

HB

190

<TARGET><BILL>HB 190</BILL><SUBJECT>HB
190</SUBJECT><COMM>HSTA27</COMM></TARGET>

REPRESENTATIVE
ERIC FEIGE
House District 12

House Resources Committee Co-Chair
Education Committee
Transportation Committee
Joint Armed Services Committee

Alaska State Legislature



House of Representatives

During Session:
State Capitol Room 126
Juneau, Alaska 99801-1182
(907) 465-4859
Fax (907) 465-3799
1-888-465-4859

SPONSOR STATEMENT HB 190

An Act relating to the allowable absence for active duty service members of the armed forces for purposes of permanent fund dividend eligibility.

With great dismay, on February 13, 2011, I, along with other members of the legislature, received an e-mail from Lt. Cmdr. Tiko Crofoot about the denial of his Permanent Fund Dividend. An Alaskan, who joined the U.S. Navy, Lt. Cmdr. Crofoot has been stationed outside of Alaska for more than ten years. Military service is an allowable absence for continuation of eligibility of a Permanent Fund Dividend. The justification for the denial occurs only because Lt. Cmdr. Crofoot and others have sacrificed not just three, five, or seven years serving our country, but have made a career serving our country in the armed forces.

According to current statute, anyone on an approved absence from the state, except members of Congress, congressional staff, and their families, is denied a permanent fund dividend after ten years of absence from the state.

Although these individuals choose to serve in the Armed Forces of the United States, once they are sworn into service, they do not have the option to choose to be physically present in Alaska. It is time to correct this injustice and allow Alaska residents who decide to join the military the opportunity to continue to receive their deserved Permanent Fund Dividend.

We sleep soundly in our beds because rough men stand ready in the night to visit violence on those who would do us harm.

Winston Churchill

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 190(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES FEIGE, Chenault, Herron, Peggy Wilson, Johnson, Muñoz, Lynn

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to allowable absences from the state for purposes of eligibility for**
2 **permanent fund dividends; and providing for an effective date."**

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

4 *** Section 1.** AS 43.23.008(a) is amended to read:

5 (a) Subject to (b), [AND] (c), and (e) of this section, an otherwise eligible
6 individual who is absent from the state during the qualifying year remains eligible for
7 a current year permanent fund dividend if the individual was absent

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

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

13 (3) serving on active duty as a member of the armed forces of the
14 United States or accompanying, as that individual's spouse, minor dependent, or

1 disabled dependent, an individual who is

2 (A) serving on active duty as a member of the armed forces of
3 the United States; and

4 (B) eligible for a current year dividend;

5 (4) serving under foreign or coastal articles of employment aboard an
6 oceangoing vessel of the United States merchant marine;

7 (5) receiving continuous medical treatment recommended by a
8 licensed physician or convalescing as recommended by the physician who treated the
9 illness if the treatment or convalescence is not based on a need for climatic change;

10 (6) providing care for a parent, spouse, sibling, child, or stepchild with
11 a critical life-threatening illness whose treatment plan, as recommended by the
12 attending physician, requires travel outside the state for treatment at a medical
13 specialty complex;

14 (7) providing care for the individual's terminally ill family member;

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

17 (9) serving as a member of the United States Congress;

18 (10) serving on the staff of a member from this state of the United
19 States Congress;

20 (11) serving as an employee of the state in a field office or other
21 location;

22 (12) accompanying a minor who is absent under (5) of this subsection;

23 (13) accompanying another eligible resident who is absent for a reason
24 permitted under (1), (2), (5) - (12), (16), or (17) of this subsection as the spouse, minor
25 dependent, or disabled dependent of the eligible resident;

26 (14) serving as a volunteer in the federal peace corps program;

27 (15) because of training or competing as a member of the United States
28 Olympic Team;

29 (16) participating for educational purposes in a student fellowship
30 sponsored by the United States Department of Education or by the United States
31 Department of State;

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

3 (A) 180 days in addition to any absence or cumulative absences
4 claimed under (3) of this subsection if the individual is not claiming an absence
5 under (1), (2), or (4) - (16) of this subsection;

6 (B) 120 days in addition to any absence or cumulative absences
7 claimed under (1) - (3) of this subsection if the individual is not claiming an
8 absence under (4) - (16) of this subsection but is claiming an absence under (1)
9 or (2) of this subsection; or

10 (C) 45 days in addition to any absence or cumulative absences
11 claimed under (1) - (16) of this subsection if the individual is claiming an
12 absence under (4) - (16) of this subsection.

13 * **Sec. 2.** AS 43.23.008 is amended by adding new subsections to read:

14 (e) After an individual has been absent from the state for more than 180 days
15 in each of the five preceding qualifying years, the department shall presume that the
16 individual is no longer a state resident. Subject to the limitation in (c) of this section,
17 the individual may rebut this presumption by providing proof to the department that
18 establishes, by clear and convincing evidence, that

19 (1) the individual was physically present in the state for at least 30
20 cumulative days during the past five years; and

21 (2) the individual is a state resident as defined in AS 43.23.095(7).

22 (f) To determine whether an individual intends to return and remain in the
23 state indefinitely, the factors the department shall consider include

24 (1) the length of time the individual was absent from the state
25 compared to the length of time the individual was physically present in the state;

26 (2) the frequency and duration of voluntary return trips to the state
27 during the past five years;

28 (3) whether the individual's intent to return to and remain in the state is
29 conditioned on future events beyond the individual's control, such as the financial
30 circumstances of the individual or the ability of the individual to find employment in
31 the state;

1 (4) the ties the individual has established with the state or another
2 jurisdiction, as demonstrated by

3 (A) maintenance of a home;

4 (B) payment of resident taxes;

5 (C) registration of a vehicle;

6 (D) registration to vote and voting history;

7 (E) acquisition of a driver's license, business license, or
8 professional license; and

9 (F) receipt of benefits under a claim of residency in the state or
10 another jurisdiction;

11 (5) the priority that the individual gave the state on an employment
12 assignment preference list, including a list used by military personnel;

13 (6) whether the individual made a career choice or chose a career path
14 that does not allow the individual to reside in or return to the state.

15 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

17 **RETROACTIVITY.** Sections 1 and 2 of this Act are retroactive to January 1, 2012.

18 * **Sec. 4.** This Act takes effect immediately under AS 01.10.070(c).

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 14, 2012

SUBJECT: Ambiguity introduced when AS 43.23.008(c) retained and AS 43.23.008(e) added (CSSSHB 190(STA))
(Work Order No. 27-LS0564\O)

TO: Representative Bob Lynn
Chair of the House State Affairs Committee
Attn: Nancy Manly

FROM: Lisa Moritz Kirsch 
Legislative Counsel

I have prepared the final House State Affairs Committee substitute you requested. I spoke with Ms. Manley on the phone about retaining the word "consider" in the first amendment on page 3, line 23. I believe the committee's intent was not that the department include documents, but to make clear that the department would consider a range of documents, including those on the list.

Another issue is the retention of existing subsection AS 43.23.008(c) while adding subsection AS 43.23.008(e). This creates a tension between a five year presumption of non-residency and the ten year bar to allowable absences other than those of members of congress and congressional staff.

The logical way to harmonize these two subsections would be to apply the five year presumption between years five and ten. However, it is possible that a person with a ten year absence might argue that after ten years the presumption of non-residency could still be rebutted under new subsection (e) because subsection (e) was enacted after subsection (c).

If this is not your intent, you may want to add language such as "subject to the limitation in AS 43.23.008(c)" to new subsection (e) to prevent this argument.

LMK:ljw
12-127.ljw

Enclosure

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 190(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered:

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7 a current year permanent fund dividend if the individual was absent

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

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11 full-time basis for which, as determined by the Alaska Commission on Postsecondary
12 Education, a comparable program is not reasonably available in the state;

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14 United States or accompanying, as that individual's spouse, minor dependent, or

1 disabled dependent, an individual who is

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3 the United States; and

4 (B) eligible for a current year dividend;

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6 oceangoing vessel of the United States merchant marine;

7 (5) receiving continuous medical treatment recommended by a
8 licensed physician or convalescing as recommended by the physician who treated the
9 illness if the treatment or convalescence is not based on a need for climatic change;

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11 a critical life-threatening illness whose treatment plan, as recommended by the
12 attending physician, requires travel outside the state for treatment at a medical
13 specialty complex;

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

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19 States Congress;

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21 location;

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24 permitted under (1), (2), (5) - (12), (16), or (17) of this subsection as the spouse, minor
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28 Olympic Team;

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31 Department of State;

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

3 (A) 180 days in addition to any absence or cumulative absences
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5 under (1), (2), or (4) - (16) of this subsection;

6 (B) 120 days in addition to any absence or cumulative absences
7 claimed under (1) - (3) of this subsection if the individual is not claiming an
8 absence under (4) - (16) of this subsection but is claiming an absence under (1)
9 or (2) of this subsection; or

10 (C) 45 days in addition to any absence or cumulative absences
11 claimed under (1) - (16) of this subsection if the individual is claiming an
12 absence under (4) - (16) of this subsection.

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14 (e) After an individual has been absent from the state for more than 180 days
15 in each of the five preceding qualifying years, the department shall presume that the
16 individual is no longer a state resident. The individual may rebut this presumption by
17 providing proof to the department that establishes, by clear and convincing evidence,
18 that

19 (1) the individual was physically present in the state for at least 30
20 cumulative days during the past five years; and

21 (2) the individual is a state resident as defined in AS 43.23.095(7).

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23 state indefinitely, the factors the department shall consider include

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25 compared to the length of time the individual was physically present in the state;

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29 conditioned on future events beyond the individual's control, such as the financial
30 circumstances of the individual or the ability of the individual to find employment in
31 the state;

1 (4) the ties the individual has established with the state or another
2 jurisdiction, as demonstrated by

3 (A) maintenance of a home;

4 (B) payment of resident taxes;

5 (C) registration of a vehicle;

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7 (E) acquisition of a driver's license, business license, or
8 professional license; and

9 (F) receipt of benefits under a claim of residency in the state or
10 another jurisdiction;

11 (5) the priority that the individual gave the state on an employment
12 assignment preference list, including a list used by military personnel;

13 (6) whether the individual made a career choice or chose a career path
14 that does not allow the individual to reside in or return to the state.

15 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

17 **RETROACTIVITY.** Sections 1 and 2 of this Act are retroactive to January 1, 2012.

18 * **Sec. 4.** This Act takes effect immediately under AS 01.10.070(c).

Alaska State Legislature



Chairman
State Affairs Committee

Member
Judiciary Committee
Energy Committee
Joint Armed Services Committee
Military & Veterans Affairs Committee

Finance Subcommittees
Administration
Corrections
Military and Veterans Affairs

A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

E-Mail: Representative_Bob_Lynn@legis.state.ak.us

Session:
Alaska State Capitol, #108
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FAX

To: Legal Services

Fax #: 465-2029

From: Nancy Manly 465-2794
Alaska State Capitol, Room 108
Juneau, AK 99801-1182

of Pages (including cover): 1

Phone: 907-465-4931
Fax: 907-465-4316

Re CS for SS190 - Draft Final CS 27-LS0564\R

2/14/2012

CS SSHB 190 moved from the House State Affairs Committee this morning with some amendments. Please draft a final CS and incorporate these amendments. Thanks.

Conceptual Amendment #1 (Gruenberg)

Page 3 Line 23 after "the" *insert* factors; ~~delete~~ "consider" and *insert* "include" so the sentence reads like this: state indefinitely, the factors the department shall ~~include~~.

consider include;

Amendment #2 (Gruenberg)

Page 3 Line 17 ~~delete~~ "documentation" and *insert* "proof"

Amendment #3 (Seaton)

Amendment Withdrawn

Conceptual Amendment #4 (Seaton)

Retain the current 10-year limit on allowable absences

Conceptual Amendment #5 (Seaton)

Amendment Failed

REPRESENTATIVE
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House Resources Committee Co-Chair
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House of Representatives

HB 190 – Version Change Summary

Comparison of versions of HB 190 on a sectional or comparison basis is impossible because there is no similarity between the language used in each version.

Version M

The original bill read across the floor was “An Act relating to the allowable absence for activity duty service members of the armed forces for purposes of permanent fund dividend eligibility.” The bill amended AS 43.23.008(c) to expand the exemption so that the ten year rule did not apply to individuals that were in the military and were eligible for a dividend for three years immediately preceding induction into the armed forces.

Due to concerns raised over Constitutional issues and previous court rulings, this method of addressing the issue was abandoned.

Version X

Introduced as a sponsor substitute, this bill addressed “allowable absences from the state for purposes of eligibility for permanent fund dividends.” It changed the 10 year bright line rule to 20 years by amending AS 43.23.008(c). The result was a method whereas anyone, including members of the armed forces, could receive a dividend under an allowable absence for 20 years, presuming they met the qualifications in statute and regulation. This version has not been heard by the committee.

Version R

Presented as a committee substitute, this version still addresses “allowable absences from the state for purposes of eligibility for permanent fund dividends.” Instead of providing specific exemptions, it strengthens what is currently in regulation creating a presumption that, if someone is absent from the state for five years, they do not have an intent to return. The bill also puts into law the criteria the Permanent Fund Division uses to allow someone to rebut the presumption that they will not return. A sectional analysis of the Version R is available.

Additional Documents
for
HB 190

- 10-Year Numbers Memo

Alaska State Legislature

REPRESENTATIVE
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House District 12

House Resources Committee Co-Chair
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House of Representatives

MEMORANDUM

To: House State Affairs Committee
From: Michael Paschall, Office of Rep. Eric Feige
Date: February 13, 2012
Re: HB 190 Follow-up to 10 year rule

During the House State Affairs hearing on HB 190, a question was asked about the number of dividends denied by the 10 year rule. Below is a table provided by the Permanent Fund Division showing the number of applications denied as a result of the 10 year rule for the years shown.

Dividend Year	# Denied/Applications	Dividend Amt	Dividend Liability
2009	116	\$1,305	\$151,380
2010	187	\$1,281	\$239,547
2011	160	\$1,174	\$187,840
Totals	463		\$578,767

Conceptual
pg 3 line 23
Shall include

Conceptual Amendment #3
Seaton
retain current 10 yr limit on allowable absence

Withdrawn
Staff
that also have
a 10 yr limit

Failed Conceptual
Amend #5

Johansen
made a motion
to divide the
question

expand that to include Congressional
Gruenberg objects
Petersen NO
Johansen NO 2 yea
Wilson YES 5 nay
Keller YES
Lynn NO
Gruenberg NO
Seaton YES
Peterson NO

Conceptual #4 Seaton Passed
Amend #4 retain current 10 yr limit

~~Amend #3~~

27-LS0564R
Kirsch
2/3/12

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 190()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES FEIGE, Chenault, Herron, Peggy Wilson, Johnson, Muñoz, Lynn

*Closed Public testimony
on 2/7/12
Open again 2/9/12
2/14 closed public testimony*

A BILL

FOR AN ACT ENTITLED

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13 specialty complex;

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16 sibling, child, or stepchild, provided the absence does not exceed 220 cumulative days;

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* Sec. 2. AS 43.23.008 is amended by adding new subsections to read:

(e) After an individual has been absent from the state for more than 180 days in each of the five preceding qualifying years, the department shall presume that the individual is no longer a state resident. The individual may rebut this presumption by providing documentation to the department that establishes, by clear and convincing evidence, that

(1) the individual was physically present in the state for at least 30 cumulative days during the past five years; and

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Gruenberg
8/13
a 15h

Gruenberg
8/21
a 15h

Gruenberg
amend 2

Gruenberg
Amend #1

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(5) the priority that the individual gave the state on an employment assignment preference list, including a list used by military personnel;

(6) whether the individual made a career choice or chose a career path that does not allow the individual to reside in or return to the state.

* **Sec. 3.** AS 43.23.008(c) is repealed.

* **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICATION FOR THE 2012 PERMANENT FUND DIVIDEND FOR CERTAIN INDIVIDUALS. (a) Notwithstanding the application deadline of AS 43.23.011, an individual who was ineligible for a 2012 dividend under former AS 43.23.008(c), repealed by sec. 3 of this Act, and who is otherwise eligible, may apply for the 2012 permanent fund dividend within 90 days after the effective date of this Act.

(b) The repeal of AS 43.23.008(c) by sec. 3 of this Act and the enactment of AS 43.23.008(e) by sec. 2 of this Act may not be applied to make ineligible any person otherwise eligible for a 2012 dividend under AS 43.23 as it read December 31, 2011.

* **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to read:

RETROACTIVITY. Sections 1 - 4 of this Act are retroactive to January 1, 2012.

* **Sec. 6.** This Act takes effect immediately under AS 01.10.070(c).

REPRESENTATIVE
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Sectional Analysis

HB 190 – 27-LS0564\R

Sec. 1 – Contains conforming language changing the reference in AS 43.23.008(a) pertaining to allowable absences from (c), which is appealed in Sec. 3 of this bill, to (e), which is established in Sec. 2 of this bill.

Sec. 2 – Establishes in law a presumption that someone who is absent from the state for more than 180 days in each of the previous five years does not plan to return to the state and thus, not eligible to receive a Permanent Fund Dividend. This section also provides a method for an individual who is denied a Permanent Fund Dividend because of this presumption to rebut the presumption.

Sec. 3 – Repeals the current ten year bright line rule that eliminates allowable absences after ten years and the exemption from the bright line rule for members of Congress and their staff and families.

Sec. 4 – Allows someone who was previously denied a dividend under the ten year bright line rule to apply for a 2012 dividend during the 90 days following the enactment of this bill into law.

Sec. 5 – Makes the new law retroactive to Jan. 1, 2012.

Sec. 6 – Makes the bill effective immediately.

Prepared by the office of Rep. Eric Feige, February 3, 2012

04603

Alaska Department of Revenue
Permanent Fund Dividend Division

PFD Division Use Only

20110

2011 Extended Absence Questionnaire

For individuals who were absent from Alaska more than 180 days for five or more consecutive years.

First Name	M.I.	Last Name	Social Security Number	Date of Birth
Address			Daytime phone number	Message phone number
City	State	Zip Code	E-mail Address	

Your Permanent Fund Dividend application has been selected for an eligibility determination because you have not lived in Alaska for at least 6 months in over five years. In accordance with 15 AAC 23.163(f) an individual with an absence totaling more than five years is presumed not to have the intent to return to Alaska and remain indefinitely in Alaska. You are not eligible for the 2011 dividend unless you provide documentation that demonstrates, to the department's satisfaction an intent at all times during your absence to return to Alaska and remain indefinitely.

The department will give greater weight to the claim of an individual who makes frequent return trips to Alaska for noncompulsory reasons than that of an individual who did not. An individual who has not been present in Alaska for 30 cumulative days in the past five years has generally not demonstrated the continuous intention to return to Alaska and remain indefinitely.

If you could not return to Alaska due to unavoidable circumstances, attach an explanation and supporting documentation.

1. List the longest period of time you physically lived in Alaska before departing on your absence.

I lived in Alaska From: ___/___/___/ To: ___/___/___

2. List the dates below when you physically returned to Alaska during your absence. Begin with the most recent dates you were here and proceed backward to your departure.

If you completed this form last year and reported absences last year, include only returns in 2010.

Returned to Alaska			Left Alaska			Returned to Alaska			Left Alaska		
Month	Day	Year	Month	Day	Year	Month	Day	Year	Month	Day	Year

3. Is your ultimate return to Alaska to remain indefinitely conditioned upon future events such as securing employment in Alaska or receiving an assignment to Alaska by your employer? Yes No

4. Have you sought employment in Alaska? Yes No

Complete both sides

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If yes, list the specific employer(s) who you contacted in Alaska and when you contacted them.

Name
Address
Telephone
Name
Address
Telephone

Date Contacted
____/____/____

Date Contacted
____/____/____

5. Have you sought employment outside of Alaska?

Yes No

If yes, explain how your seeking employment outside of Alaska is consistent with your statement that you intend to return to Alaska to remain indefinitely.

6. Have you maintained a home outside of Alaska since your departure?

Yes No

If yes, do you own this home?

Yes No

7. Have you maintained a home in Alaska since your departure?

Yes No

If yes, do you own this home?

Yes No

If you own this home, do you lease or rent it to someone?

Yes No

If you do not own this home, explain who owns this home and why you consider it your home.

8. If you are employed by the State of Alaska or the U.S. Armed Forces outside of Alaska, have you requested to be returned to Alaska by your employer?

Yes No

If yes, attach a copy of your request.

If no, explain why you have not submitted a request even though you have stated that you intend to return to Alaska to remain indefinitely.

9. Is your choice of careers one which does not allow you to reside or return to Alaska until retirement or until you make a personal choice to change careers in order to return to Alaska?

Yes No

10. Explain below why your absence should be considered allowable, and how you have demonstrated that your intent, at all times during your absence, has been to return to Alaska to remain indefinitely.

Attach additional pages if necessary.

I certify under penalty of law that to the best of my knowledge and belief, all the information on this questionnaire, including any attachments, are true and complete.

Signature	Date
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15 AAC 23.143. Establishing and maintaining Alaska residency

Statute text

(a) An individual's intent to establish residency, remain indefinitely in Alaska, or to return to Alaska and remain indefinitely is demonstrated through the establishment and maintenance of customary ties indicative of Alaska residency and the absence of those ties elsewhere. Acts that are required by law or contract or are routinely performed by temporary residents of Alaska are not by themselves evidence of residency. In evaluating whether an individual claiming Alaska residency has demonstrated an intent to remain indefinitely in Alaska, the department will consider whether or not an individual has:

(1) taken steps to establish Alaska residency and sever residency in a previous state or country;

(2) ties to another state or country that indicate continued residency in the other state or country; and

(3) taken other action during the qualifying year, through the date of application, that is inconsistent with an intent to remain in Alaska indefinitely.

(b) An individual may not become a resident while absent from Alaska.

(c) Physical presence in Alaska is not, by itself, sufficient to establish residency. Before January 1 of the qualifying year, an individual must have taken at least one step beyond physical presence in Alaska to establish residency. The department will not consider external indicators, including those listed in 15 AAC 23.173(g), established less than six months before December 31 of the qualifying year as evidence of the establishment of Alaska residency in time to qualify for the current year dividend.

(d) An individual is not eligible for a dividend if, at any time from January 1 of the qualifying year through the date of application, the individual has

(1) maintained the individual's principal home in another state or country, regardless of whether the individual spent a majority of time at that home, except while absent for a reason listed

(A) in AS 43.23.008(a)(1) - (3), (9) - (11), or (16); or

(B) in AS 43.23.008(a)(13), if the eligible resident whom the individual accompanies is absent for a reason listed in (A) of this paragraph;

(2) claimed or maintained a claim of residency in another state or country in the individual's employment personnel records; if the individual claims an error or a delay was made in processing by the personnel office, the individual must submit

(A) from the personnel office, a certified copy of the individual's request to change the individual's state of legal residence; or

(B) a sworn statement from the personnel officer who has specific knowledge that the personnel office made an error, or caused a delay, in processing the individual's personnel

records; the personnel officer must state the exact date the records show the original request was received and why the request was not processed timely;

(3) claimed a non-resident motor vehicle tax exemption in Alaska;

(4) accepted full-time, permanent employment in another state or country except while on an absence listed

(A) in AS 43.23.008(a)(1) - (3), (9) - (11), or (16); or

(B) in AS 43.23.008(a)(13), if the eligible resident whom the individual accompanies is absent for a reason listed in (A) of this paragraph;

(5) filed a resident or part-year resident income, excise, or personal property tax return in another state or country and the claim of residency on the return is for any period of time beginning January 1 of the qualifying year through the date of application, unless the individual

(A) was required by the other state or country to file a return claiming resident tax status in that state or country even though the individual was a state resident as defined in AS 43.23.095; or

(B) files in the other state or country an amended return claiming nonresident tax status and provides proof to the department that the amended return was actually filed in the other state or country;

(6) claimed or maintained a claim of a homestead or homeowner's property tax exemption in another state or country, that required the individual to be a resident of that state or country, unless the individual

(A) files an amended homestead or homeowner's property tax exemption claim deleting the claim of residency; and

(B) provides evidence from the other state or country that the individual filed an amended homestead or homeowner's property tax exemption claim deleting the claim of residency;

(7) applied for or received an education loan from another state or country that required an individual to be a resident of that state or country;

(8) disclosed in a court proceeding or affidavit that the individual is a resident of another state or country;

(9) executed a will that described residency in another state or country;

(10) moved from Alaska,

(A) for a reason other than one listed

(i) in AS 43.23.008(a)(1) - (3), (9) - (11), or (16); or

(ii) in AS 43.23.008(a)(13), if the eligible resident whom the individual accompanies is absent for a reason listed in (i) of this subparagraph; and

(B) claiming moving expenses as a deduction on the individual's federal income tax return, unless the individual

(i) files an amended federal income tax return deleting the claimed moving expenses as a deduction; and

(ii) provides proof from the Internal Revenue Service that the individual filed an amended return;

(11) accepted admission under resident tuition provisions to a college or university in another state or country, unless

(A) there was no difference between resident and nonresident tuition;

(B) nonresident tuition was waived as part of an interstate exchange agreement such as the Western Interstate Commission for Higher Education (WICHE) student exchange program or the Washington Wyoming Alaska Montana Idaho (WWAMI) medical education program; or

(C) the individual was granted admission under resident tuition provisions for any other reason that did not require the individual to be a resident of the state or country in which the college or university is located;

(12) registered to vote in another state or country, except if the individual

(A) registered to vote in another state no more than 60 days before a presidential election solely for the purpose of voting in that election and did not vote in any other election in another state other than for president of the United States; or

(B) registered to vote in another country for which the individual was not required to claim residency of the country in order to register to vote;

(13) voted in another state's or country's state, country, or local election, except if the individual voted in an election described in this paragraph and the individual was not required to claim residency in order to vote;

(14) obtained a resident hunting, fishing, or trapping license from another state or country;

(15) filed for divorce, dissolution, or legal separation in another state or country that required the individual to be a resident of that state or country in order to file the action;

(16) repealed 1/1/2010;

(17) obtained any other benefit or benefits as a result of establishing or maintaining any claim of residency in another state or country or by disclaiming Alaska residency, except that the department will not deny a dividend to an individual solely because the individual received Medicaid benefits from another state if the individual's application for Medicaid was consistent with the intent to maintain residency in Alaska.

(e) Regardless of alienage, a child born outside Alaska to an eligible resident on an allowable absence, adopted by an eligible resident, or whose adoption by an eligible resident is pending during the qualifying year, establishes Alaska residency in the child's own right immediately upon the child's arrival in Alaska if the child's custodial parent or guardian is an eligible resident at the time of the child's arrival in Alaska.

(f) An individual absent from Alaska as a dependent of an eligible resident who as soon as reasonably possible, as determined by the department, after emancipation does not return to Alaska and establish Alaska residency as an adult is not eligible for a dividend. A newly emancipated individual who was absent from Alaska as a dependent of an eligible resident who returns to Alaska as soon as reasonably possible, as determined by the department, after emancipation and who establishes external indicators of Alaska residency as an individual is not subject to the six month physical presence requirements of 15 AAC 23.163(b).

(g) A resident who marries a nonresident while physically present in Alaska is considered to have the intent to remain indefinitely in Alaska until the resident takes steps or actions to depart Alaska.

(h) An individual who on the date of application knows the individual will be moving from Alaska at a specific time to a specific destination for a reason other than one allowed by AS 43.23.008(a) does not have the intent to remain indefinitely in Alaska and is not eligible for a dividend.

(i) The eligibility of a resident who marries a nonresident while absent from Alaska is not changed by the marriage, so long as the resident is absent for the resident's own allowable reason.

(j) The fact that an individual's spouse has not declared Alaska residency does not establish a presumption that an individual is not a resident.

(k) Repealed 1/1/2000.

15 AAC 23.163. Allowable absences

(a) Except as provided in AS 43.23.005(c), an individual who has never been physically present in Alaska may not claim an allowable absence under AS 43.23.008.

(b) An individual who was absent from Alaska for more than 180 days is not eligible for a dividend if the individual

(1) was not a state resident for at least 180 days immediately before departure from Alaska;

(2) repealed 1/1/2000.

(c) For purposes of

(1) AS 43.23.008(a)(1), receiving secondary or postsecondary education on a full-time basis means enrollment and attendance in good standing as a full-time student where participation requires absence from this state

(A) at an academic institution for any of the 7th - 12th grades consistent with (d) of this section;

(B) for the purpose of pursuing a vocational certificate, associate, baccalaureate, or graduate degree, as a full-time student at a college, university, junior or community college, or postsecondary vocational institution accredited by an accrediting agency that the United States Secretary of Education recognizes under 34 C.F.R. Part 602, or full-time participation in an internship program if the internship is required by the college or university as part of the student's academic program; for the purposes of this subparagraph, an individual in the last academic year before graduation who was carrying enough credits to graduate, but fewer than full-time credits for any one term, semester, or quarter, is considered to have been a full-time student at that time; or

(C) for the purpose of pursuing a vocational certificate, associate, baccalaureate, or graduate degree, as a full-time student

(i) at a Title IV institution recognized under 20 U.S.C. 1001 - 1155 (The Higher Education Act of 1965) and 34 C.F.R., Part 600; or

(ii) at a non-accredited college or university if students attending the college or university may qualify as eligible to receive a student loan from Nellie Mae, or if the college or university's credits or degrees are accepted by at least three Title IV institutions recognized under 20 U.S.C. 1001 - 1155 (the Higher Education Act of 1965) and 34 C.F.R., Part 600;

(D) for the purposes of completing an internship or residency program at a hospital or medical clinic;

(2) AS 43.23.008(a)(2), receiving vocational, professional, or other specific education on a full-time basis means attending a program for which, as determined by the Alaska Commission on Postsecondary Education, a comparable program is not reasonably available in the state at an educational institution eligible to participate in financial aid programs administered by the Alaska Commission on Postsecondary Education.

(d) An individual clearly demonstrates that the primary reason for the individual's absence is to obtain a secondary education by living at a boarding school while attending grades 7 - 12 at an out-of-state institution. An individual who lives with an ineligible parent or ineligible permanent legal guardian while attending an out-of-state institution has not demonstrated that the primary reason for the individual's absence is to obtain a secondary education.

(e) Repealed 10/8/94.

(f) An individual whose absence or combination of absences, under a provision of AS 43.23.008 other than AS 43.23.008(a)(9) - (10) and (13), if the eligible resident whom the individual accompanies is absent for a reason specified in AS 43.23.008(9) or (10), totals more than five consecutive years is presumed not to have the intent to return to Alaska and remain indefinitely in Alaska. In such a case, the individual is not eligible for a dividend payment unless the individual provides, with the individual's application or in a timely response to a request by the department, documentation that demonstrates to the department's satisfaction an intent at all times during the absence or absences to return to Alaska and remain indefinitely in Alaska.

(g) When considering whether an individual who has been absent for more than five years has rebutted the presumption that the individual does not have the intent to return to Alaska and remain indefinitely in Alaska, the department will consider one or more of the following factors, as applicable:

(1) the length of the individual's absence compared to the time the individual spent in Alaska before departing on the absence;

(2) the frequency and duration of return trips to Alaska during the absence; the fact that the individual has returned to Alaska in order to meet the physical presence requirement of AS 43.23.005(a)(4) is not sufficient in itself to rebut the presumption of ineligibility;

(3) whether the individual's intent to return or remain is conditioned upon future events beyond the individual's control, such as economics or finding a job in Alaska;

(4) any ties the individual has established outside Alaska, such as maintenance of homes, payment of resident taxes, vehicle registrations, voter registration, driver's licenses, or receipt of benefits under a claim of residency in another state;

(5) the priority the individual gave Alaska on an employment assignment preference list, such as those used by military personnel;

(6) whether the individual made a career choice or chose a career path that does not allow the individual to reside in Alaska or return to Alaska; and

(7) any ties the individual has maintained in Alaska, such as ownership of real and personal property, voter registration, professional and business licenses, and any other factors demonstrating the individual's intent.

(h) When considering whether an individual who has been absent for more than five years has rebutted the presumption that the individual does not have the intent to return to Alaska and remain indefinitely in Alaska,

(1) the department will give greater weight to the claim of an individual who makes frequent voluntary return trips to Alaska during the period of the individual's absence than to the claim of an individual who does not;

(2) the department will generally consider that an individual who has not been physically present in Alaska for at least 30 cumulative days during the past five years has not rebutted the presumption; however, this consideration does not apply if the individual shows to the department's satisfaction that unavoidable circumstances prevented that individual from returning for at least 30 cumulative days during the past five years.

(i) Repealed 1/1/2000.

(j) The department will count whole days when determining the number of days an individual was absent from Alaska. The department will count the day an individual arrives or returns to Alaska as a day absent unless the individual previously left Alaska that same day. The department will count the day an individual leaves Alaska as a day an individual was in Alaska, unless the individual previously arrived or returned to Alaska that same day.

(k) For the purposes of AS 43.23.008(c), an individual is not considered otherwise eligible if the individual was absent from the state for more than 180 days in each of the preceding 10 qualifying years.

Permanent Fund Dividend Allowable Absences

Allowable Absence 1982

- Sec. 43.23.095. DEFINITIONS.
- (7) "state resident" means an individual who is physically present in the state with the intent to remain permanently in the state or, if the individual is not physically present in the state, intends to return to the state 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;
 - (D) medical treatment;
 - (E) service in Congress; or
 - (F) other reasons which the commissioner may establish by regulation;

Allowable Absence 1997

- Sec. 43.23.095. Definitions.
- (8) "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;
 - (D) medical treatment;
 - (E) service in Congress;
 - (F) other reasons which the commissioner may establish by regulation;
 - (G) service in the Peace Corps;
 - (H) to care for the individual's terminally ill parent, spouse, sibling, child, or stepchild;
 - (I) for up to 220 days to settle the estate of the individual's deceased parent, spouse, sibling, child, or stepchild; or
 - (J) to care for a parent, spouse, sibling, child, or stepchild with a critical life-threatening illness whose treatment plan, as recommended by the attending physician, requires travel outside the state for treatment at a medical specialty complex;

Allowable Absence 1997

- Sec. 01.10.055. Residency.
- (a) A person establishes residency in the state by being physically present in the state with the intent to remain in the state indefinitely and to make a home in the state.
- (b) A person demonstrates the intent required under (a) of this section
 - (1) by maintaining a principal place of abode in the state for at least 30 days or for a longer period if a longer period is required by law or regulation; and
 - (2) by providing other proof of intent as may be required by law or regulation, which may include proof that the person is not claiming residency outside the state or obtaining benefits under a claim of residency outside the state.
- (c) A person who establishes residency in the state remains a resident during an absence from the state unless during the absence the person establishes or claims residency in another state, territory or country, or performs other acts or is absent under circumstances that are inconsistent with the intent required under (a) of this section to remain a resident of this state.

Allowable Absence 1998

- Sec. 43.23.095. Definitions.
- (7) "state resident" means an individual who is physically present in the state with the intent to remain indefinitely 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 indefinitely in the state under the requirements of AS 01.10.055;

Allowable Absence 1998

Sec. 43.23.008. Allowable absences.

- (a) Subject to (b) and (c) of this section, an otherwise eligible individual who is absent from the state during the qualifying year remains eligible for a current year permanent fund dividend if the individual was absent
 - (1) receiving secondary or postsecondary education on a full-time basis;
 - (2) receiving vocational, professional, or other specific education on a full-time basis for which, as determined by the Alaska Commission on Postsecondary Education, a comparable program is not reasonably available in the state;
 - (3) serving on active duty as a member of the armed forces of the United States;

Allowable Absence 1998

Sec. 43.23.008. Allowable absences. *(continued)*

- (4) receiving continuous medical treatment recommended by a licensed physician or convalescing as recommended by the physician that treated the illness if the treatment or convalescence is not based on a need for climatic change;
- (5) providing care for a parent, spouse, sibling, child, or stepchild with a critical life-threatening illness whose treatment plan, as recommended by the attending physician, requires travel outside the state for treatment at a medical specialty complex;
- (6) providing care for the individual's terminally ill parent, spouse, sibling, child, or stepchild;
- (7) settling the estate of the individual's deceased parent, spouse, sibling, child, or stepchild, provided the absence does not exceed 220 cumulative days;

Allowable Absence 1998

- Sec. 43.23.008. Allowable absences. *(continued)*
- (8) serving as a member of the United States Congress;
- (9) serving on the staff of a member from this state of the United States Congress;
- (10) serving as an employee of the state in a field office or other location;
- (11) accompanying a minor who is absent under (4) of this subsection;
- (12) accompanying another eligible resident who is absent for a reason permitted under this subsection as the spouse, minor dependent, or disabled dependent of the eligible resident;

Allowable Absence 1998

Sec. 43.23.008. Allowable absences. *(continued)*

- (13) for any reason consistent with the individual's intent to remain a state resident, provided the absence or cumulative absences do not exceed
 - (A) 180 days if the individual is not claiming an absence under (1) - (12) of this subsection;
 - (B) 120 days in addition to any absence or cumulative absences claimed under (1) or (2) of this subsection if the individual is not claiming an absence under (3) - (12) of this subsection; or
 - (C) 45 days in addition to any absence or cumulative absences claimed under (1) - (12) of this subsection.

Allowable Absence 1998

Sec. 43.23.008. Allowable absences. *(continued)*

- (b) An individual may not claim an allowable absence under (a)(1) - (12) of this section unless the individual was a resident of the state for at least six consecutive months immediately before leaving the state.
- (c) An otherwise eligible individual who has been eligible for the immediately preceding 10 dividends despite being absent from the state for more than 180 days in each of the related 10 qualifying years is only eligible for the current year dividend if the individual was absent 180 days or less during the qualifying year. This subsection does not apply to an absence under (a)(8) or (9) of this section or to an absence under (a)(12) of this section if the absence is to accompany an individual who is absent under (a)(8) or (9) of this section.

Allowable Absence 2011

- Sec. 43.23.008. Allowable absences.
- (a) Subject to (b) and (c) of this section, an otherwise eligible individual who is absent from the state during the qualifying year remains eligible for a current year permanent fund dividend if the individual was absent
 - (1) receiving secondary or postsecondary education on a full-time basis;
 - (2) receiving vocational, professional, or other specific education on a full-time basis for which, as determined by the Alaska Commission on Postsecondary Education, a comparable program is not reasonably available in the state;
 - (3) serving on active duty as a member of the armed forces of the United States or accompanying, as that individual's spouse, minor dependent, or disabled dependent, an individual who is
 - (A) serving on active duty as a member of the armed forces of the United States; and
 - (B) eligible for a current year dividend;

Allowable Absence 2011

Sec. 43.23.008. Allowable absences. *(continued)*

- (4) serving under foreign or coastal articles of employment aboard an oceangoing vessel of the United States merchant marine;
- (5) receiving continuous medical treatment recommended by a licensed physician or convalescing as recommended by the physician who treated the illness if the treatment or convalescence is not based on a need for climatic change;
- (6) providing care for a parent, spouse, sibling, child, or stepchild with a critical life-threatening illness whose treatment plan, as recommended by the attending physician, requires travel outside the state for treatment at a medical specialty complex;

Allowable Absence 2011

- Sec. 43.23.008. Allowable absences. *(continued)*
- (7) providing care for the individual's terminally ill family member;
- (8) settling the estate of the individual's deceased parent, spouse, sibling, child, or stepchild, provided the absence does not exceed 220 cumulative days;
- (9) serving as a member of the United States Congress;
- (10) serving on the staff of a member from this state of the United States Congress;
- (11) serving as an employee of the state in a field office or other location;
- (12) accompanying a minor who is absent under (5) of this subsection;

Allowable Absence 2011

- Sec. 43.23.008. Allowable absences. *(continued)*
- (13) accompanying another eligible resident who is absent for a reason permitted under (1), (2), (5) - (12), (16), or (17) of this subsection as the spouse, minor dependent, or disabled dependent of the eligible resident;
- (14) serving as a volunteer in the federal peace corps program;
- (15) because of training or competing as a member of the United States Olympic Team;
- (16) participating for educational purposes in a student fellowship sponsored by the United States Department of Education or by the United States Department of State;

Allowable Absence 2011

- Sec. 43.23.008. Allowable absences. *(continued)*
- (17) for any reason consistent with the individual's intent to remain a state resident, provided the absence or cumulative absences do not exceed
 - (A) 180 days in addition to any absence or cumulative absences claimed under (3) of this subsection if the individual is not claiming an absence under (1), (2), or (4) - (16) of this subsection;
 - (B) 120 days in addition to any absence or cumulative absences claimed under (1) - (3) of this subsection if the individual is not claiming an absence under (4) - (16) of this subsection but is claiming an absence under (1) or (2) of this subsection; or
 - (C) 45 days in addition to any absence or cumulative absences claimed under (1) - (16) of this subsection if the individual is claiming an absence under (4) - (16) of this subsection.

Allowable Absence 2011

- Sec. 43.23.008. Allowable absences. *(continued)*
- (b) An individual may not claim an allowable absence under (a)(1) - (16) of this section unless the individual was a resident of the state for at least six consecutive months immediately before leaving the state.
- (c) An otherwise eligible individual who has been eligible for the immediately preceding 10 dividends despite being absent from the state for more than 180 days in each of the related 10 qualifying years is only eligible for the current year dividend if the individual was absent 180 days or less during the qualifying year. This subsection does not apply to an absence under (a)(9) or (10) of this section or to an absence under (a)(13) of this section if the absence is to accompany an individual who is absent under (a)(9) or (10) of this section.
- (d) For purposes of (a)(7) of this section, "family member" means a person who is
 - (1) legally related to the individual through marriage or guardianship; or
 - (2) the individual's sibling, parent, grandparent, son, daughter, grandson, granddaughter, uncle, aunt, niece, nephew, or first cousin.

Allowable Absence After HB 190

- Sec. 43.23.008. Allowable absences.
- (a) Subject to (b) and (c) of this section, an otherwise eligible individual who is absent from the state during the qualifying year remains eligible for a current year permanent fund dividend if the individual was absent
 - (1) receiving secondary or postsecondary education on a full-time basis;
 - (2) receiving vocational, professional, or other specific education on a full-time basis for which, as determined by the Alaska Commission on Postsecondary Education, a comparable program is not reasonably available in the state;
 - (3) serving on active duty as a member of the armed forces of the United States or accompanying, as that individual's spouse, minor dependent, or disabled dependent, an individual who is
 - (A) serving on active duty as a member of the armed forces of the United States; and
 - (B) eligible for a current year dividend;

Allowable Absence After HB 190

- Sec. 43.23.008. Allowable absences. *(continued)*
- (4) serving under foreign or coastal articles of employment aboard an oceangoing vessel of the United States merchant marine;
- (5) receiving continuous medical treatment recommended by a licensed physician or convalescing as recommended by the physician who treated the illness if the treatment or convalescence is not based on a need for climatic change;
- (6) providing care for a parent, spouse, sibling, child, or stepchild with a critical life-threatening illness whose treatment plan, as recommended by the attending physician, requires travel outside the state for treatment at a medical specialty complex;

Allowable Absence After HB 190

- Sec. 43.23.008. Allowable absences. *(continued)*
- (7) providing care for the individual's terminally ill family member;
- (8) settling the estate of the individual's deceased parent, spouse, sibling, child, or stepchild, provided the absence does not exceed 220 cumulative days;
- (9) serving as a member of the United States Congress;
- (10) serving on the staff of a member from this state of the United States Congress;
- (11) serving as an employee of the state in a field office or other location;
- (12) accompanying a minor who is absent under (5) of this subsection;

Allowable Absence After HB 190

- Sec. 43.23.008. Allowable absences. *(continued)*
- (13) accompanying another eligible resident who is absent for a reason permitted under (1), (2), (5) - (12), (16), or (17) of this subsection as the spouse, minor dependent, or disabled dependent of the eligible resident;
- (14) serving as a volunteer in the federal peace corps program;
- (15) because of training or competing as a member of the United States Olympic Team;
- (16) participating for educational purposes in a student fellowship sponsored by the United States Department of Education or by the United States Department of State;

Allowable Absence After HB 190

- Sec. 43.23.008. Allowable absences. *(continued)*
- (17) for any reason consistent with the individual's intent to remain a state resident, provided the absence or cumulative absences do not exceed
 - (A) 180 days in addition to any absence or cumulative absences claimed under (3) of this subsection if the individual is not claiming an absence under (1), (2), or (4) - (16) of this subsection;
 - (B) 120 days in addition to any absence or cumulative absences claimed under (1) - (3) of this subsection if the individual is not claiming an absence under (4) - (16) of this subsection but is claiming an absence under (1) or (2) of this subsection; or
 - (C) 45 days in addition to any absence or cumulative absences claimed under (1) - (16) of this subsection if the individual is claiming an absence under (4) - (16) of this subsection.

Allowable Absence After HB 190

- Sec. 43.23.008. Allowable absences. *(continued)*
- (b) An individual may not claim an allowable absence under (a)(1) - (16) of this section unless the individual was a resident of the state for at least six consecutive months immediately before leaving the state.
- (d) For purposes of (a)(7) of this section, "family member" means a person who is
 - (1) legally related to the individual through marriage or guardianship; or
 - (2) the individual's sibling, parent, grandparent, son, daughter, grandson, granddaughter, uncle, aunt, niece, nephew, or first cousin.

Allowable Absence After HB 190

- Sec. 43.23.008. Allowable absences. *(continued)*
- (e) After an individual has been absent from the state for more than 180 days in each of the five preceding qualifying years, the department shall presume that the individual is no longer a state resident. The individual may rebut this presumption by providing documentation to the department that establishes, by clear and convincing evidence, that
 - (1) the individual was physically present in the state for at least 30 cumulative days during the past five years; and
 - (2) the individual is a state resident as defined in AS 43.23.095(7).

Allowable Absence After HB 190

- Sec. 43.23.008. Allowable absences. *(continued)*
- (f) To determine whether an individual intends to return and remain in the state indefinitely, the department shall consider
 - (1) the length of time the individual was absent from the state compared to the length of time the individual was physically present in the state;
 - (2) the frequency and duration of voluntary return trips to the state during the past five years;
 - (3) whether the individual's intent to return to and remain in the state is conditioned on future events beyond the individual's control, such as the financial circumstances of the individual or the ability of the individual to find employment in the state;

Allowable Absence After HB 190

- Sec. 43.23.008. Allowable absences. *(continued)*
- (4) the ties the individual has established with the state or another jurisdiction, as demonstrated by
 - (A) maintenance of a home;
 - (B) payment of resident taxes;
 - (C) registration of a vehicle;
 - (D) registration to vote and voting history;
 - (E) acquisition of a driver's license, business license, or professional license; and
 - (F) receipt of benefits under a claim of residency in the state or another jurisdiction;

Allowable Absence After HB 190

- Sec. 43.23.008. Allowable absences. *(continued)*
- (5) the priority that the individual gave the state on an employment assignment preference list, including a list used by military personnel;
- (6) whether the individual made a career choice or chose a career path that does not allow the individual to reside in or return to the state.

library

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

Bill Version SSHB 190
Fiscal Note Number _____
() Publish Date _____

Identifier (file name) HB190SS-DOR-PFD-2-07-12 Dept. Affected Revenue
Title PFD Allowable Absence Appropriation Tax and Treasury
Allocation Permanent Fund Dividend Division
Sponsor Representative Feige
Requester House State Affairs OMB Component Number 981

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES	FY13	FY13	FY14	FY15	FY16	FY17	FY18
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE		(Thousands of Dollars)					
1002	Federal Receipts						
1003	GF Match						
1004	GF						
1005	GF/Prgm (DGF)						
1037	GF/MH (UGF)						
1178	temp code (UGF)						
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS							
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0	0.0
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Estimated SUPPLEMENTAL (FY12) operating costs _____ (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs _____ (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Updated for new bill version X.

Prepared by Deborah M. Bitney, Director
Division Permanent Fund Dividend
Approved by Jerry Burnett, Director Administrative Services Division
Department of Revenue

Phone 465-4785
Date/Time 2/7/12 1:56pm
Date 2/7/2012

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

BILL NO. SSHB 190

Analysis

Repeal of the 10 year rule reduces the number of cases that require eligibility determinations each year.

Additionally, moving the 5 year presumption * in 15 AAC 23.163(f) to statute makes clear the requirements needed to overcome it and makes determining eligibility less subjective.

*The 5 year presumption of 15 AAC 23.163(f) presumes that an individual who has been absent from Alaska for more than 180 days in the preceding 5 years does not intend to return.

Programming is not required since a similar 5 year presumption is already being applied. Minimal changes are anticipated to division publications.

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

Bill Version SSHB 190
 Fiscal Note Number _____
 () Publish Date _____

Identifier (file name) \HB190SS-DOR-PFD-2-2-12 Dept. Affected _____ Revenue _____
 Title PFD Allowable Absence Appropriation Tax and Treasury
 Allocation Permanent Fund Dividend Division
 Sponsor Representative Feige
 Requester House State Affairs OMB Component Number 981

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates					
			FY13	FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants, Benefits								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE		(Thousands of Dollars)						
1002	Federal Receipts							
1003	GF Match							
1004	GF							
1005	GF/Prgm (DGF)							
1037	GF/MH (UGF)							
1178	temp code (UGF)							
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS								
Full-time								
Part-time								
Temporary								

CHANGE IN REVENUES								

Estimated SUPPLEMENTAL (FY12) operating costs _____ (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs _____ (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Updated for Sponsor substitute.

Prepared by Debbie Bitney, Director Phone 465-4785
 Division Permanent Fund Dividend Date/Time 2/2/12 5:15 PM
 Approved by Jerry Burnett, Director Administrative Services Date 2/2/2012
Department of Revenue

(Revised 1/17/2012 OMB)

*new updated
one 2/7/12*

FISCAL NOTE

**STATE OF ALASKA
2012 LEGISLATIVE SESSION**

BILL NO. SSHB 190

Analysis

Repeal of the 10 year rule reduces the number of cases that require eligibility determinations each year.

Additionally, moving the 5 year presumption * in 15 AAC 23.163(f) to statute makes clear the requirements needed to overcome it clearer and makes determining eligibility less subjective.

*The 5 year presumption of 15 AAC 23.163(f) presumes that an individual who has been absent from Alaska for more than 180 days in the preceding 5 years does not intend to return.

Programming is not required since a similar 5 year presumption is already being applied. Minimal changes are anticipated to division publications.

27-LS0564\R
Kirsch
2/3/12

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 190()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES FEIGE, Chenault, Herron, Peggy Wilson, Johnson, Muñoz, Lynn

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to allowable absences from the state for purposes of eligibility for**
2 **permanent fund dividends; and providing for an effective date."**

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

4 *** Section 1.** AS 43.23.008(a) is amended to read:

5 (a) Subject to (b) and (e) [(c)] of this section, an otherwise eligible individual
6 who is absent from the state during the qualifying year remains eligible for a current
7 year permanent fund dividend if the individual was absent

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

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

13 (3) serving on active duty as a member of the armed forces of the
14 United States or accompanying, as that individual's spouse, minor dependent, or

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disabled dependent, an individual who is

(A) serving on active duty as a member of the armed forces of the United States; and

(B) eligible for a current year dividend;

(4) serving under foreign or coastal articles of employment aboard an oceangoing vessel of the United States merchant marine;

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

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

(7) providing care for the individual's terminally ill family member;

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

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

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

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

(12) accompanying a minor who is absent under (5) of this subsection;

(13) accompanying another eligible resident who is absent for a reason permitted under (1), (2), (5) - (12), (16), or (17) of this subsection as the spouse, minor dependent, or disabled dependent of the eligible resident;

(14) serving as a volunteer in the federal peace corps program;

(15) because of training or competing as a member of the United States Olympic Team;

(16) participating for educational purposes in a student fellowship sponsored by the United States Department of Education or by the United States Department of State;

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

3 (A) 180 days in addition to any absence or cumulative absences
4 claimed under (3) of this subsection if the individual is not claiming an absence
5 under (1), (2), or (4) - (16) of this subsection;

6 (B) 120 days in addition to any absence or cumulative absences
7 claimed under (1) - (3) of this subsection if the individual is not claiming an
8 absence under (4) - (16) of this subsection but is claiming an absence under (1)
9 or (2) of this subsection; or

10 (C) 45 days in addition to any absence or cumulative absences
11 claimed under (1) - (16) of this subsection if the individual is claiming an
12 absence under (4) - (16) of this subsection.

13 * **Sec. 2.** AS 43.23.008 is amended by adding new subsections to read:

14 (e) After an individual has been absent from the state for more than 180 days
15 in each of the five preceding qualifying years, the department shall presume that the
16 individual is no longer a state resident. The individual may rebut this presumption by
17 providing documentation to the department that establishes, by clear and convincing
18 evidence, that

19 (1) the individual was physically present in the state for at least 30
20 cumulative days during the past five years; and

21 (2) the individual is a state resident as defined in AS 43.23.095(7).

22 (f) To determine whether an individual intends to return and remain in the
23 state indefinitely, the department shall consider

24 (1) the length of time the individual was absent from the state
25 compared to the length of time the individual was physically present in the state;

26 (2) the frequency and duration of voluntary return trips to the state
27 during the past five years;

28 (3) whether the individual's intent to return to and remain in the state is
29 conditioned on future events beyond the individual's control, such as the financial
30 circumstances of the individual or the ability of the individual to find employment in
31 the state;

1 (4) the ties the individual has established with the state or another
2 jurisdiction, as demonstrated by

3 (A) maintenance of a home;

4 (B) payment of resident taxes;

5 (C) registration of a vehicle;

6 (D) registration to vote and voting history;

7 (E) acquisition of a driver's license, business license, or
8 professional license; and

9 (F) receipt of benefits under a claim of residency in the state or
10 another jurisdiction;

11 (5) the priority that the individual gave the state on an employment
12 assignment preference list, including a list used by military personnel;

13 (6) whether the individual made a career choice or chose a career path
14 that does not allow the individual to reside in or return to the state.

15 * **Sec. 3.** AS 43.23.008(c) is repealed.

16 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

18 APPLICATION FOR THE 2012 PERMANENT FUND DIVIDEND FOR CERTAIN
19 INDIVIDUALS. (a) Notwithstanding the application deadline of AS 43.23.011, an individual
20 who was ineligible for a 2012 dividend under former AS 43.23.008(c), repealed by sec. 3 of
21 this Act, and who is otherwise eligible, may apply for the 2012 permanent fund dividend
22 within 90 days after the effective date of this Act.

23 (b) The repeal of AS 43.23.008(c) by sec. 3 of this Act and the enactment of
24 AS 43.23.008(e) by sec. 2 of this Act may not be applied to make ineligible any person
25 otherwise eligible for a 2012 dividend under AS 43.23 as it read December 31, 2011.

26 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
27 read:

28 RETROACTIVITY. Sections 1 - 4 of this Act are retroactive to January 1, 2012.

29 * **Sec. 6.** This Act takes effect immediately under AS 01.10.070(c).

REPRESENTATIVE
ERIC FEIGE
House District 12

House Resources Committee Co-Chair
Education Committee
Transportation Committee
Joint Armed Services Committee

Alaska State Legislature



During Session:
State Capitol Room 126
Juneau, Alaska 99801-1182
(907) 465-4859
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House of Representatives

Sectional Analysis

HB 190 – 27-LS0564\R

Sec. 1 – Contains conforming language changing the reference in AS 43.23.008(a) pertaining to allowable absences from (c), which is repealed in Sec. 3 of this bill, to (e), which is established in Sec. 2 of this bill.

Sec. 2 – Establishes in law a presumption that someone who is absent from the state for more than 180 days in each of the previous five years does not plan to return to the state and thus, not eligible to receive a Permanent Fund Dividend. This section also provides a method for an individual who is denied a Permanent Fund Dividend because of this presumption to rebut the presumption.

Sec. 3 – Repeals the current ten year bright line rule that eliminates allowable absences after ten years and the exemption from the bright line rule for members of Congress and their staff and families.

Sec. 4 – Allows someone who was previously denied a dividend under the ten year bright line rule to apply for a 2012 dividend during the 90 days following the enactment of this bill into law.

Sec. 5 – Makes the new law retroactive to Jan. 1, 2012.

Sec. 6 – Makes the bill effective immediately.

Prepared by the office of Rep. Eric Feige, February 3, 2012

Nancy Manly

From: Michael Paschall
Sent: Monday, January 30, 2012 9:42 AM
To: Nancy Manly
Subject: RE: HB 190

Nancy,

We will want to bring the bill back before the committee. I am meeting again with the PFD Division today on new language that addresses the constitutional issues that were brought up last year. We will want to do a substitute for the bill with the new language. I'll be in touch later this week.

Mike

Michael Paschall
Office of Rep. Eric Feige
House District 12

Office (907) 465-5446
Toll Free (888) 465-4859
Cell (907) 460-8629

Room 126 – State Capitol
120 4th St.
Juneau, Alaska 99801

From: Nancy Manly
Sent: Monday, January 30, 2012 8:56 AM
To: Michael Paschall
Subject: RE: HB 190

Michael – if your boss wants to bring this back before the committee, let me know when.

Nancy Manly, Chief of Staff and
House State Affairs Committee Aide for
Representative Bob Lynn
House District 31
907-465-2794 Fax: 907-465-4316

From: Michael Paschall
Sent: Thursday, January 19, 2012 3:25 PM
To: Sue Wright; Liz Clement; Rebecca Rooney; Erin Shine; Terry Harvey
Cc: Nancy Manly
Subject: HB 190

Due to issues raised last year concerning HB190, Rep. Feige has prepared a sponsor substitute for the bill. Instead of providing a specific exemption for military personnel, the new bill simply increases the length of time for allowable absence from ten years to twenty.

Although the change doesn't completely solve the issue that the original bill was designed to address, it does solve the immediate problem. According to the PFD Division, only a small number of families are impacted by this type of change. They are researching accurate numbers.

The draft of the bill is attached. Please pass along to your bosses.

Mike

Michael Paschall
Office of Rep. Eric Feige
House District 12

Office (907) 465-5446
Toll Free (888) 465-4859
Cell (907) 460-8629

Room 126 – State Capitol
120 4th St.
Juneau, Alaska 99801

Nancy Manly

From: Michael Paschall
Sent: Thursday, January 19, 2012 3:25 PM
To: Sue Wright; Liz Clement; Rebecca Rooney; Erin Shine; Terry Harvey
Cc: Nancy Manly
Subject: HB 190
Attachments: HB 190 Sponsor Substitute 27-LS0564X.pdf

Categories: Important

Due to issues raised last year concerning HB190, Rep. Feige has prepared a sponsor substitute for the bill. Instead of providing a specific exemption for military personnel, the new bill simply increases the length of time for allowable absence from ten years to twenty.

Although the change doesn't completely solve the issue that the original bill was designed to address, it does solve the immediate problem. According to the PFD Division, only a small number of families are impacted by this type of change. They are researching accurate numbers.

The draft of the bill is attached. Please pass along to your bosses.

Mike

Michael Paschall
Office of Rep. Eric Feige
House District 12

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Room 126 – State Capitol
120 4th St.
Juneau, Alaska 99801

Alaska State Legislature



Chairman
State Affairs Committee

Member
Judiciary Committee
Energy Committee
Joint Armed Services Committee
Military & Veterans Affairs Committee

Finance Subcommittees
Administration
Corrections
Military and Veterans Affairs

A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

E-Mail: Representative_Bob_Lynn@legis.state.ak.us
"Bob Lynn's Alaska Blog" RepBobLynnBlog.com

Session:
Alaska State Capitol, #108
Juneau, AK 99801-1182

Phone: (907) 465-4931
Fax: (907) 465-4316
Toll Free: (800) 870-4391

Interim:
716 W. 4th Ave., #650
Anchorage, AK 99501-2133

Phone: (907) 269-0205
Fax: (907) 269-0207

FAX

To: Legal Services

Fax #: 465-2029

From: Nancy Manly 465-2794 *Nmanly*
Alaska State Capitol, Room 108
Juneau, AK 99801-1182

of Pages (including cover): 3

Phone: 907-465-4931
Fax: 907-465-4316

Re HB 190 27-LS0564\D

4/13/2011

HB 190 was heard and amended in the HSTA Committee yesterday. The bill is still in Committee so just draft a blank CS to version D incorporating these amendments. Thanks.

Amendment #1 (Gruenberg)
27.LS0564\D.1 (see attached)

Amendment #2 (Keller)
27.LS0564\D.2 (as amended)

Amendment #1 to Amendment #2 (Keller)
Amending 27.LS0564\D.2

Line 5 *delete* the word "waive" and *insert* **adopt regulations to establish** so it will read: ...the department may adopt regulations to establish the requirement of those paragraphs.

passed
AMENDMENT #1

*by Gruenberg
Johansen objects*

OFFERED IN THE HOUSE

TO: CSHB 190(), Draft Version "D"

1 Page 2, following line 5:

2 Insert a new bill section to read:

3 **"* Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 PERMANENT FUND DIVIDEND APPLICATIONS. Notwithstanding permanent
6 fund dividend application procedures or deadlines, an individual who qualifies for a dividend
7 for 2009, 2010, or 2011 because of the amendment to AS 43.23.008(c) made in sec. 1 of this
8 Act, may apply for the dividend by January 1, 2015. The Department of Revenue shall
9 prepare a form for applications under this section."

10

11 Renumber the following bill section accordingly.

12

13 Page 2, following line 11:

14 Insert a new bill section to read:

15 **"* Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

17 RETROACTIVITY. Section 1 of this Act is retroactive to January 1, 2009."

Keller
moved

27-LS0564D.2
Kirsch
4/11/11

AMENDMENT # 2

OFFERED IN THE HOUSE

BY REPRESENTATIVE Keller
for Fiege

TO: CSHB 190(), Draft Version "D"

1 Page 2, following line 5:

2 Insert a new bill section to read:

3 "* **Sec. 2.** AS 43.23.008 is amended by adding a new subsection to read:

4 "(e) If insufficient documentation is available to establish the nature of an
5 absence, as required under (c)(1) and (2) of this section, the department may waive the
6 requirement of those paragraphs."

7

8 Renumber the following bill section accordingly.

adopt regulations to establish
~~alternative compliance determination~~
~~method of compliance~~
Keller amend 1 to amend # 2
~~compliance~~

Conrad Gruenberg
Amend 1 to amend # 2
if there is insufficient docs
the dept. may adopt regs
allowing alternative prog
to establish those facts

- ~~— Peterson~~
- ~~— Seaton~~
- ~~— Gruenberg~~
- ~~— Lynn~~
- ~~— Keller~~
- ~~— Wilson~~
- ~~— Johansen~~

27-LS0564D
Kirsch
3/28/11

CS FOR HOUSE BILL NO. 190()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES FEIGE, Chenault, Herron, Peggy Wilson, Johnson

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to the allowable absence for active duty service members of the armed**
2 **forces for purposes of permanent fund dividend eligibility."**

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

4 *** Section 1.** AS 43.23.008(c) is amended to read:

5 (c) An otherwise eligible individual who has been eligible for the immediately
6 preceding 10 dividends despite being absent from the state for more than 180 days in
7 each of the related 10 qualifying years is only eligible for the current year dividend if
8 the individual was absent 180 days or less during the qualifying year. This subsection
9 does not apply to an absence under (a)(9) or (10) of this section or to an absence under
10 (a)(13) of this section if the absence is to accompany an individual who is absent
11 under (a)(9) or (10) of this section. **This subsection does not apply to an absence**
12 **under (a)(3) of this section if the individual was eligible for a dividend for the**
13 **three dividends immediately preceding induction into the armed forces, and,**
14 **during each of those three qualifying years**

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- (1) the individual was absent from the state not more than 180 days; or
- (2) if the individual was absent from the state for more than 180 days, the absence was caused by the individual's receiving secondary or postsecondary education on a full-time basis.

* **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to read:

SEVERABILITY. Under AS 01.10.030, if the sentence added to AS 43.23.008(c) by sec. 1 of this Act, or the application of it to any person or circumstance, is held invalid, the remainder of AS 43.23.008(c) and the application to other persons or circumstances are not affected.

REPRESENTATIVE
ERIC FEIGE
House District 12

House Resources Committee Co-Chair
Education Committee
Transportation Committee
Joint Armed Services Committee

Alaska State Legislature



House of Representatives

During Session:
State Capitol Room 126
Juneau, Alaska 99801-1182
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Changes to HB 190 CS Draft D

We have added additional language to HB 190 that will preclude individuals that are dependents who are on excused absences and join the military from receiving the PFD after ten years, unless the individual was on an excused absence to receive secondary or postsecondary education on a full-time basis.

This change limits the bill to those that the original version was intended to address – those individuals that live in Alaska and leave due to induction into the Armed Forces.

Nancy Manly

From: Nancy Manly
Sent: Tuesday, April 12, 2011 4:32 PM
Subject: Legal Memo for HB 190
Attachments: -07 HB 190 Legal Memo Lisa Kirsch 3-18-11.pdf

During the HSTA Committee Meeting this morning on HB 190, a Legal Memo was mentioned but the committee did not have a copy. So, I'm attaching a copy of the Legal Memo. Please file with HB 190. Thank you!

Nancy Manly, Chief of Staff and
House State Affairs Committee Aide *for*
Representative Bob Lynn
House District 31
907-465-2794 Fax: 907-465-4316

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

March 18, 2011

SUBJECT: Equal Protection Concerns -- HB 190
(Work Order No. 27-LS0564M)

TO: Representative Eric Feige
Attn: Michael Paschall

FROM: Lisa Moritz Kirsch
Legislative Counsel



I spoke to Michael Paschall on the phone about equal protection concerns for this bill. After I spoke with him about the possible problems I did additional research. Equal protection is an area where judges often disagree (I have noted an unusually high number of concurring and dissenting opinions), which makes it difficult to predict the outcome in specific cases. However, I believe the requirement that service members receive dividends for three years in order to get the benefit of the exception to the ten-year rule may create problems.

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.¹ As the importance of the individual rights affected increases, then 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 substantially 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.² At the low end of the scale, the state must show the enactment is fairly and substantially related to a legitimate state interest.

The primary state concern in granting PFDs is that the recipient of a PFD is a bona fide resident of the state. To be an Alaska resident a person must have the intent to remain in Alaska indefinitely. The state has a legitimate interest in preventing temporary residents motivated by the financial benefit from making false claims of residency. To separate these two groups, the state currently uses various indicia of residency including a

¹ *State v. Anthony*, 810 P.2d 155 (Alaska 1991); *State, Dept. of Transportation v. Enserch Alaska Const., Inc.*, 787 P.2d 624 (Alaska 1990).

² *Underwood v. State*, 881 P.2d 322 (Alaska 1994).

durational residency requirement of one year to determine whether an applicant has the intent to remain.³

The statutory change in HB 190 creates two applicant classes who are treated differently: (1) applicants who qualify for allowable absences, but are subject to the ten-year limit, (2) active duty service members who received three dividends in Alaska before being inducted into the military, who are not subject to the ten-year limit, and continue to receive PFDs based on allowable absences. The question here is whether the state's interest in granting PFDs only to residents with a genuine intent to remain in the state is fairly and substantially related to a limitation of ten years for allowable absences unless you are on active duty or in Congress, or the spouse, dependent, or staff of someone in Congress or on active duty.

Arguably, members of Congress and active duty military are somewhat unique in that their career choices put them in the position of serving government in a place other than their chosen state of residence. Also, Congressional and military service are more likely to span a term longer than a decade when compared with education or illness related absences. This particular question of differential treatment for members of Congress has not been addressed by the courts, and although the result of a court's equal protection analysis is particularly difficult to predict, at this low level of scrutiny it seems likely that the nexus between the state's purpose of excluding long absent residents who no longer intend to return and the means of providing the exception to members of the military and Congress is sufficiently close to be found constitutional.

However, there is also an equal protection issue raised by the requirement that military members were residents long enough to receive three PFDs before they were inducted. The issue of durational residency has been addressed by the courts. In *Zobel v. Williams*, the United States Supreme Court invalidated a prior scheme of PFD distribution rewarding residents incrementally higher dividends based on the length of their residency in Alaska.⁴ That Court held that the state could not distinguish between old and new residents in this way without violating the federal equal protection clause.⁵

In *Zobel*, the Court did not invalidate a threshold waiting period like the one proposed in this bill or under existing AS 43.23.005(3), and the concurring opinions in *Zobel* acknowledge that some durational residency requirements may be constitutional.⁶ In other cases, residency requirements appear to be generally disfavored, but have been upheld where the individual interest is less significant and the state interest bears a

³ AS 43.23.005.

⁴ *Zobel v. Williams*, 102 U.S. 2309, 72 L.Ed.2d 672 (1982).

⁵ *Zobel v. Williams*, 102 U.S. at 2315.

⁶ *Zobel* at 2318 and 2322, n. 8.

substantial relationship to the requirement.⁷ Although I have not done exhaustive research, there appears to be a general trend to limit durational requirements to one year. For example, in an unreported opinion Judge Dana Fabe (now an Alaska Supreme Court Justice) disallowed a two-year residency requirement, but upheld a one-year requirement.⁸ In this opinion she found that:

The problematic provision of this statute is the two-year residency requirement. One-year residency requirements have been found to be rationally related to a state's purpose to establish bona fide residency. The United States Supreme Court has affirmed a one-year residency or waiting requirement for in-state tuition, upholding lower court findings that it is reasonable to presume that a person who has not resided within a state for a year is a non-resident[.]⁹

Although the majority rejected the argument, an alternative constitutional argument addressed in the concurring opinions in *Zobel* was that durational residency requirements ran afoul of the privileges and immunities clause, or "the right to travel." It seems unlikely that the right to travel could be applied here because both classes affected by the exception to the ten-year rule are residents, and the impairment of rights can be cured whereas the invalidated distinctions between residents in *Zobel* were permanent.¹⁰

Here it could be argued that a three-year durational requirement is substantially related to the state's legitimate interest in establishing that a service member who has been out of the state for half of the year for ten years still has the intention to return. A service member who was well established in Alaska through several years of residency before joining the military may have lasting contacts that will induce permanent residency. The state has a legitimate interest in preventing fraudulent claims of residency, but whether three years of dividend eligibility to establish intent to return after ten years of long

⁷ *Church v. State, Dept. of Revenue*, 973 P.2d 1125 (1999); *Schikora v. State, Dept. of Revenue*, 7 P.3d 938 (Alaska 1991) (no more than 180 days out of state upheld); *Sosna v. Iowa*, 419 U.S. 393, 95 S.Ct. 553 (1975) (one year residency for divorce jurisdiction upheld), *But see, State v. Adams*, 522 P.2d 1125 (Alaska 1974) (one year residency found unconstitutional; state interests in regulating divorce did not outweigh litigant's interest in access to the courts).

⁸ *Lindley v. Malone*, 3AN-90-2821 CI (July 18, 1990).

⁹ Citing, *Starns v. Milkerson*, 401 U.S. 985 (1971); *Sturgis v. Washington*, 414 U.S. 1057 (1973).

¹⁰ For example, residents present in the state at statehood would have received a larger PFD forever.

Representative Eric Feige
March 18, 2011
Page 4

absences will justify the infringement of the rights of a service member with only two years of eligibility and thwart an equal protection challenge is unclear.¹¹

Please feel free to contact me if you have questions, or want me to draft an amendment to remove the three-year eligibility requirement.

LMK:plm
11-160.plm

¹¹ It is worth noting that service members must qualify for the initial dividend, so a member who has received a PFD for three years has four years of residency.

3/31 Heard & Held

27-LS0564D
Kirsch
3/28/11

3/31/11

① Seaton moved to adopt
② Gruenberg objects for discussion

4-12-11 Gruenberg removed objection

Back dated to 2009

CS FOR HOUSE BILL NO. 190()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES FEIGE, Chenault, Herron, Peggy Wilson, Johnson

A BILL

FOR AN ACT ENTITLED

"An Act relating to the allowable absence for active duty service members of the armed forces for purposes of permanent fund dividend eligibility."

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

* Section 1. AS 43.23.008(c) is amended to read:

(c) An otherwise eligible individual who has been eligible for the immediately preceding 10 dividends despite being absent from the state for more than 180 days in each of the related 10 qualifying years is only eligible for the current year dividend if the individual was absent 180 days or less during the qualifying year. This subsection does not apply to an absence under (a)(9) or (10) of this section or to an absence under (a)(13) of this section if the absence is to accompany an individual who is absent under (a)(9) or (10) of this section. This subsection does not apply to an absence under (a)(3) of this section if the individual was eligible for a dividend for the three dividends immediately preceding induction into the armed forces, and, during each of those three qualifying years

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(1) the individual was absent from the state not more than 180 days; or

(2) if the individual was absent from the state for more than 180 days, the absence was caused by the individual's receiving secondary or postsecondary education on a full-time basis.

* Sec. 2. The uncodified law of the State of Alaska is amended by adding a new section to read:

SEVERABILITY. Under AS 01.10.030, if the sentence added to AS 43.23.008(c) by sec. 1 of this Act, or the application of it to any person or circumstance, is held invalid, the remainder of AS 43.23.008(c) and the application to other persons or circumstances are not affected.

Seaton 953 ish 3/31
 provide legal
 ① Memo on case
 ② Does it put at risk the RFD a taxable item
 ③ Wilson wanted to have feige look
 950A

*made to be a problem 949
 could be a problem*

REPRESENTATIVE
ERIC FEIGE
House District 12

House Resources Committee Co-Chair
Education Committee
Transportation Committee
Joint Armed Services Committee

Alaska State Legislature



House of Representatives

During Session:
State Capitol Room 126
Juneau, Alaska 99801-1182
(907) 465-4859
Fax (907) 465-3799
1-888-465-4859

Changes to HB 190 CS Draft D

We have added additional language to HB 190 that will preclude individuals that are dependents who are on excused absences and join the military from receiving the PFD after ten years, unless the individual was on an excused absence to receive secondary or postsecondary education on a full-time basis.

This change limits the bill to those that the original version was intended to address – those individuals that live in Alaska and leave due to induction into the Armed Forces.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number _____
Bill Version HB 190
() Publish Date _____

Identifier (file name) HB190-DOR-PFD-3-24-11 Dept. Affected Revenue
Title PFD Allowable Absence for Certain Armed Forces Members Appropriation Taxation and Treasury
Allocation Permanent Fund Dividend Division
Sponsor Representative Feige
Requester House State Affairs OMB Component Number 981

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services	5.0							
Travel								
Services								
Commodities	25.0							
Capital Outlay								
Grants								
Miscellaneous								
TOTAL OPERATING	30.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
1050 PFD Funds	30.0							
TOTAL	30.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost _____

POSITIONS

Full-time								
Part-time								
Temporary								

Why this fiscal note differs from previous version (if initial version, please note as such)

Initial fiscal note

Prepared by Deborah M. Bitney, Director
Division Permanent Fund Dividend
Approved by Ginger Blaisdell, Director Administrative Services Division
Department of Revenue

Phone 465-4785
Date/Time 3/25/11; 10:23am
Date 3/25/11; 12:07pm

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. HB 190

Analysis

House Bill 190 changes the allowable absence rules for certain members of the armed forces for the purpose of determining eligibility for permanent fund dividends. It exempts those who received three dividends prior to entering the armed forces from the rule that would disqualify them automatically after absence from Alaska of 10 years. It is estimated that 100 hours of programmer time will be necessary to make these changes.

The Information & Instruction books must be changed in order to reflect changes to eligibility rules. The cost of printing and distributing new Information & Instruction books to the more than 280 distribution sites around Alaska is a direct increased cost to the division.

REPRESENTATIVE
ERIC FEIGE
House District 12

House Resources Committee Co-Chair
Education Committee
Transportation Committee
Joint Armed Services Committee

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House of Representatives

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MEMORANDUM

TO: Rep. Bob Lynn, Chair, House State Affairs Committee

FROM: Rep. Eric Feige *EF*

RE: Committee Hearing, HB 190

DATE: March 14, 2010

I am requesting that HB 190, which has been referred to the House State Affairs Committee be heard before that committee.

Attached is the current version of the bill, sponsor statement, and other related information.

My staff member assigned to handle the bill is Michael Paschall, his direct number is 465-5446.

DENALI BOROUGH

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dbgovt@mtaonline.net
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March 14, 2011

David M. Talerico, Mayor

Representative Eric Feige
State Capitol Room 126
Juneau, Alaska 99801

Dear Representative Feige,

It is my privilege to write this letter of support for House Bill 190. I have personal knowledge of someone who was recently denied his Permanent Fund Dividend although he is a 1997 graduate of Tri-Valley High School in Healy, Alaska, and has dedicated over a decade of his life serving our country as a NAVY SEAL.

After graduation, this fine young man went on to college and has since committed his life to defend our freedom, but Alaska is still his home.

I can think of very few who deserve the courtesy of receiving a PFD more than this fine individual. If HB 190 can accomplish this task, I encourage everyone's wholehearted support.

Thank you for sponsoring this bill.

Sincerely,

David M Talerico, Mayor
Denali Borough