

**SB**

**59**

**SFIN**

**FILE**

SB 59

was referred to the  
Senate Finance  
Committee

Hearing(s) were held

The bill did not move  
from Committee

ALASKA STATE LEGISLATURE  
SENATE DISTRICT 0

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**Session:**  
State Capitol Building  
Juneau, AK 99801  
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**John J. Cowdery**

Senate Rules, Chair  
Senate Transportation Committee, Chair  
World Trade State & Federal Relations, Chair  
State Affairs, Legislative Council

**SPONSOR STATEMENT SB59**

**"An act relating to permanent fund dividend program notice requirements and to the ineligibility ... of certain persons sentenced for driving while under the influence ... or for refusing to submit to a chemical test."**

Each year hundreds of Alaskans fall victim to drivers who are drunk or under the influence of other substances.

The purpose of SB59 is to add a conviction for driving while under the influence (DUI), or refusing to take a chemical test, to the list of existing conditions that make a person ineligible for a permanent fund dividend.

A first offense brings a one-year suspension of the PFD.

A second offense brings a five-year suspension of the PFD.

This means the dividend cannot be used to offset fines or debts. Instead the offender is simply ineligible for the dividend. Which leaves the dividend amount in the overall pot to be equally distributed among eligible Alaskans.

Because a permanent fund dividend is not a right, but a privilege, these penalties fall above and beyond all other penalties currently provided for by law.

In the year 2001 alone there were 1146 alcohol related accidents (36 fatal crashes, 506 nonfatal injury crashes and 604 crashes that resulted in only property damage). There were 85 total traffic deaths and 50% of those were alcohol related. An estimated 2800 people were involved in these crashes

and that's obviously a large rise from say the year 1983 when there we no injuries recorded.

SB59 is constructed to give back to those who want to make Alaska's streets safer and raise the awareness that Drinking and Driving will not be accepted

FRANK MURKOWSKI, GOVERNOR

DEPARTMENT OF LAW  
ADMINISTRATIVE SERVICES DIVISION

P.O. BOX 110300  
ASSEMBLY BLDG., SUITE 205  
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April 18, 2003

The Honorable Gary Wilken, Co-Chair  
The Honorable Lyda Green, Co-Chair  
Senate Finance Committee  
Capitol Building, Room 506  
Juneau, Alaska 99801

Dear Senators Wilken and Green,

During recent deliberation on Senate Bills 58 and 59 regarding ineligibility for permanent fund dividends in certain circumstances, Senator Stevens asked for additional information regarding the Department of Law's Collections Unit.

The Collections Unit is part of the Department's Civil Division Collections and Support budget component. The unit is responsible for handling about 100,000 currently active civil and criminal collection matters for the State and for collecting restitution on behalf of victims of crimes and delinquent acts. Criminal judgments include criminal fines, cost of incarceration, cost of appointed counsel, forfeited bonds, minor offense fines, and costs related to those fines. Civil judgments include cost and attorney fees awarded to the state in civil litigation, and APOC and OSHA penalties. The unit has existed to perform the State's collection matters since 1988. Victim restitution was added with the passage of new legislation that became effective in January, 2002.

The unit is located in Anchorage, supervised by an attorney, but staffed by paralegals and administrative clerks. Some of the unit's funding also pays for staff in the Administrative Services Division in Juneau, where related accounting functions are performed.

In FY 2003, the Collections and Support budget component includes \$290,800 in general fund program receipts from the criminal fines shown in the table below. Those funds pay for collections not related to victim restitution. Annually, Law transfers some of the money collected under cost of counsel to the Department of Administration for the Office of Public Advocacy (OPA) and the Public Defender (PD). That transfer totals \$291,300 so far in FY 2003. The transfers to OPA and the PD are in accordance with the amount of general fund program receipts shown in the operating budgets for those programs. All monies collected under Cost of Incarceration are transferred to the Department of Corrections and help to fund Community Residential Centers operated by that agency. In recent years, the legislature has begun to use

some of the balance of money collected under cost of appointed counsel to make supplemental operating appropriations to OPA and the PD. Typically, about two-thirds of the amount collected is not appropriated by the legislature and becomes part of the available general fund balance.

In a given year, approximately 85% of total collections are garnishments from the permanent fund dividend. The dollar amount collected by the Collections Unit in any given year is subject to change based on such factors as the number of judgments transferred by the Court System; the number and dollar value of voluntary payments; the amount of the permanent fund dividend; the number of defendants applying for the dividend; the number of defendants who are eligible for the dividend; other money owed with higher statutory authority<sup>1</sup> for dividend seizure (child support, IRS taxes, etc.)<sup>2</sup>; and the amount of dividends refunded due to errors, vacated judgments, and court-approved community work service. Any time the legislature contemplates changes to permanent fund dividend eligibility or changes in the order of statutory authority for dividend seizure, the amount collected by the Department of Law and available to satisfy the operating appropriations from collections, and ultimately the amount that becomes available in the balance of the general fund for appropriation for other purposes, will be affected.

The table below lists the revenue generated by the Collections Unit, in thousands, for each of the past six fiscal years:

	FY98	FY99	FY00	FY01	FY02	FY03 <sup>3</sup>
Criminal fines <sup>4</sup>	\$999.1	\$1,330.0	\$1,099.5	\$1,963.6	\$1,583.8	\$1,147.5
Cost of counsel	\$751.8	\$847.4	\$888.9	\$936.0	\$883.3	\$765.6
Cost of incarceration	\$624.3	\$741.6	\$748.4	\$853.8	\$762.3	\$658.0
Civil judgments <sup>5</sup>	\$18.4	\$49.2	\$32.8	\$27.1	\$86.0	\$67.3
Unposted collections <sup>6</sup>	\$76.3	\$101.4	\$0.0	\$0.0	\$0.0	\$0.0
Restitution <sup>7</sup>					\$104.7	\$562.2
Total	\$2,469.9	\$3,069.6	\$2,769.6	\$3,993.6	\$3,574.9	\$3,353.1

<sup>1</sup> AS 43.23.065 establishes the priority of dividend attachments: (1) child support; (2) court ordered restitution; (3) defaulted student loans; (4) court ordered fines; (5) civil judgments against a minor or the minor's parents or legal guardian; (6) other civil debts owed the state; (7) debts owed for a domestic violence rehabilitation program.

<sup>2</sup> The effect of other agencies' seizures on the collection rate partially accounts for the large increase in collections in FY99. The IRS did not attach dividends in 1998. Of course, part of the increase is also due to the growth of the permanent fund dividend itself.

<sup>3</sup> Fiscal year to date, July 1, 2002, through March 31, 2003.

<sup>4</sup> Includes collection of court fines, traffic & minor offense fines, and forfeited bonds.

<sup>5</sup> Includes collection of OSIIA and APOC penalties.

<sup>6</sup> Payments received during a fiscal year, which cannot be posted to an individual's case before the year changes. For example, if a voluntary payment is made before a judgment is received from the court, the payment cannot be posted to a case. Most are reconciled during subsequent years, but recorded as miscellaneous in the year payment was made to avoid duplicate income reporting. Most of the unposted collections shown for FY 97, FY 98, and FY 99 have since been posted to specific judgment types or have been refunded if collected in error.

<sup>7</sup> Restitution collection began in Fiscal Year 2002, as of January 1, 2002.

The Honorable Gary Wilken  
The Honorable Lyda Green  
April 3, 2003  
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Please let me know if you have further questions about this area of inquiry.

Sincerely,



Kathryn Daughhete  
Director

cc: Members of the Senate Finance Committee:

The Honorable Ben Stevens  
The Honorable Con Bunde  
The Honorable Donny Olson  
The Honorable Lyman Hoffman  
The Honorable Robin Taylor  
Gregg Renkes, Attorney General  
Scott Nordstrand, Deputy Attorney General, Civil Division  
David Marquez, Assistant Attorney General/Legislative Liaison  
Barbara Ritchie, Chief Assistant Attorney General  
Diane Wendlandt, Supervising Attorney, Collections and Support  
Sheila Peterson, Staff to Senator Gary Wilken

DWI MISDEMEANORS & FELONIES FY02 AND JULY-DEC. FY03 DRIVING WITHOUT INSURANCE							
	FY02		FY03 JULY - DECEMBER				
	FDWI	MDWI	FDWI	MDWI	INSURANCE		
ANCHORAGE	157	1750	97	894	3		
BARROW	13	76	1	24	0		
BETHEL	18	146	5	74	1		
CORDOVA	0	20	1	10	0		
CRAIG	1	44	2	18	0		
DELTA JCT	0	16	0	4	0		
DILLINGHAM	4	59	3	31	0		
FAIRBANKS	50	978	51	551	15		
GLENNALLEN	1	24	0	15	1		
HAINES	1	11	0	5	0		
HEALY	0	21	0	14	0		
HOMER	4	129	4	76	19		
JUNEAU	19	256	5	112	1		
KENAI	18	442	10	180	27		
KETCHIKAN	11	160	15	73	9		
KODIAK	6	148	3	70	1		
KOTZEBUE	12	91	5	45	1		
NAKNEK	0	15	0	14	1		
NENANA	0	17	0	19	0		
NOME	3	75	3	49	0		
PALMER	57	605	No statistics available				
PETERSBURG	1	24	1	17	4		
SEWARD	7	121	3	48	0		
SITKA	4	78	1	48	0		
TOK	0	17	0	6	0		

UNALASKA		4	40		2	15	11
VALDEZ		1	72		3	29	0
WRANGELL		2	27		0	11	1
TOTAL		394	5462		215	2452	95

Figures provided by DPS + PFD

Bruce Tangeman - Leg. Finance

Alcohol Arrest Incidents	Number of Offenders	Percent of Offenders
1	52201	94%
2	3276	6%
3	203	0%
4	15	0%
5	2	0%
<b>Ten-Year Total</b>	<u><u>55,697</u></u>	<u>100%</u>

Year	DWI Arrests	DWI Est 85% Conviction
1993	6,665	5,665
1994	6,446	5,479
1995	6,134	5,214
1996	6,009	5,108
1997	5,357	4,553
1998	5,676	4,825
1999	5,661	4,812
2000	5,652	4,804
2001	5,660	4,811
2002	6,172	5,246
	<u><u>59,432</u></u>	<u><u>50,517</u></u>

Provided by Bruce Tangeman- Leg. Finance

### Potential Projection of PFD \$ Withheld

	Approx. # DWI	% change		
1998	4825			
1999	4812	-0.3%		
2000	4804	-0.2%		
2001	4811	0.1%		
2002	5246	9.0%	4 year average	<b>4813</b>

	Median Case Dividend (from APFC)	4 year average DWI's	Potential Projected \$'s withheld
FY03	\$ 1,100	4813	\$ 5,294,204
FY04	\$ 840	4813	\$ 4,042,847
FY05	\$ 700	4813	\$ 3,369,039
FY06	\$ 770	4813	\$ 3,705,943
FY07	\$ 1,040	4813	\$ 5,005,429
FY08	\$ 1,310	4813	\$ 6,304,915

Provided by MADD

Alaska DUI arrests for 07/01/0 to 06/31/02

	<u>Felony</u>	<u>Misdemeanor</u>
Craig	1	44
Delta Junction	0	16
Anchorage	157	1,750
Barrow	13	76
Bethel	17	146
Cordova	0	20
Dillingham	4	59
Fairbanks	50	978
Glen Allen	1	24
Haines	1	11
Healy	0	21
Homer	4	129
Juneau	20	256
Kenai	18	442
Ketchikan	10	161
Kodiak	6	148
Kotzebue	12	91
Naknek	0	15
Nenana	0	17
Nome	3	75
Palmer	57	605
Petersburg	1	24
Seward	7	121
Sitka	4	78
Tok	0	17
Unalaska	4	40
Valdez	1	72
Wrangell	2	27
	393	5463
<b>Total</b>		<b>5,857</b>

# 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

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

February 19, 2003

**SUBJECT:** DWI: permanent fund dividend ineligibility (SB 59)

**TO:** Senator John Cowdery  
Attn: Crystal Moore

**FROM:** Tamara Brandt Cook *TBC*  
Director

SB 59 makes a person ineligible for a permanent fund dividend when (1) during the qualifying year the person was sentenced for DWI or refusal to submit to a chemical test; or (2) during the qualifying year or the four previous years the person was sentenced for DWI or refusal to submit to a chemical test and the person has prior convictions for either crime. Under bill section 4, the ineligibility provisions apply only to crimes committed after December 31, 2003. You ask whether the bill can be expanded to apply to prior convictions.

If the bill were expanded to disqualify people based on crimes committed before the effective date of the bill, there is a substantial likelihood that such an expansion would be struck down as an ex post facto law. However, if the bill is expanded so that past convictions are considered only for purposes of the enhanced period of ineligibility based on prior convictions, this is more likely to survive constitutional attack. The actual applicability section in SB 59 is tied to the beginning of a dividend year, rather than the effective date of the bill, for ease of administration.

The federal and state constitutions both prohibit the state from enacting ex post facto laws. (United States Constitution, art. I, sec. 10; Alaska Constitution, art. I, sec. 15) An ex post facto law is one that

- (1) makes criminal conduct that was innocent at the time that the act was performed;
- (2) aggravates a crime or makes the crime greater than at the time that it was committed;
- (3) permits imposition of a different or more severe punishment than was permissible when the crime was committed;
- (4) changes the legal rules of evidence to permit less or different testimony to convict the offender than was required when the crime was committed.

The first PFD disqualification provision under AS 43.23.005(d) was enacted in ch. 54, SLA 1991. It made ineligible for dividends felons who were incarcerated during a

current year regardless of the date of the crime that resulted in the incarceration. When it was challenged as an ex post facto law, the court upheld the provision largely because the court found that the purpose of the law was to reimburse the state for crime related costs rather than to increase punishment. (State v. Anthony, 816 P.2d 1377 (Alaska 1991) opinion on rehearing) The court stated at page 1387:

As we noted in our original opinion, the articulated purpose of AS 43.23.005(d) is to obtain funds for crime victims. In addition, we noted that the parties did not dispute at trial that a purpose of the statute is to reimburse the state for the cost of confinement. It is significant that a person convicted of a felony who is not sentenced to incarceration is not made ineligible for a permanent fund dividend. Since the purpose of the statute is compensatory rather than punitive, we conclude that it does not violate the ex post facto clause of either the United States or the Alaska Constitution.

The court, in the first appeal brought by Anthony, had earlier upheld the law on equal protection grounds. State v. Anthony, 810 P.2d 155 (Alaska 1991) Later the law was held not to be a separate punishment for double jeopardy purposes. (Hertz v. Storer, 943 P.2d 725 (Alaska 1997), cert. denied, 522 U.S. 1059 (1998))

AS 43.23.005(d) was expanded under ch. 46, SLA 1996 to add ineligibility for people sentenced during a current year or incarcerated during a current year for misdemeanors if they had been convicted of a prior felony or two or more prior misdemeanors. In order to avoid the possibility of an adverse ruling if the new law were challenged as an ex post facto law, sec. 6 of that 1996 law contained language essentially identical to that included in SB 59 under sec. 4. Because SB 59 greatly expands the category of people who are ineligible for dividends based on DWI related criminal activity, it is difficult to argue that the purpose of this legislation is "compensatory rather than punitive." Therefore, there is a reasonable chance that a challenge would succeed if the legislation is expanded to include all persons convicted in the past of DWIs or refusal to submit to a chemical test.

However, it might be possible to successfully defend against an ex post facto challenge if convictions that occur before the effective date of the measure are considered only for purposes of applying the enhanced period of ineligibility for prior convictions based upon the reasoning in Danks v. State, 619 P.2d 720 (Alaska 1980). The court held that the license of a defendant convicted of DWI for the third time could be revoked for three years under former AS 28.15.210(c), even though that statute was enacted after Danks' first two DWI convictions. The court followed a decision of the United States Supreme Court and ruled that the enhanced sentence was not to be viewed as a new jeopardy or additional penalty for the two earlier DWIs, but rather as a stiffened penalty for the most recent one.

**SENATE COMMITTEE REPORT  
First Committee of Referral**

DATE: 2/5/03

FURTHER: Finance

Date of 5-Day Notice: 2/12/03  
(in accordance with Uniform Rule 23)

DATE TURNED  
IN TO OFFICE: 4/9/03

Judiciary Committee considered

SENATE BILL NO. 59

**SB 59 PERMANENT FUND INELIGIBILITY FOR DUI**

"An Act relating to permanent fund dividend program notice requirements and to the ineligibility for permanent fund dividends of certain persons sentenced for driving while under the influence of an alcoholic beverage, inhalant, or controlled substance, or for refusal to submit to a chemical test."

and recommends:

- be replaced with \_\_\_\_\_ CS SB 59 (Jud)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

**Senate Bill:**

- same title
- new title

**House Bill:**

- same title
- technical title
- new: SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#
ADM	2/19	xx		1
LAW	2/18	xx		2
DPS	2/26		✓	3
REV	2/16		✓	4
REV	2/16		✓	5

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
<i>Tom Hermault</i>			X	
<i>Scott Ogan</i>	✓			
<i>John Gillen</i>			X	
<i>DO</i>			X	
<i>[Signature]</i>				
<b>CHAIR:</b> <i>Joseph Seebins</i>	✓			

*Tom Hermault*  
*Ogan*  
*Gillen*  
*Finch*  
*Seebins*

SENATE FINANCE COMMITTEE

SIGN-IN

SB 59-PERMANENT FUND INELIGIBILITY FOR DUI

NAME: Kathryn Daughdale Subject/Bill No: 59

Co./Dept./Title: Director, ASD, Law Phone: 465-3673

Address: PO Box 110003 DoLaw Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_

Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_

Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_

Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions

SENATE FINANCE COMMITTEE

SIGN-IN

SB 59-PERMANENT FUND INELIGIBILITY FOR DUI

NAME: LANDA BAILEY Subject/Bill No: SB 59

Co./Dept./Title: Dept Revenue CSBT Phone: 465-2302

Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_

Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_

Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions

NAME: \_\_\_\_\_ Subject/Bill No: \_\_\_\_\_

Co./Dept./Title: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_ Zip: \_\_\_\_\_

Do you wish to testify?  Yes  No  Respond To Questions