

SB

117

<TARGET><BILL>SB 117</BILL><SUBJECT>SB
117</SUBJECT><COMM>SSTA27</COMM></TARGET>

ALASKA STATE LEGISLATURE

Session

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State Affairs Committee

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Joint Armed Services Committee

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Member

Administrative Regulation Review

SENATOR BILL WIELECHOWSKI

Sponsor Statement

SB 117: PFDs for Alaska Military Members

Alaskans who choose to protect our state and country by joining the Armed Forces make immense personal sacrifices on the public's behalf. Among these is the requirement to live where stationed, most often not in Alaska. While serving elsewhere, Alaskan members of the military still deserve to receive the Permanent Fund Dividend. Senate Bill 117 will ensure that these brave Alaskans receive all the support they deserve—including their PFDs.

Current Alaska statutes allow for members of the military to continue to receive their PFDs for 10 years after the last year they were in state long enough to otherwise qualify for the PFD. However, after 10 years of absence, they are no longer eligible.

Soldiers who make the military an extended career may not be able to return to Alaska long enough to be eligible for the PFD for many years. In 2010, 67 Alaskan soldiers who applied for the PFD were denied, simply because they had been serving in the military out of state for over the 10-year limit.

Alaska statutes do allow members of the Alaska delegation to the United States Congress, their family, their staff, and their staff's family to exceed the 10-year limit. Alaskans who have proven their residency in Alaska while serving in the military deserve the same respect and treatment. Senate Bill 117 will allow Alaskan soldiers to receive their PFD as long as they are members of the Armed Forces, protecting our country, and waiting for the chance to return to the state they love.

Thank you, and I urge you to join me in supporting Senate Bill 117.

27-LS0768M
Kirsch
3/31/11

CS FOR SENATE BILL NO. 117()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SEVENTH LEGISLATURE - FIRST SESSION**

BY

**Offered:
Referred:**

Sponsor(s): SENATORS WIELECHOWSKI, Huggins, Davis

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**

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

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

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

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SENATOR BILL WIELECHOWSKI

Changes to CS for SB 117, Draft Version "M"

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.

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MEMORANDUM

March 18, 2011

SUBJECT: Constitutional issues with HB 190
(Work Order No. 27-LS0664)

TO: Senator Bill Wielechowski
Attn: Michelle Sydeman

FROM: Lisa Moritz Kirsch
Legislative Counsel



You have asked whether there are constitutional issues raised by HB 190 (version 27-LS0564\M). As I discussed on the telephone with Michelle Sydeman, there are equal protection concerns with this bill.

HB 190 amends the permanent fund dividend ("PFD") eligibility rules to allow an exception to an existing exception. AS 43.23.008(a) lists allowable absences from the state. If a person is absent for more than 180 days per year, that person may still be eligible for a PFD if they were out of state for one of the reasons on the list. However, under AS 43.23.008(c), after receiving dividends under this exception for ten years, a person may not claim the exception for allowable absences. To be eligible for a PFD in the eleventh year the person must not be out of the state for more than 180 days. There is an existing exception to this ten-year rule for members of Congress and the staff and families of members of congress. HB 190 amends AS 43.23.008(c) to allow an additional exception to this ten-year rule for active duty service members and their spouses and dependents. To qualify for this exception, a service member must have received three PFDs before induction into the armed forces.

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

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).

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 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 states 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

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

³ AS 43.23.005.

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 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 impacted by

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.

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) (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).

Senator Bill Wielechowski
March 18, 2011
Page 4

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 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 further questions.

LMK:plm
11-159.plm

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

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.

Alaskans Denied PFD Due to 10-Year Rule Potentially Effected by Exemption

ALN	Absence Reason	Residency Begin	Absence Begin	Years in AK	Years Absent
20100337996	Armed Forces	1994	1998	4	12
20100634300	Armed Forces	1991	1995	4	15
20100440152	Armed Forces	1990	1994	4	16
20100331956	Armed Forces	1993	1998	5	12
20100168141	Accompany Elig Resident	1993	1998	5	13
20100383384	Armed Forces	1984	1989	5	21
20100553847	Armed Forces	1993	1999	6	11
20100666416	Armed Forces	1993	1999	6	11
20100633390	Armed Forces	1992	1998	6	12
20100659041	Armed Forces	1990	1996	6	14
20100640489	Armed Forces	1989	1995	6	15
20100359380	Accompany Elig Resident	1988	1995	7	16
20100504258	Armed Forces	1991	1999	8	11
20100060319	Armed Forces	1995	1995	8	15
20100224001	Armed Forces	1986	1994	8	16
20100657752	Armed Forces	1986	1994	8	16
20100359287	Armed Forces	1989	1998	9	12
20100546076	Armed Forces	1985	1994	9	16
20100226053	Armed Forces	1983	1993	10	17
20100661429	Armed Forces	1987	1999	12	11
20100344847	Armed Forces	1986	1998	12	12
20100653308	Armed Forces	1986	1998	12	12
20100030578	Armed Forces	1985	1997	12	13
20100625020	Armed Forces	1978	1990	12	20
20100663432	Armed Forces	1979	1992	13	18
20100616401	Armed Forces	1984	1998	14	12
20100492325	Armed Forces	1983	1997	14	13
20100628807	Armed Forces	1969	1983	14	27
20100410771	Armed Forces	1984	1999	15	11
20100511793	PostSecondary Education	1983	1998	15	12
20100485271	Armed Forces	1981	1996	15	14
20100418345	Armed Forces	1983	1999	16	11
20100512938	Armed Forces	1976	1993	17	17
20100551498	Armed Forces	1981	1999	18	11
20100527135	Armed Forces	1979	1997	18	13
20100551661	Armed Forces	1979	1997	18	13
20100318799	Armed Forces	1978	1996	18	14
20100422285	Armed Forces	1978	1996	18	14
20100647278	Armed Forces	1978	1996	18	14

20100533711	Armed Forces	1977	1995	18	15
20100525531	Armed Forces	1976	1994	18	16
20100179814	Armed Forces	1979	1998	19	12
20100199664	Armed Forces	1979	1998	19	12
20100322451	Armed Forces	1979	1998	19	12
20100634223	Armed Forces	1979	1998	19	12
20100637597	PostSecondary Education/Military	1978	1997	19	13
20100663775	Armed Forces	1977	1996	19	14
20100559999	Armed Forces	1976	1995	19	15
20100486170	Armed Forces	1975	1994	19	16
20100408746	Armed Forces	1979	1999	20	11
20100640865	Armed Forces	1979	1999	20	11
20100660113	Armed Forces	1979	1999	20	11
20100412722	Armed Forces	1976	1996	20	14
20100550707	Armed Forces	1975	1995	20	15
20100484255	Armed Forces	1974	1994	20	16
20100592290	Armed Forces	1975	1996	21	14
20100640426	Armed Forces	1974	1996	22	14
20100599217	Armed Forces	1972	1994	22	16
20100212744	Armed Forces	1971	1994	23	16
20100338002	Armed Forces	1971	1994	23	16
20100434158	Armed Forces	1974	1998	24	12
20100116037	Armed Forces	1973	1998	25	12
20100293929	Armed Forces	1971	1996	25	14
20100593054	Armed Forces	1958	1998	40	12
20100400982	Armed Forces	1991	1998	7	12
20100636593	Armed Forces	1983	1998	15	12
20100599340	Armed Forces	1984	1998	14	12

AS 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), or (16) of this subsection as the spouse, minor dependent, or disabled dependent of the eligible resident;
- (14)** serving as a volunteer in the federal peach corps program;
- (15)** because of training or competing as a member of the United States Olympic Team;
- (16)** 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) - (15) 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) - (15) 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) - (15) of this subsection if the individual is claiming an absence under (4) - (15) of this subsection.

(b) An individual may not claim an allowable absence under (a)(1) - (15) 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.

DENALI BOROUGH

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David M. Talerico, Mayor

April 5, 2011

Senator Bill Wielechowski
State Capitol Room 101
Juneau, Alaska 99801

Dear Senator Wielechowski,

It is my privilege to write this letter of support for Senate Bill 117. 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 SB117 can accomplish this task, I encourage everyone's wholehearted support.

Thank you for sponsoring this bill.

Sincerely,

A handwritten signature in cursive script that reads "David M. Talerico".

David M Talerico, Mayor
Denali Borough