

HB

190

<TARGET><BILL>HB 190</BILL><SUBJECT>HB
190</SUBJECT><COMM>SSTA27</COMM></TARGET>

SENATE COMMITTEE REPORT

DATE: 4/10/12

FURTHER:

DATE TURNED IN TO OFFICE: 4-12-12

State Affairs Committee considered CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 190(FIN)

HB 190 PFD ALLOWABLE ABSENCE

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

and recommends:

be replaced with SCS HB 190 (STA) [] Same Title [] Technical Title Change
[] New Title/SCR No. _____

[] adopt previous SCS SCS/CS- Forthcoming [] Same Title [] Technical Title Change
[] New Title/SCR No. _____

[] attached amendment(s)

[] adopt _____ Letter of Intent

[] further referral to _____ Committee

Dept Abbr.	
ADM	LEG
CED	LAW
COR	LWF
CRT	MVA
EED	DNR
DEC	DPS
DFG	REV
GOV	DOT
DHS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
REV			✓	1

[] APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Kooluk	✓			
	Parkin	x			
	Meyer	✓			
	Giessel	✓			
CHAIR:	Wielechowski				

27-LS0564\Y
Kirsch
4/10/12

SENATE CS FOR CS FOR SS FOR HOUSE BILL NO. 190(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE SENATE 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

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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(c) is amended to read:

14 (c) An otherwise eligible individual who has been eligible for the immediately
15 preceding 10 dividends despite being absent from the state for more than 180 days in
16 each of the related 10 qualifying years is only eligible for the current year dividend if
17 the individual was absent 180 days or less during the qualifying year. This subsection
18 does not apply to an absence under (a)(9) or (10) of this section or to an absence under
19 (a)(13) of this section if the absence is to accompany an individual who is absent
20 under (a)(9) or (10) of this section. **This subsection does not apply to an absence**
21 **under (a)(3) of this section.**

22 * **Sec. 3.** AS 43.23.008 is amended by adding new subsections to read:

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

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

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

31 (f) To determine whether an individual intends to return and remain in the

1 state indefinitely, the factors the department shall consider include

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

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

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

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

12 (A) maintenance of a home;

13 (B) payment of resident taxes;

14 (C) registration of a vehicle;

15 (D) registration to vote and voting history;

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

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

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

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

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

26 **RETROACTIVITY.** Sections 1 - 3 of this Act are retroactive to January 1, 2012.

27 * **Sec. 5.** 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



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

REPRESENTATIVE
ERIC FEIGE
House District 12

House Resources Committee Co-Chair
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House of Representatives

Sectional Analysis

HB 190 – 27-LS0564\L

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 AS 43.23.008(c) that eliminates allowable absences after ten years except for members of Congress, congressional staff, and family members.

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, April 10, 2012

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.

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.

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-LS0564\M)

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).

Representative Eric Feige

March 18, 2011

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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.

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
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

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

04603

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
-----------	------

04603

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;

(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;

(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.

(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.

History -

(Sec. 5 ch 44 SLA 1998; am Sec. 1 ch 71 SLA 1999; am Sec. 1 ch 69 SLA 2003; am Sec. 1, 2 ch 116 SLA 2003; am Sec. 20, 21 ch 42 SLA 2006; am Sec. 1, 2 ch 36 SLA 2008)

Cross References -

For provisions extending to September 15, 2008, the date by which individuals who may qualify for a permanent fund dividend for 2006, 2007, and 2008 because of the 2008 addition of (a)(16) of this section may apply for the dividend, see Sec. 3, ch. 36, SLA 2008 in the 2008 Temporary and Special Acts.

Amendment Notes -

The 1999 amendment, effective January 1, 2000, added present paragraph (4), redesignated subsequent paragraphs accordingly, inserted internal references in paragraph (13), and made internal reference substitutions throughout.

The first 2003 amendment, effective June 12, 2003, in paragraph (a)(3) added the language beginning "or accompanying" to the end of the introductory language and added subparagraphs (A) and (B); updated paragraph references in paragraph (a)(13); and rewrote subparagraphs (a)(14)(A) and (B).

The second 2003 amendment, effective January 1, 2004, substituted "family member" for "parent, spouse, sibling, child, or stepchild" in paragraph (a)(7) and added subsection (d).

The 2006 amendment, effective May 26, 2006, added paragraphs (a)(14) and (a)(15), and made related changes.

The 2008 amendment, effective May 23, 2008, substituted "(16), or (17)" for "or (16)" in paragraph (a)(13), inserted paragraph (a)(16), and changed references to former paragraph (a)(15) to present paragraph (a)(16) four times in paragraph (a)(17) and once in subsection (b).

Editors Notes -

Section 35, ch. 42, SLA 2006, makes the 2006 amendments to subsections (a) and (b) of this section retroactive to January 1, 2006.

Section 4, ch. 36, SLA 2008 makes the 2008 amendments of (a) and (b) of this section retroactive to January 1, 2005.

Decisions -

Cited in *State v. Andrade*, 23 P.3d 58 (Alaska 2001).

Construction with Federal Soldiers' and Sailors' Civil Relief Act. - Servicemember, who had been discharged from the Navy, was not eligible to claim a Permanent Fund Dividend (PFD) for a certain year where he failed to overcome presumption that he had not been a resident of Alaska for the last five years; servicemember's argument that the Federal Soldiers' and Sailors' Civil Relief Act preempted state law in that area was not persuasive, as that act applied to only two areas, taxation and voting, and PFD was not a tax but a benefit. *Eagle v. Dep't of Revenue*, 153 P.3d 976 (Alaska 2007).

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.

27-LS0564K
Kirsch
4/11/12

SENATE CS FOR CS FOR SS 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 43.23.005(a) is amended to read:

5 (a) An individual is eligible, or conditionally eligible under AS 43.23.009, to
6 receive one permanent fund dividend for each year in an amount to be determined
7 under AS 43.23.025 if the individual

8 (1) applies to the department;

9 (2) is a state resident on the date of application;

10 (3) was a state resident during the entire qualifying year;

11 (4) has been physically present in the state for at least 72 consecutive
12 hours at some time during the prior two years before the current dividend year;

13 (5) is

14 (A) a citizen of the United States;

1 (B) an alien lawfully admitted for permanent residence in the
2 United States;

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

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

5 (6) was, at all times during the qualifying year, physically present in
6 the state or, if absent, was absent only as allowed in AS 43.23.008 and met the
7 requirements of AS 43.23.009; and

8 (7) was in compliance during the qualifying year with the military
9 selective service registration requirements imposed under 50 U.S.C. App. 453
10 (Military Selective Service Act), if those requirements were applicable to the
11 individual, or has come into compliance after being notified of the lack of compliance.

12 * **Sec. 2.** AS 43.23.008(a) is amended to read:

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

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

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

21 (3) serving on active duty as a member of the armed forces of the
22 United States or accompanying, as that individual's spouse, minor dependent, or
23 disabled dependent, an individual who is

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

26 (B) eligible for a current year dividend;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 * **Sec. 3.** AS 43.23.008(a), as amended by sec. 2 of this Act, is amended to read:

5 (a) Subject to (b), (c), and (e) of this section, an otherwise eligible individual
6 who is absent from the state during the qualifying year remains eligible, or
7 conditionally eligible under AS 43.23.009, for a current year permanent fund
8 dividend if the individual was absent

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

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

14 (3) serving on active duty as a member of the armed forces of the
15 United States or accompanying, as that individual's spouse, minor dependent, or
16 disabled dependent, an individual who is

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

19 (B) eligible for a current year dividend;

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

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

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

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

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

- 1 (9) serving as a member of the United States Congress;
- 2 (10) serving on the staff of a member from this state of the United
3 States Congress;
- 4 (11) serving as an employee of the state in a field office or other
5 location;
- 6 (12) accompanying a minor who is absent under (5) of this subsection;
- 7 (13) accompanying another eligible resident who is absent for a reason
8 permitted under (1), (2), (5) - (12), (16), or (17) of this subsection as the spouse, minor
9 dependent, or disabled dependent of the eligible resident;
- 10 (14) serving as a volunteer in the federal peace corps program;
- 11 (15) because of training or competing as a member of the United States
12 Olympic Team;
- 13 (16) participating for educational purposes in a student fellowship
14 sponsored by the United States Department of Education or by the United States
15 Department of State;
- 16 (17) for any reason consistent with the individual's intent to remain a
17 state resident, provided the absence or cumulative absences do not exceed
- 18 (A) 180 days in addition to any absence or cumulative absences
19 claimed under (3) of this subsection if the individual is not claiming an absence
20 under (1), (2), or (4) - (16) of this subsection;
- 21 (B) 120 days in addition to any absence or cumulative absences
22 claimed under (1) - (3) of this subsection if the individual is not claiming an
23 absence under (4) - (16) of this subsection but is claiming an absence under (1)
24 or (2) of this subsection; or
- 25 (C) 45 days in addition to any absence or cumulative absences
26 claimed under (1) - (16) of this subsection if the individual is claiming an
27 absence under (4) - (16) of this subsection.

28 * **Sec. 4.** AS 43.23.008(c) is amended to read:

29 (c) An otherwise eligible individual who has been eligible for the immediately
30 preceding 10 dividends despite being absent from the state for more than 180 days in
31 each of the related 10 qualifying years is only eligible for the current year dividend if

1 the individual was absent 180 days or less during the qualifying year. This subsection
 2 does not apply to an absence under (a)(9) or (10) of this section or to an absence under
 3 (a)(13) of this section if the absence is to accompany an individual who is absent
 4 under (a)(9) or (10) of this section. **This subsection does not apply to an absence**
 5 **under (a)(3) of this section.**

6 * **Sec. 5.** AS 43.23.008 is amended by adding new subsections to read:

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

- 12 (1) the individual was physically present in the state for at least 30
- 13 cumulative days during the past five years; and
- 14 (2) the individual is a state resident as defined in AS 43.23.095.

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

- 17 (1) the length of time the individual was absent from the state
- 18 compared to the length of time the individual was physically present in the state;
- 19 (2) the frequency and duration of voluntary return trips to the state
- 20 during the past five years;
- 21 (3) whether the individual's intent to return to and remain in the state is
- 22 conditioned on future events beyond the individual's control, such as the financial
- 23 circumstances of the individual or the ability of the individual to find employment in
- 24 the state;
- 25 (4) the ties the individual has established with the state or another
- 26 jurisdiction, as demonstrated by
 - 27 (A) maintenance of a home;
 - 28 (B) payment of resident taxes;
 - 29 (C) registration of a vehicle;
 - 30 (D) registration to vote and voting history;
 - 31 (E) acquisition of a driver's license, business license, or

1 professional license; and

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

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

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

8 * **Sec. 6.** AS 43.23 is amended by adding a new section to read:

9 **Sec. 43.23.009. Dividends of individuals with allowable absences.** (a)

10 Notwithstanding other provisions regarding eligibility for and payment of dividends,
11 the dividend of an individual who was absent from the state during six or more
12 qualifying years, as allowed in AS 43.23.008(a)(1) - (16), shall be paid to that
13 individual on the first subsequent year that the individual is eligible for a dividend
14 without claiming an allowable absence under AS 43.23.008(a)(1) - (16).

15 (b) If an individual who is conditionally eligible for a dividend that has not
16 become payable under (a) of this section fails to be eligible for a subsequent year
17 dividend, the individual's conditional eligibility for the dividend that has not become
18 payable under (a) of this section is terminated, and that dividend may not be paid.

19 (c) If an individual who is conditionally eligible for a dividend that has not
20 become payable under (a) of this section dies before conditional eligibility for the
21 dividend is terminated under (b) of this section, the department shall pay the dividend
22 to a personal representative of the estate.

23 (d) Notwithstanding other provisions, a dividend that has not become payable
24 to an individual under (a) of this section is not subject to levy, execution, garnishment,
25 attachment, or any other remedy for the collection of debt until that dividend becomes
26 payable or is paid to the individual.

27 (e) If an individual who is conditionally eligible for a dividend under (a) of
28 this section has an allowable absence from the state under AS 43.23.008(a) for 20 or
29 more years, the individual's conditional eligibility is terminated.

30 * **Sec. 7.** AS 43.23.025(a) is amended to read:

31 (a) By October 1 of each year, the commissioner shall determine the value of

1 each permanent fund dividend for that year by

2 (1) determining the total amount available for dividend payments,
3 which equals

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

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

9 (C) less the amount necessary to pay prior year dividends from
10 the dividend fund in the current year under AS 43.23.005(h), 43.23.009,
11 43.23.021, and 43.23.055(3) and (7);

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

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

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

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

24 * **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to
25 read:

26 **RETROACTIVITY.** Sections 2, 4, and 5 of this Act are retroactive to January 1, 2012.

27 * **Sec. 9.** Sections 1, 3, 6, and 7 of this Act take effect January 1, 2014.

28 * **Sec. 10.** Except as provided in sec. 9 of this Act, this Act takes effect immediately under
29 AS 01.10.070(c).

DENALI BOROUGH

P. O. Box 480 • Healy, Alaska 99743
Phone (907) 683-1330 • Fax (907) 683-1340
dbgovt@mtaonline.net
www.denaliborough.govoffice.com



David M. Talerico, Mayor

March 14, 2011

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

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 (e) 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.