsection;

31 (13) accompanying another eligible resident who is absent for a reason

1 permitted under this subsection as the spouse, minor dependent, or disabled dependent
2 of the eligible resident;

3 (14) for any reason consistent with the individual's intent to remain a
4 state resident, provided the absence or cumulative absences do not exceed

5 (A) 180 days if the individual is not claiming an absence under
6 (1) - (13) of this subsection;

7 (B) 120 days in addition to any absence or cumulative absences
8 claimed under (1) or (2) of this subsection if the individual is not claiming an
9 absence under (3) - (13) of this subsection; or

10 (C) 45 days in addition to any absence or cumulative absences
11 claimed under (1) - (13) of this subsection.

12 (b) An individual who is otherwise eligible, and who is absent for more than
13 180 days during the qualifying year remains eligible for a current year dividend only
14 if the individual was a resident of the state for at least six consecutive months
15 immediately before leaving the state.

16 (c) An otherwise eligible individual who has been eligible for the immediately
17 preceding 10 dividends despite being absent from the state for more than 180 days in
18 each of the related 10 qualifying years is only eligible for the current year dividend
19 if the individual was absent 180 days or less during the qualifying year. This
20 subsection does not apply to an absence under (a)(8) or (9) of this section or to an
21 absence under (a)(13) of this section if the absence is to accompany an individual who
22 is absent under (a)(8) or (9) of this section.

23 * Sec. 5. AS 43.23.028(a) is amended to read:

24 (a) By October 1 of each year, the commissioner shall give public notice of
25 the value of each permanent fund dividend for that year and notice of the information
26 required to be disclosed under (3) of this subsection. In addition, the stub attached to
27 each individual dividend check and direct deposit advice must

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

31 (2) disclose the amount of each dividend attributable to income earned

1 by the permanent fund from appropriations to that fund and from amounts added to
2 that fund to offset the effects of inflation;

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

6 (4) include a statement that an individual is not eligible for a dividend
7 when

8 (A) during the qualifying [CALENDAR YEAR
9 IMMEDIATELY PRECEDING THAT DIVIDEND] year the individual was
10 convicted of a felony;

11 (B) during all or part of the qualifying [CALENDAR YEAR
12 IMMEDIATELY PRECEDING THAT DIVIDEND] year, the individual was
13 incarcerated as a result of the conviction of a

14 (i) felony; or

15 (ii) misdemeanor if the individual has been convicted of
16 two or more prior crimes;

17 (5) include a statement that the legislative purpose for making
18 individuals listed under (4) of this subsection ineligible is to

19 (A) obtain reimbursement for some of the costs imposed on the
20 state criminal justice system related to incarceration or probation of those
21 individuals;

22 (B) provide funds for payments to crime victims and for grants
23 for the operation of domestic violence and sexual assault programs;

24 (6) disclose the total amount that would have been paid during the
25 previous fiscal year to individuals who were ineligible to receive dividends under
26 AS 43.23.005(d) if they had been eligible;

27 (7) disclose the total amount appropriated for the current fiscal year
28 under (b) of this section for each of the funds and agencies listed in (b) of this section.

29 * Sec. 6. AS 43.23.095(8) is amended to read:

30 (8) "state resident" means an individual who is physically present in the
31 state with the intent to remain indefinitely [PERMANENTLY] in the state under the

1 requirements of AS 01.10.055 or, if the individual is not physically present in the state,
2 intends to return to the state and remain indefinitely [PERMANENTLY] in the state
3 under the requirements of AS 01.10.055 [, AND IS ABSENT ONLY FOR ANY OF
4 THE FOLLOWING REASONS:

5 (A) VOCATIONAL, PROFESSIONAL, OR OTHER SPECIFIC
6 EDUCATION FOR WHICH A COMPARABLE PROGRAM WAS NOT
7 REASONABLY AVAILABLE IN THE STATE;

8 (B) SECONDARY OR POSTSECONDARY EDUCATION;

9 (C) MILITARY SERVICE;

10 (D) MEDICAL TREATMENT;

11 (E) SERVICE IN CONGRESS;

12 (F) OTHER REASONS WHICH THE COMMISSIONER MAY
13 ESTABLISH BY REGULATION;

14 (G) SERVICE IN THE PEACE CORPS;

15 (H) TO CARE FOR THE INDIVIDUAL'S TERMINALLY ILL
16 PARENT, SPOUSE, SIBLING, CHILD, OR STEPCHILD;

17 (I) FOR UP TO 220 DAYS TO SETTLE THE ESTATE OF
18 THE INDIVIDUAL'S DECEASED PARENT, SPOUSE, SIBLING, CHILD,
19 OR STEPCHILD; OR

20 (J) TO CARE FOR A PARENT, SPOUSE, SIBLING, CHILD,
21 OR STEPCHILD WITH A CRITICAL LIFE-THREATENING ILLNESS
22 WHOSE TREATMENT PLAN, AS RECOMMENDED BY THE ATTENDING
23 PHYSICIAN, REQUIRES TRAVEL OUTSIDE THE STATE FOR
24 TREATMENT AT A MEDICAL SPECIALTY COMPLEX];

25 * Sec. 7. AS 43.23.095 is amended by adding a new paragraph to read:

26 (10) "qualifying year" means the year immediately preceding January 1
27 of the current dividend year.

28 * Sec. 8. APPLICATION. AS 43.23.008(c), enacted by sec. 4 of this Act, applies only to
29 periods of absence during January 1, 1998, and thereafter.

30 * Sec. 9. PERMANENT FUND DIVIDENDS FOR CERTAIN SPOUSES AND
31 DEPENDENTS. (a) Notwithstanding the provision in AS 43.23.015(a) that the residency of

1 an individual's spouse may not be the principal factor relied upon in determining the residency
2 of the individual, an individual is eligible for a 1998 dividend if the individual was absent:
3 from the state while accompanying, as the spouse, minor dependent, or disabled dependent,
4 another person who was eligible for that dividend and was absent for a reason permitted
5 under AS 43.23.095(8), as that statute read at the time of the absence. An individual is
6 eligible for a 1998 dividend under this subsection only if the individual would have been
7 otherwise eligible for the 1998 dividend and

8 (1) applied for the 1998 dividend during the 1998 application period; or

9 (2) if the individual did not apply during the 1998 application period, applies
10 for the 1998 dividend during the 1999 application period.

11 (b) The Department of Revenue shall prescribe and furnish an application form for
12 claiming a 1998 dividend under (a)(2) of this section.

13 * **Sec. 10.** Section 9 of this Act is retroactive to January 1, 1998.

14 * **Sec. 11.** Sections 9 and 10 of this Act take effect immediately under AS 01.10.070(c).

15 * **Sec. 12.** Sections 1 - 8 of this Act take effect January 1, 1999.

RECEIVED

Department of Law

DEC 27 1996

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT

Office of the Attorney General
Anchorage Branch
Anchorage, Alaska

JOAN HALE,)
)
Appellant,)
)
v.)
)
STATE OF ALASKA, DEPARTMENT)
OF REVENUE, PERMANENT FUND)
DIVISION,)
)
Appellee.)

FILED IN THE TRIAL COURTS
State of Alaska, Third District

DEC 18 1996

Clerk of the Trial Courts
By A Roberts Deputy

Case No. 3AN-95-10706CI

Order

This court's order of December 3, 1996 is hereby corrected and all references to "15 AAC 23.615(c)(15)" in the conclusion of that order are amended to read "15 AAC 23.163(c)(15)."

The State's motion for reconsideration is denied. The December 3, 1996 order found that, "Zeiler did not invalidate 15 AAC 23.163(c)(15) as it applies to Hale," and ordered Hale's PFD application "remanded to the Department of Revenue for reconsideration with instructions that 15 AAC 23.163(c)(15), including the spousal exception, applies." Order at 5-6 (as amended by this order). The reasons for this decision were given in the December 3 order. No further clarification is necessary.

Done at Anchorage, this 18 day of December, 1996.

B Shortell
Brian Shortell
Superior Court Judge

I certify that on 12-23-96
a copy of the above was mailed to each
of the following at their addresses of
record: Allingham / Beardsley, AAG / Hammond, Agency
A Roberts
Secretary/Deputy Clerk

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

JOAN HALE,)
)
 Appellant,)
)
 v.)
)
 STATE OF ALASKA, DEPARTMENT)
 OF REVENUE, PERMANENT FUND)
 DIVISION,)
)
 Appellee.)

FILED IN THE TRIAL COURTS
State of Alaska, Third District

DEC 03 1996

Clerk of the Trial Courts

By Robert Deputy

Case No. JAN-95-10706CI

Background

This is an appeal by Joan Hale ("Hale") of a November 25, 1995 Department of Revenue ("State") order denying her 1994 application for a PFD. Hale moved from Alaska in 1990 to accompany her military husband, an Alaskan resident, who was assigned a tour of duty out-of-state. The State denied Hale's PFD application based on the 1993 Superior Court decision of Zeiler v. State, Dep't of Revenue, Case No. 3AN-92-1567CI (Judge Fabe, December 16, 1993).

Discussion

A Superior Court has the authority to review a final administrative order pursuant to AS 44.62.560. The scope of this review is defined by AS 44.62.570. There are four major standards of review: 1) the "substantial evidence test" for questions of fact; 2) the "reasonable basis test" for questions of law involving agency expertise; 3) the "substitution of judgment test" where no expertise is involved; and 4) the "reasonable and not arbitrary test" for the review of administrative regulations. Jager v. State, 537 P.2d 1100 (Alaska 1975).

Questions of law involve issues in which knowledge and

experience in the industry afford little guidance toward proper consideration of the legal issues. Swindel v. Kelly, 499 P.2d 291, 298 (Alaska 1972) (citing Kelly v. Zamarello, 486 P.2d 906, 916-17). These cases usually concern statutory interpretations or other analyses of legal relationships about which courts have specialized knowledge and experience. Swindel, 499 P.2d at 298. Consequently, courts are at least as capable of deciding this kind of question as an administrative agency. Id. This litigation involves the proper interpretation of Judge Fabe's Zeiler decision and 15 AAC 23.163(c)(15). This is a question of law and, as such, the proper standard of review is the substitution of judgement test. See Dille v. Ketchikan Gateway Borough, 855 P.2d 1335, 1336 (Alaska 1993).

I. Is Zeiler dispositive of Hale's claims?

In Zeiler, Judge Fabe invalidated 15 AAC 23.163(c)(15)¹ in light of a 1992 amendment to AS 43.23.015 that precludes an applicant from using the residency of a spouse as the "principal factor" in determining the residency of the applicant. Zeiler, at 21-23.²

¹The regulation originally allowed an absent resident to retain PFD eligibility if accompanying an eligible spouse out-of-state. The exception applied to those people, "accompanying an eligible individual as the spouse, minor dependent or disabled dependent of the eligible individual." After Zeiler, the Department amended the regulation to remove the spousal exception. The regulation now reads, "accompanying an eligible individual as the minor dependent or disabled dependent of the eligible individual." 15 AAC 23.163(c)(15). This regulatory modification does not apply to the present appeal, as it was not in effect during the period of Hale's absence from the state.

²The amendment to AS 43.23.015(a) reads, "...the residency of an individual's spouse may not be the principal factor relied upon by the commissioner in determining the residency of the

Both parties agree that this court is not necessarily bound by the Zeiler decision. The State contends, however, that the agency, at the time it reviewed Hale's application, was bound because State v. United Cook Inlet Drift Ass'n, 868 P.2d 913 (Alaska 1994)³, found the State subject to the doctrine of collateral estoppel. This conclusion misapplies the doctrine. Collateral estoppel has three requirements:

(1) The plea of collateral estoppel must be asserted against a party or one in privity with a party to the first action;

(2) The issue to be precluded from relitigation by operation of the doctrine must be identical to that decided in the first action;

(3) The issue in the first action must have been resolved by a final judgment on the merits.

United Cook Inlet Drift Ass'n, 895 P.2d at 950-51.⁴ The issue presented in this appeal does not fall within the collateral estoppel doctrine because neither requirement (1) or (2) are satisfied. The first requirement is not satisfied because Hale was not a party to the first action, nor was she in privity with a party in that action. The second requirement is not satisfied because the issue in this action is not identical to the issue in _____ individual."

³Decision withdrawn, modified and reissued as State v. United Cook Inlet Drift Ass'n, 895 P.2d 947 (Alaska 1995).

⁴There are two types of collateral estoppel: offensive and defensive. Offensive collateral estoppel occurs when a plaintiff seeks to preclude a defendant from relitigating an issue that the defendant previously litigated unsuccessfully against the same or a different party. Defensive collateral estoppel occurs where a defendant seeks to prevent a plaintiff from relitigating an issue the plaintiff previously litigated unsuccessfully in another action against the same or different party. See United Cook Inlet Drift Ass'n, 895 P.2d at 950 n. 7.

Zeiler. In Zeiler, the spouses at issue were all *non-residents*. In this litigation, both Hale and her spouse are *residents*.⁵ Because two of the three requirements for collateral estoppel have not been met, collateral estoppel can not be invoked against Hale in this case.

II. Did the State incorrectly interpret and apply Zeiler?

In Zeiler, the court invalidated 15 AAC 23.163(c)(15) because, contrary to AS 43.23.015(a), it fostered a presumption that the residency of an applicant was primarily determined by the residency of the spouse. Under the circumstances of that case, the regulation required a finding against eligibility for an applicant who accompanied a *non-resident* spouse out-of-state for military duty based solely on the fact that the spouse was a *non-resident*. The court found this scenario contrary to AS 43.23.015(a) which, as amended, precludes the use of the residency of the spouse as the "principle factor" in determining the residency of the applicant.

The allowable absence exceptions to the "state resident" definition that are promulgated at 15 AAC 23.163(c) are designed to include those people who, though temporarily out-of-state,

⁵In United Cook Inlet Drift Ass'n, the court found that the interpretation of the statute in the previous case (upon which the finding of collateral estoppel was based) was not confined to the facts of that case. In Zeiler, Judge Fabe expressly holds that the decision is limited to residents who accompany non-resident spouses.

It is reasonable to allow residents to "piggyback" onto an allowable absence of a resident spouse, because the fact that the spouse is still a resident is a factor tending to show 'an intent to return to Alaska and remain permanently in the state'. That factor does not exist for residents who accompany nonresident spouses out of state. Zeiler, at 17-8 (emphasis in the original).

demonstrate a sufficient likelihood to return. For those people, the Zeiler court found it reasonable to "piggyback" the absence of a resident on the allowable absence of the spouse. Zeiler, at 17-18. According to 15 AAC 23.163(c)(15), the Zeiler plaintiffs would have been denied PFD eligibility solely because their spouses were not residents. This result ran counter to the amended language of AS 43.23.015(a).

The present case is distinguishable because both Hale and her spouse were Alaska residents when they left the state. Under these circumstances, 15 AAC 23.163(c)(15) does not require a finding of ineligibility based solely on the residency of the spouse; rather, the regulation retains Hale's eligibility and leaves the State free to evaluate her residency and eligibility based on all of the evidence in the record. This interpretation does no offense to AS 43.23.015(a) and makes invalidation of the regulation unnecessary.

Conclusion

Collateral estoppel did not require the State to deny Hale's PFD application. Furthermore, Zeiler did not invalidate 15 AAC 23.615(c)(15) as it applies to Hale. Hale's scenario fits squarely within the circumstances envisioned by Zeiler when it found that it was reasonable to allow residents to "piggyback" onto the allowable absence of a resident spouse because the spouse's residency is a factor tending to show a likelihood that the applicant intends to return to the state. Zeiler, at 17-18. For these reasons, it is ordered that Hale's PFD application is remanded to the Department of Revenue for reconsideration with instructions that 15 AAC 23.615(c)(15), including the spousal

exception, applies.

Done at Anchorage, this 3 day of ^{December} ~~November~~, 1996.

S. Shortell
Brian Shortell
Superior Court Judge

I certify that on 12-5-96
a copy of the above was mailed to each
of the following at their addresses of
record: Collingham, Boardley AAG
a Roberts
Secretary/Deputy Clerk

Exhibit A

Page 6 of 6

Alaska State Legislature
House of Representatives

MAY 05 1997

COMMITTEE ASSIGNMENTS:

LABOR & COMMERCE, CHAIRMAN
MILITARY & VETERANS AFFAIRS, CHAIRMAN
COMMUNITY & REGIONAL AFFAIRS
RESOURCES
INTERNATIONAL TRADE / TOURISM
LEGISLATIVE COUNCIL

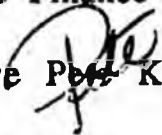


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FAX 894-9949

SESSION:
STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE (907) 465-3777
FAX (907) 465-2819

Memorandum

TO: Senator Drue Pearce, Co-Chair and Senator Bert Sharp, Co-Chair, Senate Finance Committee

FROM: Representative  Kott

DATE: February 25, 1997

SUBJECT: CSHB 2(FIN)

Please schedule CSHB 2(FIN) for a hearing by the Finance Committee at your earliest convenience. This legislation will reinstate the "piggy-back" rule allowing spouses to accompany individuals who leave the state on allowable absences such as military service, education and peace corps volunteering. The spouses will once again be eligible to receive a permanent fund dividend under the "piggy-back" provision.

Necessary materials will be provided within the next several days. Thank you for scheduling this legislation for an early hearing.



Representative Pete Kott



Alaska State Legislature House of Representatives

Committees

Rules Committee, Chair
Legislative Council
International Trade & Tourism
Military & Veterans Affairs
World Trade & State/Federal Relations



Sponsor Statement CSHB 2(FIN)

Interim:
10928 Eagle River Rd. Suite 141
Eagle River, AK 99577

Session:
Alaska State Capitol
Juneau, AK 99801

This bill resolves the damage done by a particular court ruling. The ruling's effects have unintentionally excluded spouses from receiving permanent fund dividends in the event an individual leaves the state under an "allowable absence" and the spouse accompanies the individual.

Historically the spouse was allowed to piggy-back on the individual leaving the state under an allowable absence. A court ruling changed this status by stating that marriage can not be the reason used to determine a person's residence eligibility. Unintentionally, the effect of this ruling has disrupted the allowable absences traditionally accepted which include a spouse accompanying an individual for purposes of military service, medical treatment and educational pursuits. Students who leave the state on allowable absences remain eligible for the permanent fund while their spouses who accompany them are ineligible. Similarly, service members who leave the state on allowable absences remain eligible for the permanent fund while the spouses are ineligible.

Through monetary incentives the ruling has effectively encouraged families to break apart for lengthy periods of time. The situation is deplorable and will be remedied by HB 2.

HB 2 excuses an individual from an absence of the state when the reason for the absence includes accompanying another eligible resident, who is absent for a reason permitted under this section, as the spouse, minor dependent, or disabled dependent of the eligible resident.

Effective January 1, 1998 HB 2 will restore to spouses the status they had prior to the Superior Court's unfortunate ruling. In addition, this bill will permit Alaskans who, because of the Court's ruling, did not previously qualify, to apply for prior year dividends, provided they: (1) would have been otherwise eligible for prior year dividends; and (2) apply for the prior year dividend during the 1998 application period.

HB 2 passed the House unanimously. This bill is good public policy. I urge your support.

Representative Pete Kott

Juneau Office (907) 465-3777 Toll Free 1-800-861-KOTT(5688) Fax (907) 465-2819
Eagle River Office (907) 694-8944 Fax (907) 694-8945 E-Mail: representative_pete_kott@legis.state.ak.us



Alaska State Legislature House of Representatives

Committees

Rules Committee, Chair
Legislative Council
International Trade & Tourism
Military & Veterans Affairs
World Trade & State/Federal Relations



Interim:
10928 Eagle River Rd. Suite 141
Eagle River, AK 99577

Session:
Alaska State Capitol
Juneau, AK 99801

Sectional Analysis CSHB 2(FIN)

Section 1: Amends the style of writing in AS 43.23.005. Part (6) of this section provides that individuals must be present in the state for the entire calendar year, unless the absence is allowable under AS 43.23.008.

Section 2: This is a new section, 43.23.008, which clarifies the allowable absences of an individual in the calendar year immediately preceding the current dividend year. This section includes a new provision, (11), which establishes that a spouse may accompany an individual outside the state, if that individual is leaving under an allowable absence, and remain eligible for the permanent fund.

Section 3: This section modifies the definition of a state resident. It allows a person to remain in the state "indefinitely" rather than "permanently." Part of this section is deleted and replaced by the language contained in Section 2 of the bill.

Section 4: This section is entirely new. It allows those who did not receive a permanent fund dividend, because of the court ruling, to apply for a previous year's dividend. An individual is eligible for a 1992, 1993, 1994, 1995, 1996, or 1997 dividend even if the individual was absent from the state while accompanying as the spouse, minor dependent, or disabled dependent, another person who was eligible for that dividend and was absent under an allowable absence. The individual is eligible if the individual:

- (1) would have been otherwise eligible for the prior year dividend;
- (2) applies for the prior year dividend during the 1998 application period.

The Department of Revenue is instructed to prescribe and furnish an application form for those in this situation.

Section 5: This section establishes an effective date of January 1, 1998.



Representative Pete Kott

Juneau Office (907) 465-3777 Toll Free 1-800-861-KOTT(5688) Fax (907) 465-2819
Eagle River Office (907) 694-8944 Fax (907) 694-8945 E-Mail: representative_pete_kott@legis.state.ak.us

A handwritten signature in the bottom right corner of the page.

HB 2 History

- ☒ 1991 Legislature passed a bill expanding the allowable absences to include spouses.
- ☒ 1993 Superior Court ruled in the Zeiler Case that a spouse's residence eligibility cannot be used as the primary determinant of the other spouse's residency. The PFD division then applied this to the law and disallowed spouses from "piggy-backing" off an individual's allowable absence.
- ☒ During the 18th legislature HB 392 passed the House and Senate but the House failed to concur due to lack of time at the end of session.
- ☒ During the 19th legislature HB 4 passed the House and Senate but the House failed to concur with the substantive changes made in the Senate.
- ☒ **1996 the Superior Court decides in favor of Joan Hale and states that the PFDD misapplied the Zeiler decision to Joan Hale's case. The State appeals the decision to the Supreme Court.**

RECEIVED

FEB 22 1997

February 15, 1997

Dear Senator Green,

Ans'd.....

I am writing to voice my support for HB-2 dealing with eligibility for receiving the permanent fund.

In the summer of 1992 my Alaska resident husband was transferred by the Air Force to Montana. It was our desire to return to Alaska within three years. That is what we did. During our entire absence from Alaska, we maintained ownership of three real estate properties, paying many thousands of dollars in Alaska property tax. Alaska was very quick to claim this tax money and at the same time they were denying me my permanent fund. My husband was absent from the state for an allowable absence. By the ruling of the State, I could not accompany my husband and maintain my eligibility for the permanent fund. This ruling discriminates against me. It is an anti-family ruling that was ill conceived from the beginning. I believe this is unconstitutional.

We have now returned to our home in Eagle River. Alaska is our home and we plan to retire here. . . . in Alaska. It is my hope that you will successfully pass HB-2 into law.

Sincerely,



Valorie B. Rampton
11045 Kaskanak Dr.
Eagle River, AK 99577
(907)694-9563

Christy L. Miller
P.O. Box 33405
Juneau, AK 99803
(907) 465-5066

February 24, 1997

Governor Tony Knowles
State Capitol Building
Juneau, AK 99801

Re: House Bill 2, Permanent Fund Dividend Eligibility

Dear Governor Knowles:

I am writing in favor of HB 2, Permanent Fund Dividend Eligibility.

My husband was honored to be chosen as one of the few National Guard Officers to fill the slots in the Army Helicopter course at Fort Rucker, Alabama with the Fixed Wing Multi-Engine course to follow. My two children and I went with him and, with our support, he graduated and is realizing a life long dream.

We lived paycheck to paycheck there but did so for our family and our country. I learned that I would not receive my 1996 dividend nor would I receive my 1997 dividend. The denial was because we choose to keep our family together and relocate with my husband to Fort Rucker. This was not considered an allowable absence.

In this age where we should be working to keep our families together, I urge you to pass this bill. Please give those of us who are doing what is right a chance to have what is rightfully ours.

Sincerely,


Christy Miller

cc: Byron Mallot, Director, Alaska Permanent Fund Corp.
Representative Pete Kott
Representative Eldon Mulder

ALASKA DEPARTMENT OF REVENUE
 PERMANENT FUND DIVIDEND DIVISION

HANDOUT FOR TESTIMONY ON SCS CSBH 4
 AS OF APRIL 22, 1996

We estimate that 7,000 applicants, 4,500 applicants in years 1992 through 1995, and 2,500 who may apply in 1996, who have been or will be denied a dividend would be made eligible by passage of SCS CSBH 4.

We will determine potentially payable applicants for dividend years 1992 through 1995 by redetermining their eligibility. Applicants who are otherwise eligible will be put into a pay status immediately. Some applicants must supply additional information to us before a final eligibility determination can be made. These applications will take longer to process and will result in either a payment or notice of denial. The entire process will begin after the bill is signed into law. Payments for dividend years 1992 through 1995 will reduce the amount of funds available for the 1996 dividend by about \$8.00 (estimated below based on the number of eligible applicants in 1995). All payments will commence in October 1996.

We cannot predict the total dollar amount of dividends that will be paid by passage of SCS CSBH 4. The following chart illustrates the cost of paying every applicant (regardless of eligibility) previously denied a dividend for accompanying their eligible spouse.

	<u># of Applications/Dividend Amount</u>	<u>Dollar Amount</u>
1992	25/\$915.84	\$22,896.00
1993	1052/\$949.46	998,831.92
1994	1987/\$983.90	1,955,009.30
1995	1436/\$990.30	<u>1,422,070.80</u>
	Total	<u>4,398,808.02</u>

The provisions of this bill were first introduced in January of 1994 and reintroduced in the next session in January 1995. It is our hope that the current legislature will bring this issue to a close. We support the passage of this bill, however, the longer it is delayed, the more costly it will be to reprocess the prior year applications.



from Alaska waters just an empty gesture from a posturing politician?

On the other hand, Exxon doesn't need to have the Exxon Valdez in Alaska and their efforts to bring it back may have been the result of an informal meeting of bored big shots getting their laughs off of Alaskans who love this land and wildlife.

Maybe Exxon's lawyers plan a big welcome party for the symbol of black Friday to be in a stronger position before settlement.

Really the issue isn't about a particular

again in the transportation of Alaska crude.

Maybe all of the above is a continuing scenario of deviant behavior.

— Tim Martin
Anchorage

Clinic's information invaluable

I'm writing in response to Mark S. Walker's letter, "Clinic profits from abortions."

Do you know the saying "ignorance is bliss"? Mr. Walker must live in a very happy place.

clinic, a clinic that performs annual exams for women, provides information on breast and cervical cancer, teaches self-examination regarding breast cancer, educates men and women on sexually transmitted diseases, offers pregnancy testing and if a test shows an unwanted positive, they offer counseling and options for those women. They don't just strap you in and perform an abortion. As a matter of fact, abortions are generally discouraged. Other options are strongly encouraged.

Religious and moral views are great for

A lot of people who vote for all of these school bonds don't have to pay a cent simply because they aren't property owners. Ironically enough, many of these are the same people who screamed about a \$20 student fee.

It would be interesting to see how many of these bonds would pass if there were a stipulation that if passed, a sales tax would be instituted to pay off the bond.

— Clarence R. Milster
Eagle River

Not all military families try to scam Permanent Fund checks

I would like to know if I am the "military dependent" Frank Smith from Barrow is writing about in regards to Puss Kott's bill to extend the Permanent Fund dividend to military dependents (letter, Jan. 26).

I was born in Anchorage at the Alaska Native Medical Center, Oct. 13, 1959. Attended Cordova Public School, K-12. Moved to Anchorage in fall 1981. Married an Air Force Sergeant from Texas, Aug. 1982 in Anchorage.

Military moves took us to Austin, Texas, and Germany, from January 1983 to May 1987. Two sons born in Germany. Prayed for return to Alaska. We got lucky! Home again, 1987. Bought a house, settled in, had another son. No plans to leave. 1992, Surprise! Must move again. First the tears,

then we adjust and end up loving it.

The dividend letter arrived and I was shocked to read, "Notice of Denial." I was hurt, unbelieving, this has to be a mistake. I had once thought how fortunate I was to be an Alaskan and not have to prove it like all those who came and went.

That comforting thought disappeared that day. I expected denials in the mail for my husband and three boys to come any day. I could have lived with that, after all, we were out of state. They never arrived.

In shock, heartbroken, I was told I was no longer a resident of



FIRST PERSON

Alaska even though my family, whom I lived with, retained their resident status. For three years I waited for the mistake to be fixed. My husband retired and we came home in June 1995.

It is time to file again. The heartache that temporarily faded returns.

They don't care that I am an Alaskan by heart. Nothing will change that. They don't care that it wasn't my choice to go where my husband was sent. We are a family and belong together.

They don't care that I am an Alaska Native corporation share holder. They don't care that I have a house, vehicles, voter's registration, and a court in Alaska.

They don't care that I know that

I was coming back to stay. They don't care that I came back to Alaska for two weeks to maintain my residency. They don't care that I did what my representative "back home" recommended of those of us that we: military families living temporarily out-of-state do to retain our residency. They don't care that the man I chose to spend my life with had a job that required he be sent where his services are needed.

The only thing they care about is that it is not an "absence" for me to be in my "resident" husband's absence as military dependents. And I don't have as I thought to fill out an application. Recently, although I am home I am told to state that my residency began the day I returned from

out-of-state in June 1995, not the day I was born a resident of the new 49th state in October 1959.

The law determined wrongly that I was not a resident, but don't penalize Alaskans in the future who didn't, by chance or choice, happen to be stationed in Alaska and decide that Alaska residency sounds like easy money and then decide to wring money out of Alaska while they are stationed at a base near their hometown.

I want to be accepted by my state for what I am, a resident of Alaska. Let's make the law pertain to those who really don't deserve the privilege.

— Sarah Walker
Anchorage

1775

DOONESBURY



Let us know your views

The Daily News welcomes your response to articles in the paper and opinion on matters of public interest. We publish several thousand letters to the editor each year. Letters intended for publication should be brief, and are subject to editing. No more than one letter a month per writer will be considered for publication.

Mail: 10¢ Letters, Anchorage Daily News, P.O. Box 149001, Anchorage 99514. Or, you may send it to our e-mail address: letters@pdn.adn.com. Or, you may fax it to 258-2157.

All submissions must include a daytime phone number and address. (Your phone number and address will not be published.) We do not run unsigned or anonymous letters, open letters addressed to third parties or copies of letters sent to other papers.

Questions? Call Cathy Carpenter, 257-4595. Outside Anchorage, call toll free, (800) 478-4200.

DEPARTMENT OF REVENUE
 PERMANENT FUND DIVIDEND DIVISION
ANALYSIS OF RETROACTIVE PROVISION OF CSHB 2

<u>Year</u>	<u>Number of Applicants Denied</u>	<u>Estimated Number not on file after 1994</u>	<u>Dividend Amount</u>	<u>Estimated Total Dividend Payment</u>
1992	25	****	915.84	22,896.00
1993	1,052	****	949.46	998,831.92
1994	1,987	****	983.90	1,955,009.30
1995	1,436	* 551	990.30	1,967,726.10
1996	1,360	*** 627	1130.68	2,246,661.16
TOTALS	5,860			\$ 7,191,124.48

Notes

* Most of the spouses were paid in 1992. Only those applications in Review or Appeal were not paid.

** The 1995 PFD Household Booklet contained a special message concerning the Superior Court Case disallowing the absence. Applicants were specifically encouraged to file an application.

In all years, the PFD Household Booklet contained information and examples of how to claim this specific absence. PFD always encouraged these spouses to file an application.

*** These numbers are estimates based on the decline of applications since 1994.

1997 Information:

The number of 1997 spousal absences total 1,082. These applications will be held pending the outcome of the 1997 Legislative session. If HB2 does not pass, these applicants will be denied.

ALASKA DEPARTMENT OF REVENUE
 PERMANENT FUND DIVIDEND DIVISION

**1994, 1995, 1996 DIVIDEND PAYMENTS TO ELIGIBLE APPLICANTS WITH
 ABSENCES COMPARISON**

As of 5/8/97

<u>Abs Code</u>	<u>Absence Reasons Listed by Applicant</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>
<i>Adult</i>				
B	Full Time Student	3,472	3675	3703
C	Active Duty Armed Forces	2,710	2548	2357
D	Continuous Medical Treatment	45	64	60
H	Employed by the State of AK	17	19	16
E	AK Congressional Delegation	3	3	3
	Congressional Staff	38	31	28
F	Full Time Peace Corp Service	24	16	26
G	U.S. Athletic Team	5	4	6
<u>Total Eligible Adults with Absences</u>		<u>6.314</u>	<u>6.360</u>	<u>6.199</u>
<i>Child</i>				
A	Accompany Eligible Sponsor	3,292	2854	2541
B	Full Time Student	162	202	132
C	Continuous Medical Treatment	21	11	12
<u>Total Eligible Children with Absences</u>		<u>3.475</u>	<u>3.067</u>	<u>2.685</u>
<u>Total Eligible Adults and Children with at least one Absence</u>		<u>9.789</u>	<u>9.427</u>	<u>8.884</u>
<u>Dividend Amount Per Year</u>		<u>983.9</u>	<u>990.3</u>	<u>1130.68</u>
<u>Estimated Payments</u>		<u>\$9,631,397.10</u>	<u>\$9,335,558.10</u>	<u>\$10,044,961.12</u>

Allowable absences in 15 AAC 23.163(c)

- (10) Congressional staff
- (11) State of Alaska Employees
- (12) National Athletic Team
- (15) Accompanying an eligible individual as a minor dependent or disabled dependent.
- (16) 180, 120, 45 day absences

Amendment to CSHB 2(FIN)

Page 4, line 22:

delete word "even"

Page 4, line 23:

delete "minor dependent, or disabled dependent";

delete "was eligible for" replace with "received"

Page 4, lines 22, 23 should read:

"dividend if the individual was absent from the state while accompanying, as the spouse, another person who received that dividend and"

Alaska Department of Revenue
PERMANENT FUND DIVIDEND PROGRAM
1995 HOUSEHOLD APPLICATION BOOKLET

Application Deadline: March 31, 1995

December 1994

Dear Alaskans:

As residents of our state, we should all be proud! We have developed some of our vast resources to provide an economy for our people and to generate revenue for state and local services. This has been coupled with tremendous successes in developing new strategies and technologies to protect our environment. One of the greatest achievements was our commitment to the future in which Alaskans voted to put money aside in a savings account called the Alaska Permanent Fund. As you know, the Permanent Fund provides us with an annual dividend, which is paid from a portion of the Fund's earnings. It is available to every Alaskan who meets the eligibility requirements.

As owners of Alaska's lands, resources, and savings, we can continue to enjoy the benefits of the ownership. At the same time, we also must be diligent in meeting our ownership responsibilities. We must be creative and come together to face the challenges ahead. Alaska must be internally strong. We must responsibly develop our natural resources, vigilantly care for our environment, and wisely invest in Alaska. It's up to each of us to make this happen. This will ensure that our children and their children will inherit a healthy and viable Alaska full of promise and hope.

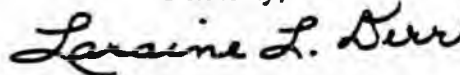
I am pleased to provide you with this 1995 Permanent Fund Dividend application booklet. Please read it carefully to determine if you are eligible for the dividend and how to properly apply. Answer each question truthfully as required by law. Please let us know if you or someone you know needs help applying.

Permanent Fund Dividends

Year	Amount
1982	\$1,000.00
1983	386.15
1984	331.29
1985	404.00
1986	556.26
1987	708.19
1988	826.93
1989	873.16
1990	952.63
1991	931.34
1992	915.84
1993	949.46
1994	983.90

Applications for the 1995 dividend must be filed by Friday, March 31, 1995. The 1995 dividend amount is scheduled to be announced the last week of September, 1995 with payments to begin Wednesday, October 11, 1995.

Sincerely,



Laraine L. Derr
Commissioner

Need Help? Perhaps you or someone you know needs help with the dividend application. If so, call or visit the Anchorage or Juneau Dividend Information Office between the hours of 8 am and 5 pm, Monday through Friday. Persons calling from Fairbanks may call 451-2820. You may also write to us at the following addresses:

ANCHORAGE- Telephone (907) 273-2600
TTY (HEARING IMPAIRED) - (907) 279-0098
Alaska Department of Revenue
Dividend Information Office
Corner of 6th and K
1016 West Sixth Avenue, Suite 100
Anchorage, Alaska 99501

JUNEAU - Telephone (907) 465-2326
TTY (HEARING IMPAIRED) - (907) 465-2868
Alaska Department of Revenue
Dividend Information Office
State Office Building, 11th Floor
P.O. Box 110461
Juneau, Alaska 99811

NEED MORE FORMS? Starting Monday, January 16, 1995 you may pick up dividend forms at the Department of Revenue Dividend Information offices listed above. Forms are also available at the Offices of the Governor, Legislative Information Offices, and city clerk offices. If you prefer to write, please send your request to the Juneau Dividend Information Office.

FROM THE DIRECTOR

IMPORTANT NOTICE TO SPOUSES ABSENT FROM ALASKA

On December 16, 1993 the Alaska Superior Court determined that the "piggyback" allowable absence was invalid. This means that unless the legislature enacts legislation to reinstate this historically allowable absence, otherwise eligible spouses accompanying Alaska residents who are on an allowable absence *will not qualify* for a dividend. As the Department did last year, the Department will again ask the legislature to correct this situation. Accordingly, if you are an otherwise eligible Alaskan resident accompanying your spouse who is an eligible Alaska resident on an allowable absence, you should go ahead and apply for the 1995 dividend by the application deadline.

REMINDER TO STUDENTS

Students who are attending school out of state should remember that registering to vote in the other state will make you ineligible for a dividend. To register to vote in Alaska, use the voter registration forms contained in this booklet. See page 12 for instructions.

APPLICATION DEADLINE

The application period for the 1995 dividend is Tuesday, January 3, 1995 through *Friday, March 31, 1995*. Please file early to ensure you don't miss this deadline! If by *March 15, 1995* you have not received a batch card receipt confirming your application is on file, please contact a Dividend Information Office.

DEADLINE FOR PROVIDING REQUESTED INFORMATION

Please remember that the deadline for providing requested information is June 30, 1995. To provide the most amount of time to respond to a request for information, please file early.

DIRECT DEPOSIT

In 1994, nearly 246,000 qualified Alaska residents had their 1994 dividend directly deposited to their participating Alaska bank or credit union account. The number of Alaska financial institutions participating in direct deposit has increased this year to 28. If you qualify for direct deposit, you can have your and your children's dividends deposited directly to your or your child's savings or checking account. *All 1995 direct deposit payments will be made on Wednesday, October 11, 1995.* Please see page 10 of this booklet for participation requirements and instructions.

General Information

Statutory and Regulatory Authority. AS 43.23 and 15 AAC 23.

Application Receipt (Batch Card). You will be notified by mail when the applications from your household have been put on file. This receipt is not a guarantee of eligibility for the 1995 dividend. When you receive this notice will depend on the number of applications received at the same time.

IMPORTANT! If you don't have this receipt by **March 15, 1995** please contact a Dividend Information Office. Dividend Information Offices do not issue receipts.

Deadline to Provide Requested Information. You are required to answer all questions and provide all requested information and documentation. The information requested on the application, supplemental schedule and other requests is used by the department to identify the applicant, determine eligibility and determine how the eligible applicant wants to have their dividend paid.

IMPORTANT! If you do not provide the required information with your original application or if the division requests additional information, you will only have until the later of **June 30, 1995** or 30 days from the date of the request to provide the information. If you do not provide all requested information by the deadline, your application will be denied.

When Payments Will Be Made. The Department of Revenue will begin making payments Wednesday October 11, 1995. All payments to eligible applicants will be made by December 31, 1995. Eligible applicants who qualify for direct deposit will have their dividends

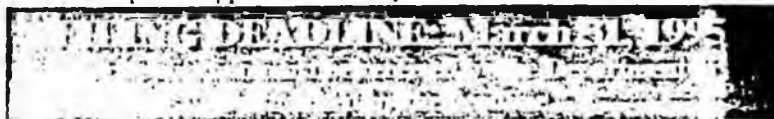
deposited as part of the first payment run. All other checks will be issued in the order in which the applications are approved for payment. Applications awaiting an eligibility determination will be paid on a weekly basis as they are approved for payment.

Name and Address Changes. If your name or mailing address changes after you have submitted your application but before you get your check, you must let the Permanent Fund Dividend Division know in writing. Use form 04-083 Name Change, Address Change or Social Security Number Addition in the back of this booklet. You must advise the department of any address change even if you requested your dividend to be directly deposited.

Lost Checks. If you lose your check, please contact the nearest Dividend Information Office. You will be asked to complete a Request for Stop Payment form. If the check has not been cashed, it will be reissued.

Applicants Who Die. If an eligible Alaskan dies after completing a timely filed application, their dividend check belongs to the estate and may be cashed by an heir. However, an heir may not apply for someone who died before signing their application. You may contact a Dividend Information Office for further information.

Note to Minors Regarding Extended Filing Deadline. If your parent or guardian did not claim a dividend on your behalf or did not file a completed application, or if you did not receive a dividend as



Follow the directions which precede each set of questions. Failure to follow directions will cause a delay in the processing of your application.

Answer questions 14-17C ONLY if you answered NO to question 5.

Please Print Clearly!

14. Your Name as It Appears on Your Birth Certificate (See page 4, #14)			15. State of Birth	16. Sex
First Name	M.I.	Last Name		<input type="checkbox"/> M <input type="checkbox"/> F
17A. If married, enter your spouse's name		17B. Spouse's Birth Date	17C. Spouse's Social Security Number	
First Name	M.I. Last Name	Month Day Year		

Answer question 18 ONLY if you answered NO to questions 5 or 6 or answered YES to 7A or 7B.

18. Where Do You Physically Live? (Street Address or Physical Location – do not list a Post Office Box number)

Answer questions 19-21B ONLY if you answered NO to question 6 or answered YES to question 7A or 7B.

19. List the dates and the number of days you were gone from Alaska in 1994. If you left prior to January 1, 1994, enter the date you actually departed. Circle the reason(s) you were absent for each absence. Attach additional sheets as needed for explanation.

Circle only one absence reason per line from list below	Left	Returned	# of Days	Explanation
A B C D E F G H J K L	___/___/___	___/___/___	_____	_____
A B C D E F G H J K L	___/___/___	___/___/___	_____	_____
A B C D E F G H J K L	___/___/___	___/___/___	_____	_____
A B C D E F G H J K L	___/___/___	___/___/___	_____	_____
	Month Day Year	Month Day Year		

(_____) Total # of Days during 1994 you were absent.

Absence Reasons Codes

A. Accompanying an eligible Alaska resident as the resident's spouse or disabled adult dependent. (See "FROM THE DIRECTOR" on Page 2 of the application booklet for an important notice.)

Name of Alaska Resident You Were With		
First Name	Last Name	
Alaska Resident's Birth Date		
Month	Day	Year
Alaska Resident's Social Security Number		

- B. Enrolled as a full-time student.
- C. On active duty as a member of the U.S. Armed Forces.
- D. Continuous medical treatment under a doctor's care. (Attach doctor's statement.)
- E. Service as a member of Alaska's congressional delegation or staff.
- F. Full time volunteer under the Peace Corp Act. (Attach Peace Corp statement)
- G. Member of a U.S. National Athletic Team. (Attach confirmation)
- H. As a requirement of employment by the State of Alaska.
- J. Vacation.
- K. Seeking employment or employed for a reason other than C, E, F or H. (Please explain)
- L. Other reasons, including business. (Please explain)

20. A. Have you ever physically lived in Alaska as an adult resident for at least six consecutive months prior to the first absence listed in question 19? Yes No

B. If YES, please list the dates of the most recent six consecutive month period prior to the first absence listed in question 19.

From ___/___/___ through ___/___/___
Month Day Year Month Day Year

21A. Were you physically present in Alaska at some time during 1993 or 1994? Yes No

B. If YES, which year were you most recently in Alaska? 1993 1994

If you were absent for more than 180 days in 1994, attach copies of supporting documents that show you were physically present at some time during 1993 or 1994. Examples of supporting documents can be found on page 5, line 21A-B of the instructions.

You are NOT ELIGIBLE for a 1995 dividend, and should not file if you were not physically present in Alaska at some time during 1993 or 1994.

Answer questions 22-24 ONLY if you answered NO to question 8.

22. What is your Alien Registration Number?	A - _____	24. All non-U.S. citizens must submit a copy of the front and back of their Alien Registration Card with their application.
23. On December 31, 1993 what was your legal alien status?	Resident <input type="checkbox"/> Asylee <input type="checkbox"/> Refugee <input type="checkbox"/> Other (Attach explanation) <input type="checkbox"/>	

FILING DEADLINE: March 31, 1995
Mail your application to:
Alaska Department of Revenue
P.O. Box 1062, Anchorage, AK 99516-1062

ABSENCE REASONS CODES (Circle only *ONE* absence *PER LINE*. Use a separate line for each absence if you were absent for more than one reason during 1994)

A. Accompanying an eligible Alaska resident as the resident's spouse or disabled adult dependent. Circle A if you were outside Alaska with your husband or wife who was an eligible Alaska resident for purposes of the dividend program and who was absent for an allowable reason. Please list the name, birth date and social security number of the person with whom you were absent. **CAUTION:** If the spouse or disabled adult dependent was absent more than 180 days during 1994 they must have lived in and been a resident of Alaska for six consecutive months immediately prior to leaving the state for the absence to be considered allowable. *Please see "FROM THE DIRECTOR" on page 2 of this booklet for an important notice.*

B. Enrolled as a full-time student. Circle B if you were absent from Alaska to attend school (grades 7-12), college or a university and were enrolled in good standing as a full-time student. School absences may also include vocational education, professional education, and other special education not available in Alaska, as well as officially authorized and documented sabbatical leave for educational instruction from the University of Alaska, Alaska Pacific University, Sheldon Jackson College or Alaska school districts.

C. On active duty as a member of the U. S. Armed Forces. Circle C if you were absent from Alaska for active service in the military. **Armed Forces dependents must mark A, not C,** and complete the information on the eligible resident with whom they are absent. Transfers under orders for the commissioned corps of the U.S. Public Health Service (USPHS) and the National Oceanic and Atmospheric Administration (NOAA) as well as the National Guard are not considered allowable absences.

D. Continuous medical treatment under a doctor's care. Circle D if you were absent from Alaska for continuous medical treatment. Attach a doctor's statement verifying the absence. If you were absent from Alaska solely because of the climate, you should circle J or L, not D.

E. Service as a member of Alaska's congressional delegation or staff. Circle E if you were absent from Alaska as a U.S. Senator or U.S. Representative for Alaska or a member of their staff.

F. Full time volunteer under the Peace Corp Act. Circle F if you were absent from Alaska as a full time volunteer under the Peace Corp Act. Attach an official Peace Corp statement reflecting your dates of service.

G. As a member of a U.S. National Athletic Team. Circle G if you were absent from Alaska as a member of a U.S. National athletic team as an eligible athlete. Attach a document provided by the international federation or National governing body for that nonprofessional sport confirming your membership.

H. As a requirement of employment by the State of Alaska. Circle H if the State of Alaska is your employer and you were absent as a result of that employment. This includes employment in a State of Alaska field office.

I. Omitted intentionally. Held in the custody and control of the State of Alaska is no longer an allowable absence.

J. Vacation. Circle J if you were absent from Alaska only for a vacation.

K. Seeking employment or employed for a reason other than C, E, F or H. Circle K if you were absent from Alaska looking for work or were working outside except while absent for allowable reasons C, E, F or H. Attach a detailed explanation of your circumstances. If you were employed outside of Alaska, please describe your employment and list your employer.

L. Other reasons, including business. Circle L if you were absent from Alaska for a reason not listed in A through K. Circle L if you were absent from Alaska while on business other than employment under absence reasons C, E, F, H or K. Attach an explanation describing the specific reason and circumstances of your absence, attaching a separate sheet of paper if necessary.

Line 20A. Answer NO if you have never physically lived in Alaska as an adult resident for at least six consecutive months prior to departing on the first absence listed in question 19.

Line 20B. If you answered YES to 20A, list the dates of the last time you physically lived in Alaska as an adult resident for at least six consecutive months prior to the first absence listed in question 19.

Lines 21A -B. Physical Presence. If you answered YES to question 21A, check the most recent year you were in Alaska on question 21B. If you were absent for more than 180 days in 1994, you must also attach proof that you were in Alaska at some time during 1993 or 1994. This proof may include: copies of airline tickets, marine highway tickets, travel club records, hotel receipts, school records, medical records, employment records, Department of Revenue form 04-438 (Affidavit of Physical Presence) or other evidence that proves you were in Alaska at some time during 1993 or 1994. These items must have the name of the adult applicant clearly listed on them. Please note that the Affidavit of Physical Presence, form 04-0438, *must* be completed in person at a Dividend Information Office.

ANSWER QUESTIONS 22-24 ONLY IF YOU ANSWERED NO TO QUESTION 8

Lines 22-24 - Alien Status. List your alien registration number and check what your legal alien status was on December 31, 1993, regardless of what it is currently. **Be sure to submit a copy of the front and back of your Alien Registration Card.** If you only have a temporary work or education registration, you are **NOT** eligible for a 1995 dividend.



APPLICATION DEADLINE
March 31, 1996

Year	Amount
1982	\$1,000.00
1983	\$386.15
1984	\$331.29
1985	\$404.00
1986	\$556.26
1987	\$708.19
1988	\$826.93
1989	\$873.16
1990	\$952.63
1991	\$931.34
1992	\$915.84
1993	\$949.46
1994	\$983.90
1995	\$990.30



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

Dear Alaskan,

I'm pleased to send you an application for the 1996 Alaska Permanent Fund Dividend.

Alaskans are fortunate to enjoy the wealth of oil production, and have wisely set aside a portion of our oil revenues for deposit into the Permanent Fund, which now totals approximately \$15 billion. The dividend program allows us all to share the wealth from our publicly owned resources.

Those who have been eligible for dividends since the first payment in 1982 have received more than \$10,000. That's more than \$40,000 for a family of four. The dividend program has channeled more than \$5 billion into the Alaska economy. Those dollars, in turn, help create and support about 6,500 jobs annually.


I'm happy to point out one important change in this year's packet. At my request, the Department of Revenue has worked with the Division of Elections and the Lieutenant Governor's Office to make voter registration a part of this application. I want to make it easier for every eligible Alaskan to register, and I hope you'll exercise your right to vote. If you are not registered or need to re-register at a new address, there are clear instructions inside this booklet.


As for your dividend, please review the application carefully. If you have questions or need assistance, you can visit, call, or write the dividend information office nearest you. Each year, a few eligible Alaskans don't get dividends because they either forget to apply or have trouble filling out the paperwork. If you know someone who might need help with this application, please take a minute to give that person a hand.


Sincerely,
Tony Knowles
Tony Knowles
Governor


1996 PERMANENT FUND DIVIDEND APPLICATION


ADULT APPLICATION INSTRUCTIONS, continued


 Established Alaska residency before January 1, 1995.


 Were physically present in Alaska during all of 1995 with the intent to remain permanently in Alaska, or, if absent from Alaska more than 180 days, lived in Alaska as a resident for at least 180 consecutive days immediately prior to leaving for an allowable reason, maintaining at all times while absent an intent to return to Alaska to remain permanently.


 Have been physically present in Alaska at some time during 1994 or 1995.

 During all of 1995, were a U.S. citizen or a lawfully admitted alien with conditional resident, permanent resident, refugee or asylee status.

 Were not incarcerated at any time during 1995 as the result of a felony conviction.

 Filed an application during the period of January 2, 1996 through March 31, 1996.

 At any time since December 31, 1994, have not claimed residency in another state or obtained a benefit as a result of a claim of residency in another state.

 On the date of application, were physically present in Alaska with an intent to remain permanently, or were absent for an allowable reason with an intent to return to Alaska and remain permanently.

NOTE: An adult's intent to remain permanently in Alaska or to return to Alaska to remain permanently, is shown by specific actions which are consistent with Alaska residency. That intent is destroyed if the person takes steps to establish residency in another state. For example, someone who accepts a benefit as a resident of another state takes an action inconsistent with the intent to remain an Alaska resident permanently. That person is not eligible for the dividend even though that person may have met the physical presence requirements.

Physical presence in Alaska during the qualifying year and at the time of filing is not, by itself, sufficient to establish eligibility for the dividend. An adult who has never lived in Alaska is not eligible for a dividend; an adult cannot establish Alaska residency while living outside the state.

LINE 13 A&B—Signatures of Verifiers. Have two adults who know that you are an Alaska resident sign your application (Eligibility Verification by Two Adults Who Know You). By signing, these adults are stating that you are an eligible Alaska resident. These adults are subject to the same penalties for falsely verifying a claim for a

dividend as you are for falsely filing.



LINE 14-18—ANSWER ONLY IF YOU ANSWERED NO TO QUESTION 5 ON THE FRONT OF THE APPLICATION.

LINE 14—Birth Name. Enter your name exactly as it appears on your birth certificate. If there is no initial record of your birth, enter the name that you were given at birth and attach other documentation as proof.

LINE 15—Birth State. Enter the two letter abbreviation for the state in which you were born. If you were not born in the United States, enter the territory or country in which you were born.

LINE 16—Sex. Mark the square indicating whether you are male or female.

LINE 17 A, B—Enter the legal name of your spouse (do not use nicknames) and your spouse's date of birth. If your spouse is deceased or if you are single write N/A for Not Applicable.

LINE 18—Enter your spouse's social security number.



LINES 19-21B—ANSWER ONLY IF YOU ANSWERED NO TO QUESTION 6 OR YES TO QUESTION 7A or 7B. You must report on your application all absences, during 1995, totaling more than 90 days. If you do not list these absences, your 1996 application will be denied.

LINE 19—Absences. List all the dates and number of days you were absent from Alaska since December 31, 1994. If you left Alaska prior to January 1, 1995, and that absence extended into the 1995 calendar year, enter the date you actually left Alaska but do not count any days prior to January 1, 1995 in the "# of days" column. Count the day you arrived or returned to Alaska as a day absent. Count the day you left Alaska as a day in Alaska. Circle your reason for being out of Alaska. Choose from those listed in the "Absence Reasons Codes" section in question 19 and provide an explanation. Use a separate line for each type of absence and for each time you began and ended each type of absence.

SEE EXAMPLE ON BOTTOM OF PAGE 10

A. Accompanying an eligible Alaska resident as the resident's spouse. Circle A if you were outside Alaska with your husband or wife who was an eligible Alaska resident and who was absent for an allowable reason. List the name, date of birth and SSN of the person you were absent with.

B. Enrolled as a full time student. Circle B if you were absent from Alaska to attend grades 7 - 12, a college or university and were enrolled and attending in good standing as a full time student. School absences may include vocational or professional education, sabbatical leave, and other special education not available in Alaska.

Follow the directions which precede each set of questions. Failure to follow directions will cause a delay in the processing of your application.

Answer questions 14-18 ONLY if you answered NO to question 5.

Please Print Clearly!

14. Your Name as It Appears on Your Birth Certificate (See page 9, #14) First Name M.I. Last Name			15. State of Birth	16. Sex <input type="checkbox"/> M <input type="checkbox"/> F
17A. If married, enter your spouse's name First Name M.I. Last Name		17B. Spouse's Birth Date Month Day Year	18. Spouse's Social Security Number	

Answer questions 19-21B ONLY if you answered NO to question 6 or answered YES to question 7A or 7B.

19. List the dates and the number of days you were gone from Alaska in 1995. If you left prior to January 1, 1995, enter the date you actually departed. Circle the reason(s) you were absent for each absence. Attach additional sheets as needed for explanation.

Circle only one absence reason per line from list below	Began	Ended	# of Days	Explanation
A B C D E F G H I J K	Month / Day / Year	Month / Day / Year	_____	_____
A B C D E F G H I J K	Month / Day / Year	Month / Day / Year	_____	_____
A B C D E F G H I J K	Month / Day / Year	Month / Day / Year	_____	_____
A B C D E F G H I J K	Month / Day / Year	Month / Day / Year	_____	_____

() Total # of Day during 1995 you were absent.

Absence Reasons Codes

A. Accompanying an eligible Alaska resident as the resident's spouse.

Name of Alaska Resident You Were With First Name M.I. Last Name		
Alaska Resident's Birth Date Month Day Year		Alaska Resident's Social Security Number

- B. Enrolled as a full-time student.
- C. On active duty as a member of the U.S. Armed Forces.
- D. Continuous medical treatment under a doctor's care. (Attach doctor's statement)
- E. Service as a member of Alaska's congressional delegation or staff.
- F. Full time volunteer under the Peace Corp Act. (Attach Peace Corp statement)
- G. Member of a U.S. National Athletic Team. (Attach confirmation)
- H. As a requirement of employment by the State of Alaska.
- I. Vacation.
- J. Seeking employment or employed for a reason other than B, C, E, F, G or H. (Please explain)
- K. Other reasons, including business. (Please explain)

20. A. Have you ever physically lived in Alaska as an adult resident for at least 180 consecutive days prior to the first absence listed in question 19? Yes No

B. If YES, please list the dates of the most recent 180 consecutive day period prior to the first absence listed in question 19.

From Month / Day / Year through Month / Day / Year

21. A. Were you physically present in Alaska at some time during 1994 or 1995? Yes No

B. If YES, which year were you most recently in Alaska? 1994 1995

If you were absent for more than 180 days in 1995, attach copies of supporting documents that show you were physically present at some time during 1994 or 1995. Examples of supporting documents can be found on page 10, line 21B of the instructions.

Answer questions 22-23 ONLY if you answered NO to question 8.

22. What is your Alien Registration Number? A- _____	23. On December 31, 1994 what was your legal alien status? Resident <input type="checkbox"/> Asylee <input type="checkbox"/> Refugee <input type="checkbox"/> Other (Attach explanation) <input type="checkbox"/>
---------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

FILING DEADLINE: March 31, 1996

Your application must be received by the Department or postmarked by the deadline.

Mail your application to:
Alaska Department of Revenue

P.O. Box 110462, Juneau, AK 99811-0462

Your Permanent Fund Dividend Program 1997 Household Application Booklet



P.O. Box 110201
Juneau, Alaska 99911-0201
(907) 486-3800
Fax (907) 486-3838

PDF file whole booklet included cross sheets

Dear Alaskan,

One of the best things about being Governor is this chance to send you your application for the Permanent Fund Dividend. It's a unique program that lets all of us share the benefits of our publicly owned resources. I'm especially pleased this year to join other Alaskans in celebrating the 20th anniversary of the Permanent Fund. We should all be proud of the \$19 billion we've set aside so far to help keep our economy stable in the days of declining state revenues.

I have asked the folks at the Dividend Division to find better ways to serve you in the years ahead. They are exploring taking applications by computer or telephone, and are considering other streamlining ideas. It's my commitment to make the process easier, more efficient and understandable for everyone. Please note that this booklet also contains a voter registration application. If you need to register or update your voter registration address, please take this opportunity to do so. If you have questions about any part of this booklet, contact the dividend information office nearest you (see Page 2 for telephone numbers).

Our Permanent Fund is one of the most successful public policy programs in the world today. As we mark this special anniversary, let us also reaffirm the commitment of all Alaskans to protect the Fund for future generations.

Sincerely,

Tony Knowles
Governor

15 YEARS OF PERMANENT FUND DIVIDENDS

Year	Amount	Year	Amount
1982	\$1,000.00	1990	.952.63
1983	.386.15	1991	.931.34
1984	.331.29	1992	.915.84
1985	.404.00	1993	.949.46
1986	.556.26	1994	.983.90
1987	.708.19	1995	.990.30
1988	.826.93	1996	1,130.68
1989	.873.16		

Application Deadline March 31, 1997

HOW TO FILL IN THE ADULT APPLICATION, continued



Were physically present in Alaska during all of 1996 with the intent to remain permanently in Alaska. If absent from Alaska more than 180 days, lived in Alaska as a resident for at least 180 consecutive days immediately prior to leaving for an allowable reason. Maintained at all times while absent, an intent to return to Alaska to remain permanently.



Have been present in Alaska at some time during 1995 or 1996.



During all of 1996, were a U.S. citizen or a lawfully admitted alien with conditional resident, permanent resident, refugee or asylee status.



Were not incarcerated or sentenced in 1996 as a result of a felony conviction or incarcerated as a result of a probation violation of a felony conviction, or were not incarcerated during 1996 as a result of a third misdemeanor conviction.



Filed an application between January 2, 1997 and March 31, 1997.



At any time since December 31, 1995, have not claimed residency in another state or obtained a benefit as a result of a claim of residency in another state.



On the date of application, were physically present in Alaska with an intent to remain here, or were absent for an allowable reason with an intent to return to Alaska and remain here.

NOTE: Your intent to remain in Alaska or to return to Alaska to remain, is shown by specific actions which are consistent with Alaska residency. That intent is destroyed if you take steps to establish residency in another state. For example, if you accept a benefit as a resident of another state, you have taken an action inconsistent with the intent to remain an Alaska resident permanently. You are not eligible for the dividend even though you may have met the physical presence requirements.

Physical presence in Alaska during the qualifying year and at the time of filing is not, by itself, sufficient to establish eligibility for the dividend. An adult who has never lived in Alaska is not eligible for a dividend; an adult cannot establish Alaska residency while living outside the state.

LINE 13 A&B. Have two adults who know that you are an Alaska resident sign your application (Eligibility Verification by Two Adults Who Know You). By signing, these adults are stating that you are an eligible Alaska resident. These adults are subject to the same penalties for falsely verifying a claim for a dividend as you are for falsely filing.



LINE 14-18—ANSWER ONLY IF YOU ANSWERED NO TO QUESTION 5 ON THE FRONT OF THE APPLICATION.

Birth Name. Enter your name exactly as it appears on your birth certificate. If there is no initial record of your birth, enter the name that you were given at birth and attach other documentation as proof. Passports, Naturalization papers or letters from the social security administration indicating date of birth are also considered acceptable documents.

State of Birth. Enter the two letter abbreviation for the state in which you were born. If you were not born in the United States, enter the territory or country in which you were born.

Sex. Mark the square indicating whether you are male or female.

Enter the legal name of your spouse (do not use nicknames) and your spouse's date of birth. If your spouse is deceased or if you are single, write N/A for Not Applicable.

Enter your spouse's social security number.



LINES 19-21B—ANSWER ONLY IF YOU ANSWERED NO TO QUESTION 6 OR YES TO QUESTION 7A OR 7B. You must report on your application all absences, during 1996, totaling more than 90 days. If you do not list these absences, your 1997 application will be denied.

Absences. List all the dates and number of days you were absent from Alaska since December 31, 1995. If you left Alaska prior to January 1, 1996, and that absence extended into the 1996 calendar year, enter the date you actually left Alaska but do not count any days prior to January 1, 1996 in the "# of days absent" column. Count the day you arrived or returned to Alaska as a day absent. Count the day you left Alaska as a day in Alaska. Circle your reason for being out of Alaska. Choose from those listed in the "Absence Reasons Codes" section in question 19 and provide an explanation. Use a separate line for each type of absence and for each time you began and ended each type of absence.

SEE EXAMPLE ON PAGE 22



Accompanying an eligible Alaska resident as the resident's spouse. Circle A if you were outside Alaska with your husband or wife who was an eligible Alaska resident and who was absent for an allowable reason. List the name, date of birth and SSN of the person you were absent with. This is not a specifically allowable absence.

Follow the directions before each set of questions. If you don't, you'll delay our processing of your application.

Answer questions 14-18 ONLY if you answered NO to question 5.

Please Print Clearly!

14. Print Your Name as It Appears on Your Birth Certificate (See page 20) First Name _____ M.I. _____ Last Name _____			15. State of Birth _____	16. Sex Female <input type="checkbox"/> Male <input type="checkbox"/>	
17A. If married, print your spouse's name First Name _____ M.I. _____ Last Name _____		17B. Print your Spouse's Birth Date Month _____ Day _____ Year _____	18. Print Your Spouse's Social Security Number _____-_____-_____-_____-_____-_____		

Answer questions 19-21B ONLY if you answered NO to question 6 or answered YES to question 7A or 7B.

19. List the dates and the number of days you were gone from Alaska in 1996. If you left prior to January 1, 1996, enter the date you actually departed. Circle the reason(s) you were absent for each absence. Attach additional sheets as needed for explanation.

See list of absence reasons below. Then, circle only one letter per line.	Absence Began			Absence Ended			# of Days Absent	Explain Why You Were Gone
	Month	Day	Year	Month	Day	Year		
A B C D E F G H I J K L M	___/___/___	___/___/___	___/___/___	___/___/___	___/___/___	___/___/___	_____	_____
A B C D E F G H I J K L M	___/___/___	___/___/___	___/___/___	___/___/___	___/___/___	___/___/___	_____	_____
A B C D E F G H I J K L M	___/___/___	___/___/___	___/___/___	___/___/___	___/___/___	___/___/___	_____	_____
A B C D E F G H I J K L M	___/___/___	___/___/___	___/___/___	___/___/___	___/___/___	___/___/___	_____	_____

(_____) Total # of Days during 1996 you were absent.

Absence Reasons Codes

A. Accompanying an eligible Alaska resident as the resident's spouse.

Name of Alaska Resident You Were With First Name _____ M.I. _____ Last Name _____		
Alaska Resident's Birth Date Month _____ Day _____ Year _____		Alaska Resident's Social Security Number _____-_____-_____-_____-_____-_____

- B. Enrolled as a full-time student.
- C. On active duty as a member of the U.S. Armed Forces.
- D. Continuous medical treatment under a doctor's care. (Attach doctor's statement)
- E. Service as a member of Alaska's congressional delegation or staff.
- F. Full-time volunteer under the Peace Corps Act. (Attach Peace Corps statement)
- G. Member of a U.S. National Athletic Team. (Attach confirmation)
- H. As a requirement of employment by the State of Alaska.
- I. Vacation.
- J. Seeking employment or employed for a reason other than B, C, E, F, G or H. (Please explain)
- K. Other reasons, including business. (Please explain)
- L. To care for a parent, spouse, sibling, child or stepchild with a critical life-threatening illness.
- M. Settle the estate of a deceased parent, spouse, sibling, child or stepchild.

20. A. Have you ever lived in Alaska as an adult resident for at least 180 consecutive days prior to the first absence listed in question 19? If NO, skip B. Yes No

B. If YES, please list the dates of the most recent 180 consecutive day period prior to the first absence listed in question 19.

From ___/___/___ through ___/___/___
Month Day Year Month Day Year

21. A. Were you present in Alaska at some time during 1995 or 1996? Yes No

If NO, you are **NOT ELIGIBLE** for a 1997 dividend. You should not file if you were not present in Alaska at some time during 1995 or 1996.

B. If YES, which year were you most recently in Alaska? 1995 1996

If you were absent for more than 180 days in 1996, attach copies of supporting documents that show you were physically present at some time during 1995 or 1996. Examples of supporting documents are on page 21, line 21B of the instructions.

Answer questions 22-23 ONLY if you answered NO to question 8.

22. What is your Alien Registration Number? A- _____	23. On December 31, 1995 what was your legal alien status? Resident <input type="checkbox"/> Asylee <input type="checkbox"/> Refugee <input type="checkbox"/> Other (Attach explanation) <input type="checkbox"/>
---------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

FILING DEADLINE: March 31, 1997

Your application must be received by the Department or postmarked by the deadline.

**Mail your application to:
Alaska Department of Revenue
P.O. Box 110462, Juneau, AK 99811-0462**

BEFORE THE DEPARTMENT OF REVENUE

STATE OF ALASKA

IN THE MATTER OF)
JOAN H. HALE) ORDER GRANTING MOTION
) FOR SUMMARY ADJUDICATION
)
1994 PERMANENT FUND DIVIDEND) CASELOAD NO. 951072
)

The Permanent Fund Dividend Division, (Division), has filed a Motion for Summary Adjudication in this appeal. The Division alleges that there are no material facts at issue, and that the denial of the application of Joan H. Hale, (Applicant), for a 1994 Permanent Fund Dividend, (PFD), should be upheld as a matter of law. The Division argues that the Applicant's 1994 PFD was correctly denied because the Applicant was out of the state on an unallowable absence, and that because of this absence, the Applicant is ineligible for a 1994 PFD under 15 AAC 25.163(c).

The Applicant filed an Opposition to the Motion for Summary Adjudication on September 11, 1995. The Applicant argues that AS 43.23.015 requires the Division to look beyond the purpose and duration of the Applicant's absence and "to consider all relevant circumstances in determining the eligibility of an individual." The Applicant argues that she has established Alaska residency and always intended to return to Alaska during her absence. The Applicant asserts that taking into account all the relevant circumstances she is an Alaska resident and she is therefore eligible for a 1994 PFD.

The Applicant is correct in asserting that AS 43.23.015 requires the Division "to consider all relevant circumstances in determining the eligibility of an individual." However, there are discrete requirements for residency for PFD purposes that each applicant must meet. AS 43.23 is the chapter in the Alaska statutes that establishes eligibility requirements for the PFD. AS 43.23.095(8) defines "state resident" as follows:

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

- (A) vocational, professional, or other specific education for which a comparable program was not reasonably available in the state;
- (B) secondary or postsecondary education;
- (C) military service;

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ALASKA DEPT. OF REVENUE
PFD DIVISION
DIVIDEND APPEALS

- (D) medical treatment;
- (E) service in Congress;
- (F) other reasons which the commissioner may establish by regulation; or
- (G) service in the Peace Corps;

The Applicant's absence was not for any of the reasons specified under AS 43.23.095(8). Her Alaska residency for the purpose of eligibility for a PFD is therefore dependent on whether her absence is allowable under regulations promulgated under AS 43.23. These regulations govern the outcome of this case.

The facts relating to the duration and purpose of the Applicant's absence are not in dispute. The Applicant was absent from Alaska for over 180 days during the 1994 qualifying year. The primary purpose of the Applicant's absence was to accompany her husband, who was on an allowable absence from Alaska as an active duty member of the U.S. military.

Under 15 AAC 23.163(c)(15) and its predecessors, an individual could be absent from the state and retain eligibility for a PFD if the individual was absent primarily for the purpose of "accompanying an eligible individual as the spouse . . . of the eligible individual." These regulations were invalidated as the result of a court decision. Zeiler v. State, Dept. of Revenue, No. 3AN-92-1567 Ci. (Alaska Super., Dec.16, 1993).

The Applicant argues that despite Zeiler, under 15 AAC 23.163(c)(15) her absence is allowable.

The Zeiler decision dealt with an appeal which contested the Department of Revenue's authority to provide allowable absences to the spouses of residents on allowable absences while denying dividends to the spouses of nonresidents who were absent for similar reasons. The court upheld the Department of Revenue's regulation against constitutional challenges based on the federal and state equal protection clauses. The court found that it is reasonable "to allow residents to 'piggyback' onto an allowable absence of a resident spouse, because the fact that the spouse is still a resident is a factor tending to show 'an intent to return to Alaska and remain permanently in the state.'" Zeiler at 17 - 18.

The court found against the Department of Revenue, however, on state statutory grounds. In 1992 the permanent fund dividend statutes were amended by the legislature. The following provision was added to AS 43.23.015(a):

However, the residency of an individual's spouse may not be the principal factor relied upon by the commissioner in determining the residency of the individual.

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ALASKA DEPT. OF REVENUE
PFD DIVISION
DIVIDEND APPEALS

Zeiler court concluded that:

[B]ecause the residency of an applicant's spouse has been and continues to be "the principal factor" in determining the residency of an applicant resident seeking to accompany that spouse on an allowable absence, regulation 15 AAC 23.163(c)(15) and its functionally equivalent predecessors are and were invalid as of the date that the 1992 amendment of AS 43.23.015(a) took effect. Zeiler at 22 - 23.

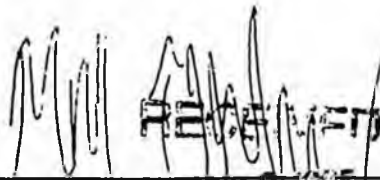
AS 43.23.095(8) defines "state resident" for the purpose of PFD eligibility. Included in this definition is the requirement that an applicant be either present in the state or on an allowable absence. The absences specifically allowed by law are set forth in 15 AAC 23.163(c)(1) - (15). 15 AAC 23.163(c)(16)(A) limits absences that are not specifically allowed under 15 AAC 23.163(c)(1) - (15) to a maximum of 180 days. The court in Zeiler invalidated 15 AAC 23.163(c)(15), the regulation allowing an absence from Alaska to accompany an eligible spouse out of state.

The Applicant was absent from Alaska for more than 180 days during the 1993 calendar year, which is the qualifying period for a 1994 PFD. The primary purpose of her absence was to accompany her husband. Thus, she is ineligible for a 1994 PFD because her absence exceeded 180 days and she does not qualify for any of the other absences allowed by law. There are no material facts in dispute and it is clear that the Division is entitled to judgment as a matter of law.

Therefore, the Division's Motion for Summary Adjudication is GRANTED. This case will not be scheduled for formal hearing. The Division's decision that Joan H. Hale is not eligible for a 1994 Permanent Fund Dividend will stand.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560. If an appeal is filed, it must be filed within 30 days of the date of the order of adoption of this decision.

DATED: November 29, 1995

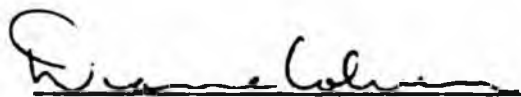

Mark T. Hanley
Revenue Hearing Examiner
ALASKA DEPT. OF REVENUE
PFD DIVISION
DIVIDEND APPEALS

ORDER OF ADOPTION OF DECISION OF HEARING OFFICER

I, Diane Colvin, Senior Revenue Hearing Examiner, under the authority of AS 43.05.010, order that the attached decision relating to the eligibility of Joan H. Hale for a 1994 Permanent Fund Dividend be adopted and entered in the Applicant's file as of this date as the final administrative determination in this matter.

This decision was prepared by Mark T. Handley, who was duly appointed under the authority of AS 44.17.010 and AS 44.25.010 as Hearing Officer, to consider the arguments and evidence presented in this appeal and to recommend a decision in this matter.

DATED: November 29, 1995



Diane Colvin
Senior Revenue Hearing Examiner

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ALASKA DEPT. OF REVENUE
PFD DIVISION
DIVIDEND APPEALS

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

Case No. 3AN-95-10706 CI

JOAN HALE

Appellant,

VS.

STATE OF ALASKA, DEPARTMENT OF REVENUE,

PERMANENT FUND DIVISION

Appellee.

Appeal

Appeal from decision from the
State of Alaska, Department of Revenue,
Diane Colvin, Senior Revenue Hearing Examiner.

Caseload No. 951072

BRIEF OF APPELLANT

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Text of Relevant Statutes and Regulations

A.S. 43.23.015. Application and proof of eligibility. (a) The commissioner shall adopt regulations under the Administrative Procedure Act (AS 44.62) for determining the eligibility of individuals for permanent fund dividends. The commissioner may require an individual to provide proof of eligibility, and the commissioner may use other information available from other state departments or agencies to determine the eligibility of an individual. The commissioner shall consider all relevant circumstances in determining the eligibility of an individual. However, the residency of an individual's spouse may not be the principal factor relied upon by the commissioner in determining the residency of the individual.

15 AAC 23.163. ALLOWABLE ABSENCES.

(c) An individual who otherwise qualifies, but who was not physically present in Alaska for the entire qualifying year, may be eligible for a dividend if the individual was absent primarily for one of the following reasons:

(15) accompanying an eligible individual as the spouse, minor dependent, or disabled dependent of the eligible individual;

(Eff. 1/1/96, Register 124; am 6/26/96, Register 126; am 12/24/93, Register 128)

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Zeller, et al v. Department of Revenue, Case No. 3AN-92-1567
CIV.
(Dec. 16, 1993).....5, 6, 7, 8
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I. INTRODUCTION

Joan Hale appeals the denial of her 1994 permanent fund dividend. The State of Alaska Department of Revenue (hereinafter "DOR") denied her dividend because she spent part of the year 1994 out of state accompanying her husband, an Alaska resident, on his military tour of duty out of state. The Hales had lived in Alaska off and on since 1977 prior to Mr. Hale's transfer, and they have since returned to Alaska to live now that his military obligation is complete. While they lived out of state, they both maintained their Alaska voters registration, driver's licenses, and their son paid out of state tuition at college.

II. JURISDICTIONAL STATEMENT

This appeal arises out of a request for judicial review of the decision of a final administrative order pursuant to AS. 44.62.560. The decision appealed from is the DOR Order Granting Motion for Summary Adjudication dated November 29, 1996.

III. STATEMENT OF ISSUES PRESENTED

1. Whether the DOR erred in denying a permanent fund dividend to Joan Hale, an applicant who meets all the requirements of eligibility except that she accompanied her

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spouse out of state for a portion of the year on his military tour of duty.

2. Whether the DOR erred in failing to grant Hale a hearing on the issue of the reason for her absence from the state.

3. Whether the DOR violated the Administrative Procedure Act rule making requirements by retroactively deleting a regulation without notice and opportunity for public comment.

IV. STATEMENT OF THE CASE

Appellant Joan Hale submitted a timely application for a 1994 permanent fund dividend. Her application was denied and by a Notice of Denial dated August 25, 1994 [Exc. 19] and she requested an informal conference [Exc. 15] She checked the box on the informal conference request form requesting that the conference be by telephone. The telephone conference never took place and on June 16, 1995 the DOR issued a "1994 Permanent Fund Division Informal Conference Decision." [Exc. 20] Hale appealed this decision by request for a formal hearing appeal. [Exc. 1] The DOR Fund Division representative filed a Motion for Summary Adjudication [Exc. 6], opposed by Hale, [Exc. 30], which was

granted by the hearing officer on November 29, 1995. [Exc.

34.]

The only reason given by the DOR in denying Ms. Hale's application is that she was absent from the state for more than 180 days and that a superior court decision in Zeiler, et al v. Department of Revenue, Case No. 3AN-92-1567 CIV. December 16, 1993, invalidated 15 AAC 23.163(c)(15), a regulation that allowed an applicant to accompany an eligible individual on an allowable absence as the spouse of that individual. [Exc. 19, 20, 43]. In the Zeiler case, several Alaskan residents were denied dividends because they accompanied their non-resident spouses on their military tour of duty. The Zeiler plaintiffs challenged the Department of Revenue regulation 15 AAC 23.163(c)(15) which allowed an applicant to be absent from the state to accompany an eligible spouse on an allowed absence, and still maintain his or her own eligibility. The Zeiler plaintiffs cited A.S. 43.23.015, which had been amended in 1992 to prohibit a Department of Revenue practice of denying dividends outright to Alaskan residents who were married to non-resident spouses. The specific language of the 1992 amendment to A.S. 43.23.015 is the following:

The commissioner shall consider all relevant circumstances in determining the eligibility of an individual. However, the residency of an individual's spouse may not be the principal factor relied upon by

the commissioner in determining the residency of the individual.

The Zeiler court upheld the spousal residency requirement on constitutional grounds, but then stated in a dictum that to the extent the regulation based an eligibility determination on the residency of the spouse as the principal factor, that it was invalidated by A.S. 43.23.105 as of January 1, 1992. Instead giving effect to the legislative intent to grant dividends otherwise eligible applicants who happened to be married to non-residents, the court in Zeiler took the action that neither the plaintiffs nor the Department of Revenue had requested and said that the 1992 amendment to 43.23.015 caused 15 AAC 23.163(c)(15) to be invalid as of the effective date of the 1992 amendment.

For the reasons set forth below, appellant Joan Hale believes that the Commissioner of Revenue's interpretation of the decision in Zeiler is wrong, and that the Zeiler decision is not binding on this court. She asks that this court reverse the action of the Department of Revenue and grant her 1994 permanent fund dividend.

V. STANDARD OF REVIEW

The issues raised involve the interpretation of laws rather than facts and this court is entitled to substitute its judgment on the meaning of those laws.

VI. ARGUMENT

The DOR's reliance on the superior court decision in Zeiler, supra, to deny Hale's dividend was in error.

1. The Zeiler decision is not binding on this court.

The Zeiler decision is a superior court decision and as such is not binding on another superior court.

2. The DOR is estopped from using the outcome of the Zeiler case as dispositive against other applicants.

The State of Alaska DOR, in its amended answer to the complaint in the Zeiler case (Exhibit H), opposed the Zeiler plaintiff's request that the case be recognized as a class action, stating that the outcome of the Zeiler case would not be used as dispositive of other cases. The relevant language of the amended answer is as follows:

That separate actions or appeals of individual cases would create a risk of rulings dispositive of others' cases is denied, unless a separate case were to go to appeal at the highest appellate level. Superior Court appeals decisions are not dispositive of any other case and have minimal presidential value. The division uses the decision in the Bolls case as guidance where similar factual circumstances arise, not as a case dispositive of all appeals where spouses non-residency is a factor.

(See Exhibit H attached.)

Joan Hale was not a party to the Zeiler case. She was not given notice of the case nor an opportunity to participate. The interests of the Zeiler plaintiff's were very different from Hale's and her interests were not protected or adequately represented in that case. It is unfair for the DOR to now use the Zeiler case against Hale after stating in that case that it would not consider the case dispositive of other cases. (Exhibits attached: Motion for Summary Judgement, Exhibit I; Opposition to Motion for Summary Judgement and Cross-Motion for Summary Judgement, Exhibit J; Reply to Opposition to Cross Motion for Summary Judgement, Exhibit K; Reply to Opposition to Motion for Summary Judgement and Opposition to Cross Motion for Summary Judgement, Exhibit L; Order, Exhibit M; Answer, Exhibit O; and Complaint, Exhibit P.)

3. The DOR has failed to distinguish between "residency" and "eligibility".

The amendment language in 43.23.015 prohibits the DOR from using the residency of an individual's spouse as the principal factor in determining the residency of the individual. 15 AAC 23.163(c)(15) states that an individual who accompanies an eligible spouse on an allowable absence will be deemed to be on an allowable absence. This does not require the DOR to use the spouse's residency as the

principal factor in determining the applicant's residency. It merely allows the DOR to grant a dividend to an otherwise eligible resident notwithstanding an absence from the state. Joan Hale met all the other requirements of residency. Her application and supplemental schedule included many factors establishing her residency Alaskan, including, moving her belongings to Alaska, obtaining full time employment in Alaska, declaring Alaska residency on employment forms, registering to vote in Alaska, obtaining an Alaska driver's license and registering a vehicle in Alaska. (See Exhibit A attached.) She has taken no action inconsistent with an intent to remain in Alaska, has not applied for nor received the benefits of any other state, and, in fact, returned to Alaska twice during 1993, the first time to hunt for a house, the second time to sign the paperwork to buy a house in Alaska.

B. The DOR's interpretation does violence to the legislature intent.

1. This court should interpret the regulation in a way that is consistent with the legislative intent.

The legislature adopted the 1992 amendment to A.S. 43.23.015 in order to stop the DOR from wrongfully denying dividends to applicants based on the non-residency of their spouses.

The 1992 amendment to A.S. 43.23.015 prohibiting the use of the spouses residency as the principal factor in

result of determination was passed as HCS CSSB 327 (FIN) an H.
1992 Session Laws of Alaska Chapter 4. (Exhibit B)

In a sectional on CS SB 327, (Exhibit C) Senator
Croft stated that the purpose of section 10 of CSSB 327
(FIN) (Exhibit D) is the following:

Section 10: Establishes that the Commissioner of
Revenue will not deny an applicant solely on the basis
of their spouses residency.

(The original Senate Bill 327 is attached as Exhibit E.)
Both the Committee Substitute for Senate Bill 327 (FIN)
(Exhibit F) and the House Committee Substitute for CS SB 327
(FIN) read as follows:

However, the residency of the individual's spouse may
not be the *only* factor relied upon by the commissioner
in determining the residency of the individual.: CS SB
327 (FIN) § 10, and HCS CS SB 327 (FIN) § 10, (emphasis
added).

Representative Terry Martin proposed Amendment 1 to
substitute the word "a" for the phrase "the only". House
Journal March 25, 1992. p. 2752, (Exhibit G). This amendment
was adopted. Then Representative Max Gruenberg proposed
Amendment 5 to substitute "the principal" for "a". This
amendment was also adopted. House Journal March 25, 1992, p.
2759. The deletion of the language "a factor" and the
subsequent adoption of the language "the principal factor"

proves that the legislature intended that the commissioner could consider the spouses residency as "a" factor in determining residency, it is only prohibited from considering the spouses residency as the "principal factor" in determining residency. As already stated above, Hale has many other factors proving her residency besides her husband's residency. The regulation is valid to the extent that it allows the commissioner to consider all of the factors including her husband's residency.

2. The plain meaning of the "the principal factor" requires the DOR to grant Hale's application.

In Black's Law Dictionary, 'principal' is defined as:

Principal, adj. Chief; leading; most important or considerable; primary; original. Highest in rank, authority, character, importance, or degree.

Black's Law Dictionary, Sixth Edition, West Publishing Co., St. Paul, Minn. 1990

Clearly Hale's husband's residency is not the chief, leading, most important, primary or original reason for her state residency.

Joan Hale is not attempting to use her husband's residency as the "principal factor" in her residency determination. The statute does not prohibit the DOR from considering the residency of the spouse as a factor in the determination of residency of the applicant, it only prohibits the DOR from using the residency of the spouse as

the principal factor." In fact, the legislature considered and rejected the language "a factor" and substituted instead "principal factor."

3. The rules of statutory construction require that this court interpret A.S. 43.23.015 to allow Hale a dividend check.

The goal of statutory interpretation is to give effect to the legislature's intent. O'Callaghan v. State of Alaska et al., 826 P. 2d 1132, (Alaska, 1992) Supreme Court opinion No. 3818, March 6, 1992.

The Alaska Supreme Court stated in State Leasing and Equip. v. Wichman 874 P. 2d 949 (Alaska, 1994) Supreme Court Opinion No. 4086, May 27, 1994.

The goal of statutory construction is to give effect to the legislature's intent, with regard for the meaning the statutory language conveys to others. Tesoro Alaska Petroleum Co. v. Kenai Pipe Line Co., 746 P.2d 896, 905 (Alaska 1987). We will construe the words in a statute in accordance with their common usage unless they have acquired a peculiar meaning through statutory definition of judicial construction. Wilson v. Municipality of Anchorage, 669 P.2d 569, 571-72 (Alaska 1983); see also AS 01.10.040 (Supp. 1991).

Whenever possible, the court should construe a statute so as to avoid an unconstitutional, absurd, or

unjust result. Uniform Statutes and Rules Construction
Act 1918

It is furthermore a goal to construe a statute in a way that will avoid an unjust result. To construe that statute in the way urged by the DOR would work a terrible injustice to Hale, and would lead to absurd consequences which the legislature did not intend.

The fundamental purpose of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law. In order to determine this intent, courts begin by examining the language of the statute. However, language should not be given a literal meaning if doing so would result in absurd consequences which the Legislature did not intend. Thus, the intent prevails over the letter, and the letter will, if possible be so read as to conform to the spirit of the act. Finally, courts do not construe statutes in isolation, but rather read every statute with reference to the entire scheme of law by which it is part so that the whole may be harmonized and retain effectiveness. In re Matthew C. 4 Cal. Rptr. 2d 303,307 (1992) 9 Cal App 4th 750 (1992, 5th Dist). (Exhibit N)

C. The DOR has failed to follow its own regulations in denying Hale's permanent Fund Dividend.

1. The DOR duly adopted 15 AAC 23.163 and cannot change this regulation without going through the notice and rulemaking requirements of the Administrative Procedure Act. (APA)

The DOR action is bound by the Administrative Procedure Act set out at 44.62.010 et seq. This requires a notice period and procedure for public comment, none of which was followed by the DOR in invalidating retroactively 15 AAC 23.163.

2. The DOR failed to grant Hale a hearing as required by the APA.

The DOR's refusal to consider any other factors proving residency in Hale's application other than her absence to accompany her spouse amounts to a violation of the hearing requirements of the APA and a denial of Hale's due process rights.

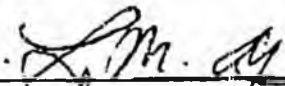
VII. CONCLUSION

For the forgoing reasons, this court should grant Hale's appeal and remand this case to the DOR with instructions to consider all the factors in determining Hale's residency, as required by statute, and to follow its

own regulation and find that Hale was out of the state on an allowable absence in 1993.

Respectfully submitted this 20th day of June, 1996.

LAW OFFICES OF LYNN M. ALLINGHAM



Lynn M. Allingham

TCN: 70792 DATE & TIME: 05/08/97 17:00 TO 22:00 STATUS:5 IN PROG.

**** ORDER SUMMARY ****

SPONSOR: SFIN SENATE FINANCE CHAIRS: PEARCE
PURPOSE: PUB PUBLIC HEARING LEGISLATIVE SHARP
CONTACT: LARRY STEVENS TEL#: (907)465-3004
CHAIRING SITE: JUNEAU CAPITOL CAP532
TOLL FREE: (800)478-7612 DIAL-UP: LIO: (800)478-9908

SPONSOR REMARKS(PUB): TESTIMONY:Y ALLOWED 2 MINUTE LIMIT
TESTIMONY WILL BE TAKEN WITH A 2 MINUTE LIMIT. TESTIMONY WILL BE TAKEN FROM
JUNEAU AT 5:00 PM AND FROM ALL OTHER LOCATIONS AT 6:00 PM.

SPONSOR REMARKS(LIO): BACKUP MATERIAL:N MEETING IN PROGRESS:N MAX. SITES:20
SITES MAY JOIN THRU THE JNU LIO.
NO JNU MOD. AVAILABLE UNTIL APPROX. 5:45 PM.
TCN REQUESTED ON 05/08/97 AND HAS 5 UPDATES

**** AGENDA ****

- 1 HB 2 PERMANENT FUND DIVIDEND ELIGIBILITY
- 2 5:00PM TESTIMONY FROM JUNEAU.
- 3 6:00PM TESTIMONY FROM ALL OTHER LOCATIONS

**** PARTICIPATING LIOS ****

ANC ANCHORAGE	716 W 4TH, #200	LOCATION STAFF
FBX FAIRBANKS	119 N CUSHMAN ST	LOCATION STAFF
* JNU JUNEAU	CAPITOL CAP532	LOCATION STAFF
KEN KENAI LIO	145 MAIN ST LOOP	LOCATION STAFF
MAT MATSU	600 E RAILROAD	LOCATION STAFF
SIT SITKA	210 LAKE STREET	LOCATION STAFF

**** VOLUNTEER & OFFNET SITES ****

ZZZ OF1 OFFNET 1	IN STATE	CALL IN LINE	(800)478-7612
ZZZ OF2 OFFNET 2	IN STATE	CALL IN LINE	(800)478-7612
ZZZ OF3 OFFNET 3	OUT OF STATE	CALL IN LINE	(800)478-7612
ZZZ OF4 OFFNET 4	OUT OF STATE	CALL IN LINE	(800)478-7612

PARTICIPANTS IN:ANCHORAGE ANC

1	T	JOAN HALE	ANCHORAGE	TSFY. HB 2
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		2324_SONSTROM DR.		AK 99517 (907)243-0633
3		TO OBSERVE		OBSV. ALL ITEMS

PARTICIPANTS IN:FAIRBANKS FBX

1	MS. T	CORA WATKINS		TSFY. HB 2
				AK (907)000-0000
2	MS. T	KATHLEEN BEASINGER		TSFY. HB 2
				AK (907)000-0000

PARTICIPANTS IN:JUNEAU JNU

1	SEN	RANDY PHILLIPS	SFIN/CHAIRING	TSFY. HB 2
				AK (907)000-0000
2	MS	NANCY JONES	PFD DIVISION	TSFY. HB 2
				AK (907)000-0000
3		TO OBSERVE		OBSV. ALL ITEMS

LTN1100-R01
05/08/97

LEGISLATIVE TELECONFERENCE NETWORK

PAGE 02
18:40:57

TCN: 70792 DATE & TIME: 05/08/97 17:00 TO 22:00 STATUS:5 IN PROG.

PARTICIPANTS IN:JUNEAU

JNU

4	TO	OBSERVE	OBSV. ALL ITEMS
5	TO	OBSERVE	OBSV. ALL ITEMS
6	TO	TESTIFY	TSFY. ALL ITEMS

PARTICIPANTS IN:MATSU

MAT

1	MS	└ DONNA	HUTTON	TSFY. HB 2
				AK (907)000-0000

PARTICIPANTS IN:SITKA

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1	└	LYDIA	CLARK	TSFY. HB 2
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PARTICIPANTS IN:OFFNET 3

ZZZ OF3

1	MS	└ LAINA	SMITH	TSFY. HB 2
		905 APPLEWOOD DR	FAYETTEVILLE	NC (907)000-0000

**** UPDATES ****

01	05/07/97	09:59:25	ANNOUNCING TELECONFERENCE
02	05/07/97	13:35:10	KENAI LIO ADDED ON
03	05/08/97	10:48:35	MATSU ADDED ON
04	05/08/97	12:53:53	TELECONFERENCE HAS BEEN CANCELED
05	05/08/97	13:08:07	ANNOUNCING TELECONFERENCE

SENATE FINANCE COMMITTEE

S I G N - I N

HB 2 PERMANENT FUND DIVIDENT ELIGIBILITY

NAME: Nanci A. JONES Subj/Bill No: HB2
Co./Dept./Title: Dept of Revenue - PFD Director Phone: X 2323
Address: St Ofc Bldg - 11th Floor Zip: 99811
Do you wish to testify? Yes No Respond to Questions

NAME: Sue Badilla Subj/Bill No: HB2
Co./Dept./Title: Testifying for self Phone: 789-5751
Address: 1067 Arctic Circle ^{Juneau} AK Zip: 99801
Do you wish to testify? Yes No Respond to Questions

NAME: _____ Subj/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond to Questions

NAME: _____ Subj/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond to Questions

May 8, 1997

Alaska Senate Finance Committee

Subject: House bill No.2

From: George Friendshuh
Soldotna, Alaska
(907) 262-4923

I would like to testify in favor of HB #2. My concern is for the spouse of military personnel.

My daughter was born and raised in Alaska. She married an Alaskan resident who joined the Navy and have been stationed in various places. Their children were born in Alaska.

The family returns to Alaska every year and maintains Alaska residency.

My daughter followed all the Permanent Fund rules and after receiving the 1992 and 1993 Permanent Fund checks, the rules changed and she has been asked to return the money for 1992 and 1993 checks.

Please pass HB #2 to clarify the Permanent Fund rules pertaining to military spouses.

Thank you,



George Friendshuh