

HB

52

<TARGET><BILL>HB 52</BILL><SUBJECT>HB
52</SUBJECT><COMM>SSTA28</COMM></TARGET>

SENATE COMMITTEE REPORT

DATE: 2/27/13

FURTHER: Finance

DATE TURNED
IN TO OFFICE: 3/19/13

State Affairs Committee considered HOUSE BILL NO. 52 am

HB 52-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:

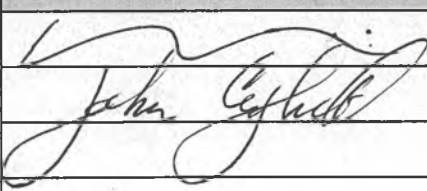
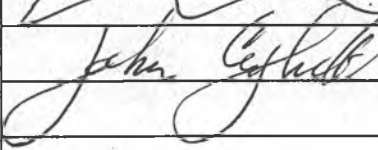
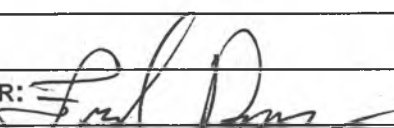
- be replaced with SCS _____ (_____) Same Title Technical Title Change
 New Title/SCR No. _____
- adopt previous SCS _____ (_____) Same Title Technical Title Change
 New Title/SCR No. _____
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

Dept Abbr.	
ADM	LWF
CED	LAW
COR	LEG
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
	wielechowski				✓
	Gifford	✓			
CHAIR: 	Dyson				

Alaska State Legislature

REPRESENTATIVE
ERIC FEIGE
House District 6

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



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

House of Representatives

SPONSOR STATEMENT – HB 52

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

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, through no fault of his own, 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 while at the same time making sure that only those that truly intend to return to Alaska continue to receive a dividend on an allowable absence.

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

Alaska State Legislature

REPRESENTATIVE
ERIC FEIGE
House District 6

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



During Session:
State Capitol Room 126
Juneau, Alaska 99801-1182
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House of Representatives

Sectional Analysis

HB 52 – 28-LS00170\A

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 to rebut the presumption that they do not intend to return to the state.

Sec. 3 – Repeals AS 43.23.008(c) which 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 2013 dividend during the 90 days following the enactment of this bill into law.

Sec. 5 – Makes the new law retroactive to Jan. 1, 2013.

Sec. 6 – Makes the bill effective immediately.

Prepared by the office of Rep. Eric Feige, January 23, 2013

Email: Representative.Eric.Feige@akleg.gov

ALASKA STATE LEGISLATURE

House District 6
Co-Chair House Resources Committee
Transportation Committee
Fisheries Committee
Joint Armed Services Committee



State Capitol Room 126
Juneau, Alaska 99801-1182
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REPRESENTATIVE ERIC A. FEIGE

HB52 Bill Comparison Version 28-LS0170\A.A to 28-LS0170\A

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

HB52 Version 28-LS0170\A was amended on the House Floor with the following changes:

Page 3, lines 17 - 18:

Delete "documentation to the department that establishes, by clear and convincing evidence,"
Insert "clear and convincing evidence to the department"

Page 3, line 23, following "consider":

Insert "all relevant factors, including"

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: HB 52
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB052AMH-DOR-PFD-03-15-13
Title: PFD ALLOWABLE ABSENCE
Sponsor: FEIGE
Requester: (S) STA

Department: Department of Revenue
Appropriation: Taxation and Treasury
Allocation: Permanent Fund Dividend Division
OMB Component Number: 981

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2014 Request	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES	FY 2014	FY 2014					
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 (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes
If yes, by what date are the regulations to be adopted, amended or repealed? 07/01/14

Why this fiscal note differs from previous version:

Second version, to address language change to the bill as ammended on the House floor.

Prepared By:	Dan DeBartolo - Division Director	Phone:	(907)465-4785
Division	Permanent Fund Dividend Division	Date:	03/15/2013 09:00 AM
Approved By:	Bryan D. Butcher, Commissioner	Date:	03/15/13
	Department of Revenue		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. HB 52 (AM)

Analysis

The current PFD 5-year rule in regulation has enough of a gray area that ultimately leads to more of these cases going to formal appeal. At the formal level Administrative Law Judges currently look at the regulation surrounding the 30 day cumulative return requirement over 5 years as a "general" guideline but not a hard and fast rule. That kind of uncertainty makes it difficult for the division to clearly set eligibility policy when making determinations for this rule. The proposed changes to this portion of the bill clarifies the 5-year language and moves it into statute so we are able to say there is a bright line when it comes to the 30-day return requirement and can simply deny applicants if they do not meet that criteria. This would likely reduce the number of appeals that reach the formal level and reduce the associated OAH legal costs.

The current 10-year rule in statute allows an applicant to receive a dividend for 10 consecutive years while having allowable absences in excess of 180 days in the qualifying year. An applicant who is still absent for more than 180 days in an 11th consecutive qualifying year is no longer eligible for the dividend and will have to return to the state for at least 180 days to receive the dividend again. This bill repeals this provision, which allows anyone to have consecutive years of absences of more than 180 days in perpetuity. While the division can measure how many denials we have made for the 10-year rule since 2009 when it went into effect, it is difficult for us to forecast the impact that compounding total may have on future eligibility work. Currently the division has had no more than 107 "10-year rule" denials in a dividend year since 2009. If the 10-year rule is repealed, those applicants that previously believed they were ineligible may now decide to apply, which would not be reflected in our current denial numbers.

Based on what we can measure, the division calculates that the operational cost savings created in Appeals by strengthening the 5-year rule will likely be a fiscal offset for the potential work created in Eligibility by eliminating the 10-year rule.

Regulation changes will need to be adopted in order to implement this bill. If the bill is passed with the retroactivity date to 1/1/2013 as written, we will need to change and repeal portions of 15 AAC 23.163.(g) and (h) and apply those changes retroactively to the 1/1/2013 date for the purposes of uniformly applying eligibility.

In amendment #1, adopted on the House floor, only two wording changes were made to phrasing to ensure ambiguity was removed from the bill. Specifically this change -

Page 3, line 23, following "consider": Insert "all relevant factors, including"

allows the division to consider all factors when reviewing residency ties and not just the ones listed in the bill. This strengthens the divisions ability to render accurate eligibility decisions, and has no fiscal impact.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: HB 52 (A)
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB052-DOR-PFD-01-25-13
Title: PFD ALLOWABLE ABSENCE
Sponsor: FEIGE
Requester: (H) STA

Department: Department of Revenue
Appropriation: Taxation and Treasury
Allocation: Permanent Fund Dividend Division
OMB Component Number: 981

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates				
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OPERATING EXPENDITURES	FY 2014	FY 2014					
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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 (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes
If yes, by what date are the regulations to be adopted, amended or repealed? 07/01/14

Why this fiscal note differs from previous version:

Initial _____

Prepared By: <u>Dan DeBartolo - Division Director</u>	Phone: <u>(907)465-4785</u>
Division: <u>Permanent Fund Dividend Division</u>	Date: <u>01/25/2013 02:36 PM</u>
Approved By: <u>Alicia Egan, Legislative Liaison</u>	Date: <u>01/25/13</u>
<u>Department of Revenue</u>	

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. HB 52

Analysis

The current 10-year rule in statute allows an applicant to receive a dividend for 10 consecutive years while having allowable absences in excess of 180 days in the qualifying year. An applicant who is still absent for more than 180 days in an 11th consecutive qualifying year is no longer eligible for the dividend and will have to reestablish residency ties to receive the dividend again. This bill repeals this provision, which allows anyone to have consecutive years of absences of more than 180 days in perpetuity. While the division can measure how many denials we have made for the 10-year rule since 2009 when it went into effect, it is difficult for us to forecast the impact that compounding total may have on future eligibility work. The division has had no more than 107 "10-year rule" denials in a dividend year since 2009. If the 10-year rule is repealed, those applicants that previously believed they were ineligible may now decide to apply, which would not be reflected in our current denial numbers.

The current PFD 5-year rule in regulation has resulted in many applications going to formal appeal. At the formal level Administrative Law Judges currently look at the regulation surrounding the 30 day cumulative return requirement over 5 years as a "general" guideline when determining eligibility. Legal uncertainty makes it difficult for the division to clearly set eligibility policy when making determinations for this rule. This bill clarifies the 5-year language and moves it into statute, so the PF Division can determine applicants eligibility, by denying the application, if criteria is not met. This would likely reduce the number of appeals that reach the formal level and reduce the associated OAH legal costs.

The division calculates that the operational cost savings created by strengthening the 5-year rule will likely offset the potential work created by eliminating the 10-year rule.

Regulation changes will need to be adopted in order to implement this bill. If the bill is passed with the retroactivity date to 1/1/2013 as written, we will need to change and repeal portions of 15 AAC 23.163.(g) and (h) and apply those changes retroactively to the 1/1/2013 date for the purposes of uniformly applying eligibility.

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR WIELECHOWSKI

TO: HB 52 am

1 Page 3, following line 12:

2 Insert a new bill section to read:

3 **** Sec. 2.** AS 43.23.008(c) is amended to read:

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

12

13 Renumber the following bill sections accordingly.

14

15 Page 4, line 10:

16 Delete all material.

17

18 Renumber the following bill sections accordingly.

19

20 Page 4, lines 15 - 16:

21 Delete "former AS 43.23.008(c), repealed by sec. 3 of this Act,"

22 Insert "AS 43.23.008(c), as it read on the day before the effective date of this Act,"

23

1 Page 4, lines 19 - 20:

2 Delete "The repeal of AS 43.23.008(c) by sec. 3 of this Act and the enactment of
3 AS 43.23.008(e) by sec. 2 of this Act"

4 Insert "AS 43.23.008(e), enacted by sec. 3 of this Act,"

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

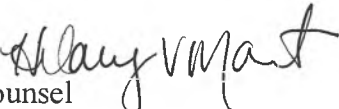
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 15, 2013

SUBJECT: Constitutionality of permanent fund dividend exemption
(HB 52 am) (Work Order No. 28-LS0170\A.A.1)

TO: Senator Bill Wielechowski

FROM: Hilary Martin 
Legislative Counsel

You have asked whether an exemption to the permanent fund dividend (PFD) 10-year rule for active duty military members would be upheld.

In *Ross v. State*, the Alaska Supreme Court considered a challenge under the equal protection clause to the ten-year rule for PFD eligibility and determined that the 10-year rule and exception for Members of the United States Congress, their staffs, or the families of either, did not violate the equal protection clause.¹ The Court explained the equal protection analysis for PFDs:

We have adopted a flexible "sliding scale" test for reviewing equal protection claims. First, we determine what weight should be afforded the constitutional interest impaired by the challenged enactment. The nature of this interest is the most important variable in fixing the appropriate level of review. Second, we examine the purposes served by a challenged statute. Depending on the level of review determined, the state may be required to show only that its objectives were legitimate, at the low end of the continuum, or, at the high end of the scale, that the legislation was motivated by a compelling state interest. Third, an evaluation of the state's interest in the particular means employed to further its goals must be undertaken.

We have previously held that PFDs are not basic necessities or a fundamental right. Instead, a PFD is merely an economic interest and therefore is entitled only to minimum protection under our equal protection analysis. Restrictions on economic interests are reviewed at the low end of the sliding scale. Our review is therefore limited to considering whether this regulation was designed to achieve a legitimate

¹ 286 P.3d 495, 497 (2012).

governmental objective and whether it bears a fair and substantial relationship to accomplishing that objective. At this level of review, we do not determine whether a regulation is perfectly fair to every individual to whom it is applied.^[2]

Therefore, exempting those serving on active duty in the armed forces from the 10-year rule would be considered under the lowest scrutiny. A reviewing court would look at whether the exception for military members "was designed to achieve a legitimate governmental objective and whether it bears a fair and substantial relationship to accomplishing that objective."

In *Ross*, the state argued that the Congressional member exception recognized that absences for Congressional members are distinct from other allowable absences because members and their staff must spend much of their time in Washington, D.C. while maintaining significant ties to Alaska.³ The Court stated that "the legislature apparently concluded that the ties that bind a member of Congress or a congressional staffer to Alaska are strong enough to indicate an intention to return to Alaska indefinitely to reside, thus vitiating concerns of fraud and dividends being paid to non-Alaskans."⁴

An exception for active duty armed forces members would be analyzed in a similar way. The court would look at the reasons for excepting active duty military members and their families from the 10-year requirement. The military members could be seen as similar to members of Congress in that both are serving government in a place other than their state of residence, and the absences are likely to be longer than those for education or illness, for example. Based on the *Ross* case, it seems likely that a court would uphold an exception to the 10-year rule for active duty military members against an equal protection challenge.⁵

If I may be of further assistance, please advise.

HVM:lnd
13-151.lnd

² *Id.* at 498 - 499.

³ *Id.* at 502.

⁴ *Id.*

⁵ As an additional note, the Alaska Supreme Court has held that "'minimal scrutiny under the Alaska Constitution is more demanding than rational basis review under the U.S. Constitution'; thus, if the rule does not violate Alaska's Equal Protection Clause, it does not violate the federal equal protection clause." *Id.* at 499 (quoting *State v. Anthony*, 810 P.2d 155, 157 (Alaska 1991)). Therefore, if the exception for active duty military members did not violate Alaska's equal protection clause, it would likely not violate the federal clause as interpreted in *Zobel v. Williams*, 457 U.S. 55 (1982).

Brian A. Ross
PSC 559 Box 5856
FPO, AP 96377
usnarosses@yahoo.com

January 28, 2013

Dear Members of the Alaska Legislature:

The State of Alaska rightly prides itself on its support of the military, especially in allowing for extended absences for military service and the receipt of PFDs. One Department of Revenue Administrative Law Judge (ALJ) declared:

The Department of Revenue supports an individual's choice to serve in the military and does not believe a person should be forced to choose between service to their country and maintaining their Alaska residency for PFD eligibility purposes.¹

However, since AS43.23.008(c) became law during the 20th Legislature in 1998, the state has forced many military personnel to choose between the two. Recently, another ALJ confirmed the significant problems that the "ten-year rule" has caused by stating, "*This statute places career military personnel in the difficult position of choosing between service to country and receiving a PFD.*"²

In 2008, I was denied a PFD because of AS43.23.008(c). For the first time in 18 years, I was placed in the difficult position of continuing service to country and receiving a PFD. With nearly two decades of active military service behind me at that point, I chose service to country. As a result, my 2010, 2011, and 2012 PFD's, and those of my children, have been denied as well.

I hope that my personal story, combined with some thoughts on how AS43.23.008(c) unfairly penalizes those in the military, will help convince you to support House Bill #52. This bill seeks to right the wrong made in 1998 and stop forcing career military Alaskans to choose between service to country and receiving a PFD.

I was born in Anchorage, Alaska, in 1972, and grew up on the Hillside. While in high school, I determined that I wanted to serve our country in the U.S. Armed Forces. I was nominated to the U.S. Naval Academy (USNA) by former Senator Frank Murkowski and current Congressman Don Young. The late Senator Stevens nominated me for the U.S. Military Academy as well, but I chose to attend USNA with a goal of becoming a career U.S. Marine. My temporary, but extended, absence from Alaska began in 1990 when I started school in Annapolis, MD. I graduated USNA and was commissioned into the U.S. Marine Corps in 1994. I have served our country around the world for the last 18+ years, including six overseas deployments. I have served in Operation IRAQI FREEDOM twice. I am currently stationed with my family in Okinawa, Japan.

Since leaving Alaska at age 17 to serve in the military, I have made dozens of well-documented, non-compulsory visits back to the state. In the last five years alone, I have traveled home for over 75 days, well-exceeding the criteria of the state's "72-hour" and "five-year" rules. Most recently, in 2012, I traveled to the state twice, spending over a month in Anchorage taking care of my dying mother, Barbara. I received the first PFD given to Alaskans in 1982 (remember that first \$1000?) and received one every year until denied in 2008. I have possessed a valid Alaska Driver's License since I was 16 years old. I am registered to vote in Alaska and have voted in Alaska elections for over 20 years. I have titled, registered, and licensed every vehicle I have owned in Alaska since my first truck in 1992. My Last Will and Testament will be executed in the state upon my death. In addition to these continuous and extensive "paper ties," I have significant "physical ties." My

¹ See Enclosure (1), OAH No. 09-0400-PFD, pg 2.

² See Enclosure (2), OAH No. 10-0020-PFD, pg 3.

father lives in Alaska and has lived there continuously since 1968. My two brothers live in Alaska. Since 1999, I have also owned real property in Alaska—part ownership in cabins and five acres of land near Glenallen. My wife, kids, and I most recently enjoyed caribou hunting with my Dad and siblings at our property near Lake Louise following my Mom's death in September 2012.

I am currently stationed overseas, but Alaska is, always has been, and always will be, my state of legal residence and my Home of Record. On all of my PFD applications since entering the service in 1990, I have consistently provided adequate documentation to overcome the state's presumptions on loss of residency at five years. In addition, for the past 20 years, I have signed sworn statements on the PFD applications that I have every intention of returning and retiring in Alaska upon the completion of my military career. And yet, for the last four years, I have been denied a PFD because of the "ten-year rule."

AS43.23.008(c) is discriminatory and makes little public policy sense for the following reasons:

1. Current military retirement benefits are only accrued after 20 years of active service, not before. Therefore, if someone leaves the service after 10 years, he or she gets nothing other than the military experience. However, many personnel who complete at least 10 years of service will consider themselves "over the hump" and choose to "go to 20" to capture federal retirement benefits and maximize his or her service to the country. When the state's identified goal is to encourage long-term residency, having a 10-year cap on PFDs actually discourages long-term residency among military personnel, since most are apt to give up their Alaska residency after a decade and establish it elsewhere. Texas or Florida also have large retired and veteran military populations and are very appealing not because of their warm weather but because of their extensive pro-military benefits (tax free federal retirement, free in-state tuition, etc.). Alaska, in other words, is deterring the return of its career veterans which in turn robs the state of valuable experience. Wouldn't you prefer to encourage those military veterans to instead maintain residency in Alaska during their career so that they can bring that knowledge back to the state when they leave the service?

2. More specifically, each year, Alaska's two US Senators and one US Congressman nominate over a dozen Alaskan high school graduates to the US service academies. The application procedures are stringent and the competition is keen. Do we appoint qualified Alaskans to the service academies with the hope that they complete the five-year minimum service and resign at the first opportunity a.k.a. "five and dive?" I trust not. I think you would agree that the State of Alaska desires these appointees to graduate West Point, Annapolis, and Colorado Springs, agree to serve for 20 years or more, retire, and then bring that education and those experiences back to Alaska for the long-term benefit of the state. Ironically, the "ten-year rule" denies PFDs to Alaskans, who in good faith, pursued a lengthy military career, yet eternally awards PFDs to the Congressmen and staff who nominated them!

3. More generally, under Chapter 40, Title 10, US Code, members of the armed forces are entitled to leave at the rate of 2 ½ calendar days for each month of active service, which equates to 30 days of earned leave per year. Except as specifically authorized by the Secretary of Defense, any leave accumulated in excess of 75 days is lost at the end of every fiscal year. Additionally, the maximum amount of leave a military member can take at any point is generally limited to 60 days. This means that because of Federal law, military personnel can never comply with the 180-day in-state requirement of the statute while remaining on active duty, unless the service member is able to get stationed in the State at some point in his or her career. Isn't due process denied when there is no opportunity for compliance? Of course, getting assigned to Alaska seems easy, since...

4. As you know, Alaska has several military bases. In fact, according to its website, over 21,000 military personnel are stationed in Alaskan Command. No doubt, nearly every day, you have seen countless US Army and US Air Force personnel around Anchorage and Fairbanks. Soldiers and Airmen have thousands of opportunities to return to Alaska and get stationed here on a routine basis, allowing them to "reset the ten-year clock" during a 20-year career. Unfortunately, US Marine Corps and Navy personnel have extremely limited opportunities. Over the holidays, you probably saw Marines in Dress Blue uniforms soliciting

for Toys for Tots, but nearly every one of those Marines are reservists. In fact, there are only a handful Navy and Marine Corps personnel actively stationed in Alaska. Simply put, AS43.23.008(c) actually discriminates between branches of the armed forces since, as a Marine, I don't have nearly the same opportunities to fulfill my career in the state as a Soldier or Airman. Isn't the denial of opportunity the very definition of discrimination?

I have spent the last four years fighting against and attempting to change AS43.23.008(c) through the administrative appeals process and the Alaska judicial system. As many of you know, I recently lost my Alaska Supreme Court appeal for my 2009 PFD. A minor setback, I will continue to press forward with the appeals on my 2010, 2011, and 2012 PFDs until the law is changed. I believe strongly that the current statute unfairly penalizes career military personnel for the reasons noted above. For good measure, I have applied for my 2013 PFD and those of my children just as I always have done.

But I could certainly use your help in the legislative arena. Since the judicial branch doesn't seem interested in declaring AS43.23.008(c) unconstitutional, perhaps the distinguished members of the Alaska Legislature could repeal the statute altogether? Recognizing the primacy of legislative action while denying my 2009 PFD appeal, Administrative Law Judge Jeffrey Friedman noted:

Military personnel are federal employees who are serving their country in positions as honorable as those working in Congress. The legislative history does not indicate why Congressional staff and Members of Congress were excluded from subsection (c)... Whatever the reason, deciding which out-of-state residents qualify for a PFD is a policy question that is appropriately left to the legislature to resolve.³

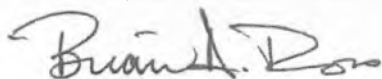
Recently, the state openly acknowledged that certain careers, other than Congressmen, may require an Alaskan resident to remain out of state for a longer duration than 10 years. Lisa Moritz Kirsch, Legislative Counsel, Division of Legal and Research Services in a Memorandum on Constitutional Issues dated March 18, 2011, recently argued:

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.⁴

I hope that you consider my personal story and the information presented above and decide to resolve this policy question in favor of some of us Alaskans with "unique" career choices. Please help stop career military Alaskans from having to choose between service to country and receiving a PFD.

It is the right thing to do.

Sincerely, and Semper Fidelis,



Brian A. Ross
Lifelong Alaskan
US Marine

**** The views expressed in this letter represent the views of a private Alaskan resident who serves as a US Marine and do not constitute official endorsement by the Department of Defense or the US Marine Corps.

³ See Enclosure (2), OAH No. 10-0020-PFD, pg 4.

⁴ See Enclosure (3), HB190 Legal Opinion, pg 2. See also footnote 16 in Enclosure (2), OAH No. 10-0020-PFD, pg 3.

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 2012

- 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 2012

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 2012

- 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 2012

- 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 2012

- 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 2012

- 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 52

- 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 52

- 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 52

- 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 52

- 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 52

- 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 52

- 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 52

- 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 clear and convincing evidence to the department 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 52

- 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 all relevant factors, including**
 - **(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;**

Allowable Absence After HB 52

- 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 52

- 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.**

5 and 10 Year Denials

5 Year Absence Denials		
Dividend Year	Military	Count
2009	N	45
2009	Y	85
Subtotal		130
2010	N	62
2010	Y	115
Subtotal		177
2011	N	53
2011	Y	147
Subtotal		200
2012	N	63
2012	Y	122
Subtotal		185
Military Total		469
Non-Military Total		223
Grand Total		692

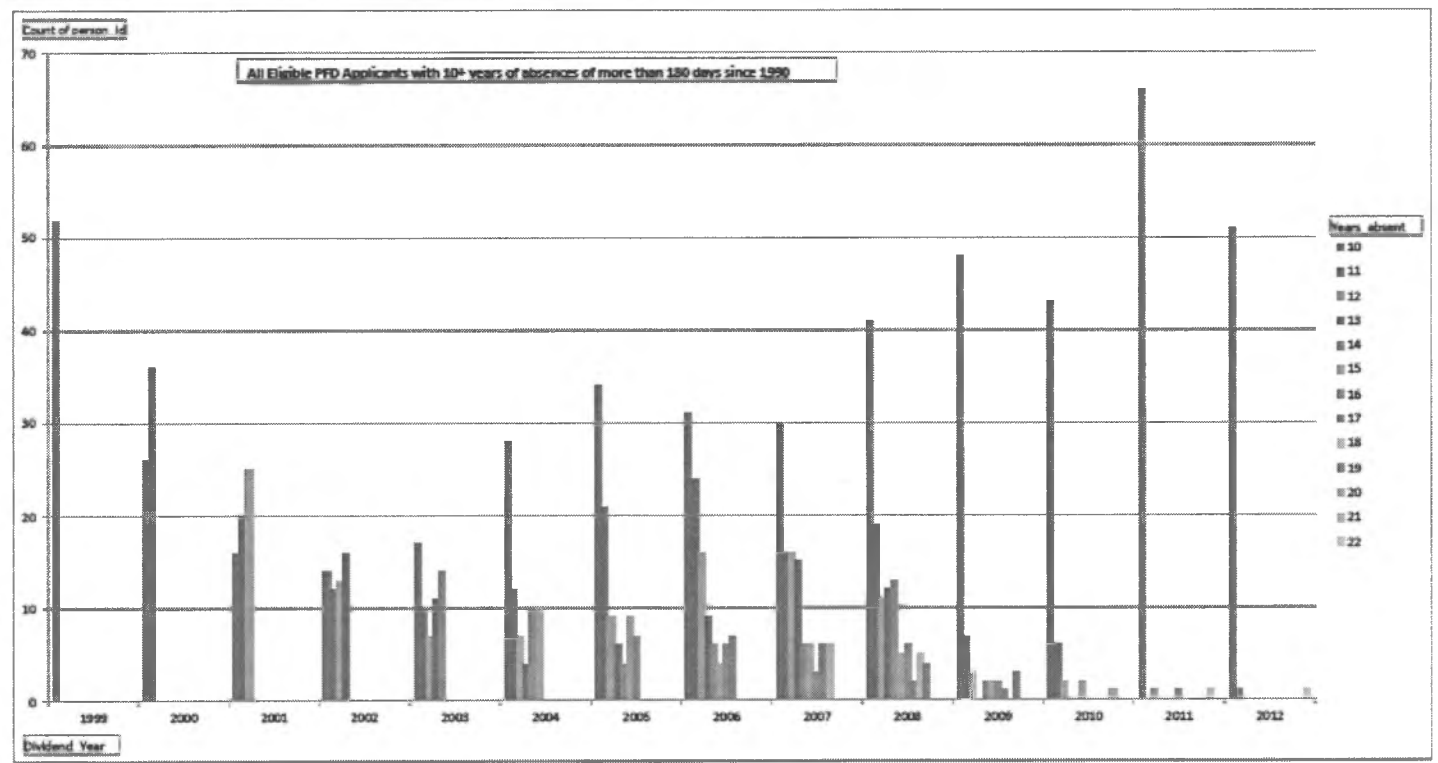
10 Year Absence Denials		
Dividend Year	Military	Count
2009	N	9
2009	Y	50
Subtotal		59
2010	N	25
2010	Y	82
Subtotal		107
2011	N	19
2011	Y	69
Subtotal		88
2012	N	30
2012	Y	65
Subtotal		95
Military Total		266
Non-Military Total		83
Grand Total		349

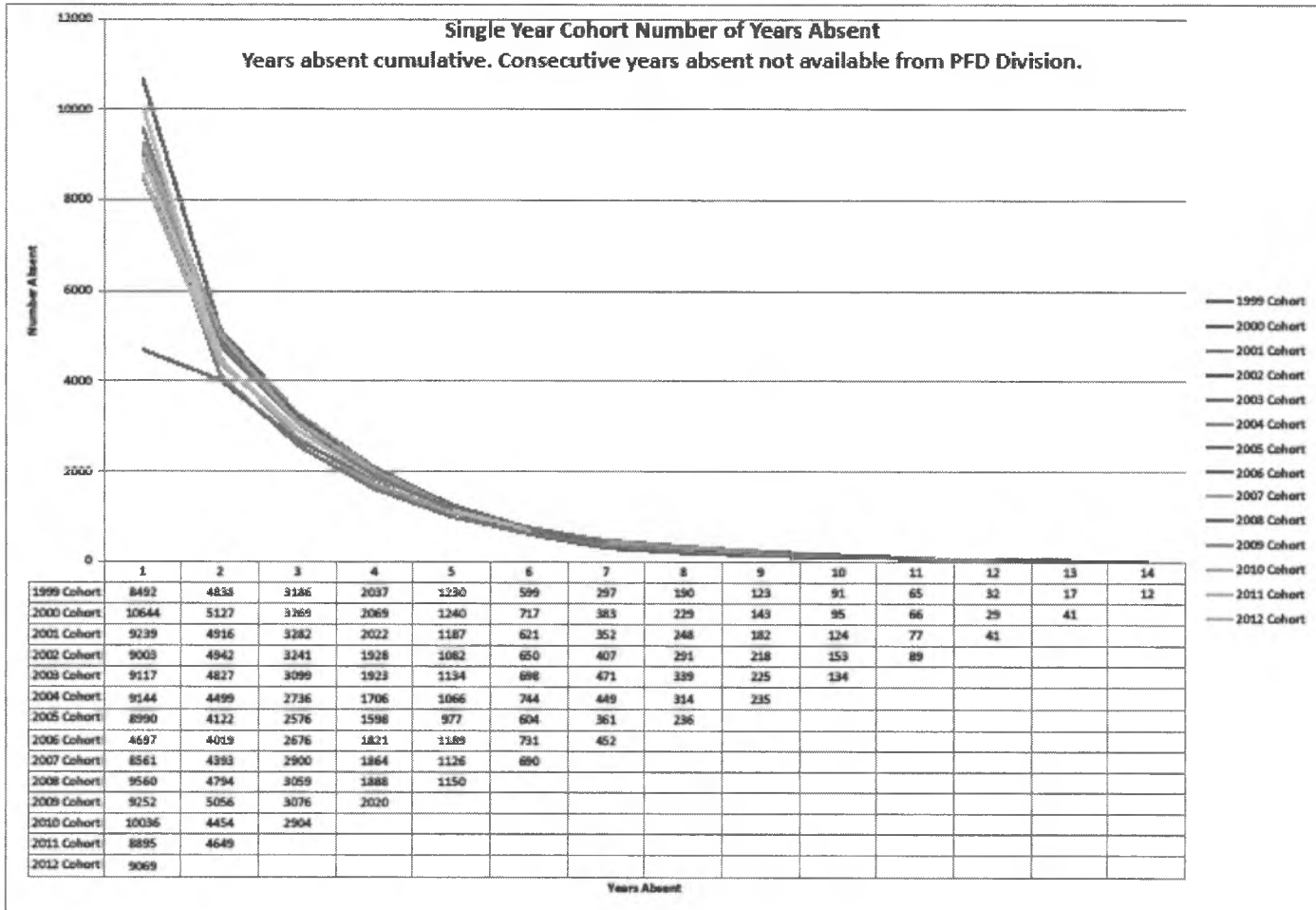
HB 52 Presentation to Senate State Affairs
Committee 3/19/2013

Eligible Absences > 10 Years

Count of person_id	Column Labels	10	11	12	13	14	15	16	17	18	19	20	21	22	Grand Total
1999		52													52
2000		25	36												62
2001		16	20	23											61
2002		14	12	13	16										55
2003		17	10	7	11	14									59
2004		28	12	7	4	10	10								71
2005		34	21	9	6	4	9	7							90
2006		31	24	16	9	6	4	6	7						103
2007		30	16	16	15	6	6	3	6	6					104
2008		41	19	11	12	13	5	6	2	3	4				118
2009		48	7	3	2	2	2	1	3						68
2010		43	6	2		2						1			54
2011		66		1			1						1		69
2012		51	1											1	53
Grand Total		497	184	110	73	55	38	25	16	11	7	1	1	1	1029

← Ten Year Rule Applied Within Red Area





Alaska Statute Pertaining to Permanent Fund Dividends (Application and Allowable Absence)
AS 43.23.005 to AS 43.23.017 and Definitions AS 43.23.095

Chapter 43.23. PERMANENT FUND DIVIDENDS

Revisors Notes -

Chapter 99, SLA 1985 established, subject to a contingency requiring legislative action, an annuity program funded by permanent fund dividends. The contingency was never satisfied and the sections establishing the proposed annuity program were repealed by Sec. 17, ch. 20, SLA 2002.

Cross References -

For 1982 permanent fund dividend distribution, see Sec. 19, ch. 102, SLA 1982, in the Temporary and Special Acts; for provisions relating to the Permanent Fund Corporation, see AS 37.13.

Administrative Code -

For permanent fund dividend distribution, see 7 AAC 38.

For Alaska permanent fund dividend, see 15 AAC 23.

AG Opinions -

If the legislature enacts any other distribution program which is consistent with the intent of the permanent fund dividend law (AS 43.23), any appropriation to implement that program will be exempt from the appropriation limit of Sec. 16, art. IX, of the state constitution. 1983 Op. Att'y Gen. No. 01.

Decisions -

Statutory scheme of former AS 43.23.010 held unconstitutional. - The statutory scheme under former AS 43.23.010, by which the state distributes income derived from its natural resources to the adult citizens of the state in varying amounts, based on the length of each citizen's residence, violated the equal protection rights of newer state citizens. *Zobel v. Williams*, 457 U.S. 55, 102 S. Ct. 2309, 72 L. Ed. 2d 672 (1982).

The state objectives of creating a financial incentive for individuals to establish and maintain Alaska residence, and assuring prudent management of the Permanent Fund and the state's natural and mineral resources are not rationally related to the distinctions Alaska seeks to make in the dividend program between newer residents and those who have been in the state since 1959. *Zobel v. Williams*, 457 U.S. 55, 102 S. Ct. 2309, 72 L. Ed. 2d 672 (1982).

Objective to reward citizens for past contributions is not a legitimate state purpose since this reasoning could open the door to state apportionment of other rights, benefits and services according to length of residency and would permit the states to divide citizens into expanding numbers of permanent classes, a result which would be clearly impermissible. *Zobel v. Williams*, 457 U.S. 55, 102 S. Ct. 2309, 72 L. Ed. 2d 672 (1982).

This statute does not impose any threshold waiting period on those seeking dividend benefits; persons with less than a full year of residency are entitled to share in the distribution. Nor does the statute purport to establish a test of the bona fides of state residence. Instead, the dividend statute creates fixed, permanent distinctions between an ever increasing number of perpetual classes of concededly bona fide residents, based on how long they have been in the state. *Zobel v. Williams*, 457 U.S. 55, 102 S. Ct. 2309, 72 L. Ed. 2d 672 (1982).

Permanent fund dividend payments were made for "public purpose" within the meaning of Alaska Const., Art. IX, Sec. 6. *Beattie ex rel. Beattie v. United States*, 635 F. Supp. 481 (D. Alaska 1986), *aff'd sub nom. Greisen ex rel. Greisen v. United States*, 831 F.2d 916 (9th Cir. 1987), cert. denied, 485 U.S. 1006, 108 S. Ct. 1469, 99 L. Ed. 2d 699 (1988).

Permanent fund dividend payments subject to federal income tax. - Permanent Fund dividend payments are income and, since these payments are not excludable from gross income as "gifts", they are therefore subject to the federal income tax. *Beattie ex rel. Beattie v. United States*, 635 F. Supp. 481 (D. Alaska 1986), *aff'd sub nom. Greisen ex rel. Greisen v. United States*, 831 F.2d 916 (9th Cir. 1987), cert. denied, 485 U.S. 1006, 108 S. Ct. 1469, 99 L. Ed. 2d 699 (1988).

Payments received under Alaska's Permanent Fund Dividend Program are subject to federal income tax. *Greisen ex rel. Greisen v. United States*, 831 F.2d 916 (9th Cir. 1987), cert. denied, 485 U.S. 1006, 108 S. Ct. 1469, 99 L. Ed. 2d 699 (1988).

Property of bankruptcy estate. - Debtor's permanent fund dividend, sent to IRS by the State of Alaska, is the property of the bankruptcy estate and subject to turnover by the IRS pursuant to 11 U.S.C. Sec. 541 and 542. Interest of IRS in permanent fund dividend was no greater than that of any other levying creditor. If levy is valid, IRS holds a perfected lien against debtor's permanent fund dividend. *Camacho v. United States*, 177 Bankr. 667 (Bankr. D. Alaska 1994).

Sec. 43.23.005. Eligibility.

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

- (1) applies to the department;
- (2) is a state resident on the date of application;
- (3) was a state resident during the entire qualifying year;
- (4) has been physically present in the state for at least 72 consecutive hours at some time during the prior two years before the current dividend year;
- (5) is
 - (A) a citizen of the United States;
 - (B) an alien lawfully admitted for permanent residence in the United States;
 - (C) an alien with refugee status under federal law; or
 - (D) an alien that has been granted asylum under federal law;
- (6) was, at all times during the qualifying year, physically present in the state or, if absent, was absent only as allowed in AS 43.23.008; and
- (7) was in compliance during the qualifying year with the military selective service registration requirements imposed under 50 U.S.C. App. 453 (Military Selective Service Act), if those requirements were applicable to the individual, or has come into compliance after being notified of the lack of compliance.

(b) [Repealed, Sec. 18 ch 4 SLA 1992].

(c) A parent, guardian, or other authorized representative may claim a permanent fund dividend on behalf of an unemancipated minor or on behalf of a disabled or an incompetent individual who is

eligible to receive a payment under this section. Notwithstanding (a)(2) - (4) of this section, a minor is eligible for a dividend if, during the two calendar years immediately preceding the current dividend year, the minor was born to or adopted by an individual who is eligible for a dividend for the current dividend year.

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

(1) during the qualifying year, the individual was sentenced as a result of conviction in this state of a felony;

(2) during all or part of the qualifying year, the individual was incarcerated as a result of the conviction in this state of a

(A) felony; or

(B) misdemeanor if the individual has been convicted of

(i) a prior felony as defined in AS 11.81.900; or

(ii) two or more prior misdemeanors as defined in AS 11.81.900.

(e) [Repealed, Sec. 64 ch 21 SLA 1991].

(f) The commissioner may waive the requirement of (a)(4) of this section for an individual absent from the state

(1) in a time of national military emergency under military orders while serving in the armed forces of the United States, or for the spouse and dependents of that individual; or

(2) while in the custody of the Department of Health and Social Services in accordance with a court order under AS 47.10 or AS 47.12 and placed outside of the state by the Department of Health and Social Services for purposes of medical or behavioral treatment.

(g) For purposes of applying (d)(1) of this section, the date the court imposes a sentence or suspends the imposition of sentence shall be treated as the date of conviction. For purposes of applying (d)(2)(B) of this section, multiple convictions arising out of a single criminal episode shall be treated as a single conviction.

(h) If an individual who would otherwise have been eligible for a permanent fund dividend dies after applying for the dividend but before the dividend is paid, the department shall pay the dividend to a personal representative of the estate or to a successor claiming personal property under AS 13.16.680. If an individual who would otherwise have been eligible for a dividend and who did not apply for the dividend dies during the application period, a personal representative of the estate or a successor claiming personal property under AS 13.16.680 may apply for and receive the dividend. If an individual who received a dividend for the year immediately before the qualifying year and who would otherwise have been eligible for a dividend dies during the qualifying year after having been a state resident for at least 180 days immediately before the date of death, notwithstanding (a)(1) - (3) and (a)(6) of this section, a personal representative of the estate or a successor claiming personal property under AS 13.16.680 may apply for and receive the dividend. Notwithstanding AS 43.23.011, an application for a

dividend may be filed by the personal representative or the successor under this subsection at any time before the end of the application period for the next dividend year.

History -

(Sec. 1 ch 102 SLA 1982; am Sec. 1 ch 57 SLA 1987; am Sec. 1 ch 54 SLA 1988; am Sec. 1 ch 159 SLA 1988; am Sec. 2, 3 ch 107 SLA 1989; am Sec. 1 ch 68 SLA 1990; am Sec. 46, 62 ch 21 SLA 1991; am Sec. 1 ch 68 SLA 1991; am Sec. 4 - 8, 18 ch 4 SLA 1992; am Sec. 2, 3 ch 46 SLA 1996; am Sec. 2 - 4 ch 44 SLA 1998; am Sec. 1 ch 91 SLA 1998; am Sec. 25 ch 92 SLA 2001; am Sec. 5 ch 89 SLA 2002; am Sec. 5 ch 64 SLA 2005; am Sec. 1 ch 22 SLA 2010)

Cross References -

For legislative findings in connection with the 1989 amendment to (a) of this section, see Sec. 1(a), ch. 107, SLA 1989 in the Temporary and Special Acts; for the application deadlines for minors who qualified for a dividend for 1992 because of the 1992 amendment to (c) of this section, see Sec. 19, ch. 4, SLA 1992 in the Temporary and Special Acts; for legislative purpose relating to the 1996 amendments amending subsection (d) and adding subsection (g), see Sec. 1, ch. 46, SLA 1996 in the Temporary and Special Acts.

Amendment Notes -

The first 1998 amendment, effective January 1, 1999, rewrote subsection (a); in subsection (d) substituted "qualifying year" for "calendar year immediately preceding that dividend year" in paragraphs (1) and (2); and, effective January 1, 2000, inserted "for at least 72 consecutive hours" in paragraph (a)(4).

The second 1998 amendment, effective June 13, 1998, added subsection (h).

The 2001 amendment, effective July 6, 2001, in subparagraph (d)(2)(B), added item (i) and the item (ii) designation, and, in item (ii), substituted "misdemeanors" for "crimes."

The 2002 amendment, effective January 1, 2004, added paragraph (a)(7) and made related stylistic changes.

The 2005 amendment, effective July 1, 2005, in subsection (f), deleted "In a time of national military emergency" from the beginning of the introductory language, added the paragraph (1) designation and added that language at the beginning of paragraph (1), and added paragraph (2).

The 2010 amendment, effective January 1, 2011, in subsection (h), inserted the third sentence, added "under this subsection" in the fourth sentence, and made stylistic changes.

Editors Notes -

Section 6, ch. 46, SLA 1996 provides that the 1996 amendments that amended subsection (d) and added (g) "apply only to individuals convicted of crimes committed after December 31, 1996" and that "[c]onvictions for crimes committed before January 1, 1997, may not be considered in determining the number of prior convictions for purposes of applying AS 43.23.005(d)(2)(B)."

Under Sec. 6, ch. 89, SLA 2002, paragraph (a)(7) applies to a person who applies for a permanent fund dividend on or after January 1, 2004.

History Reports -

For legislative letter of intent relating to the enactment of subsection (f) by Sec. 1 ch. 68, SLA 1991 (HCS CSSB 98(FIN)), see 1991 Senate Journal, pages 256, 257.

Decisions -

Constitutionality. - The 1989 amendment to paragraph (a)(2) of this section, imposing a two-year residency requirement for applicants, was unconstitutional; the one year requirement in subsection (e) is the applicable period, since no appeal is pending. *Lindly, et al. v. Malone*, Superior Court, 3rd Jud. Dist. 3AN-90-02586 CI (1990) (The 1991 amendment codified this decision.).

Subsection (d) does not violate the equal protection clause of the United States Constitution and/or the Alaska Constitution. *State v. Anthony*, 810 P.2d 155 (Alaska 1991).

Subsection (d), which makes incarcerated felons ineligible for permanent fund dividends, does not violate the ex post facto clause of either the United States or the Alaska Constitutions. *State v. Anthony*, 816 P.2d 1377 (Alaska 1991).

Denial of a permanent fund dividend to an incarcerated felon was not a separate punishment in addition to his sentence for murder for purposes of double jeopardy. *Hertz v. Storer*, 943 P.2d 725 (Alaska 1997).

The alien eligibility requirement of subparagraph (a)(5)(B) is constitutional because the department has the authority to interpret the statutory language in a manner that meets the purposes of the permanent fund dividend program and that comports with federal law. *State v. Andrade*, 23 P.3d 58 (Alaska 2001).

No constitutional protection of permanent fund dividend. - Changes in the qualifying date for a permanent fund dividend (pfd) do not violate the constitutional rights of new residents. Plaintiffs, as new residents, had only an inchoate expectancy of a pfd which is not afforded constitutional protection. *Underwood v. State*, 881 P.2d 322 (Alaska 1994).

Dividends received on behalf of minors. - Where a divorced mother borrowed money from her childrens' permanent fund dividends, it was not error on the part of the court to deny the former husband's request that the mother be ordered to repay the amount taken. *Hayes v. Hayes*, 922 P.2d 896 (Alaska 1996).

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).

Dividends properly withheld. - The state department of revenue properly withheld appellant's permanent fund dividends (PFDs) for 1992, 1993, and 1994 because the absences he reported from his primary Alaska residence exceeded the 180-day period allowed under former AS 43.23.005(a), 43.23.095(8), and their implementing regulations. *Schikora v. State*, 7 P.3d 938 (Alaska 2000).

Applied in *Dep't of Revenue v. Cosio*, 858 P.2d 621 (Alaska 1993); *State, Dep't of Revenue v. Wilder*, 929 P.2d 1280 (Alaska 1997).

Stated in *Alaska Oil Co. v. Alaska*, 45 Bankr. 358 (D. Alaska 1985).

Cited in *Standard Alaska Prod. Co. v. Schaible*, 874 F.2d 624 (9th Cir. 1989); *Lee v. Cox*, 790 P.2d 1359 (Alaska 1990); *Morgan v. Department of Revenue*, 813 P.2d 295 (Alaska 1991); *Handley v. State, Dep't of Revenue*, 838 P.2d 1231 (Alaska 1992); *United States v. Pleier*, 849 F. Supp. 1321 (D. Alaska 1994).

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).

Sec. 43.23.010. Eligibility for permanent fund dividend. [Repealed, Sec. 22 ch 102 SLA 1982].

Repealed or Renumbered

Sec. 43.23.011. Application period.

(a) An application for a permanent fund dividend shall be filed during the period that begins January 1 and ends March 31 of that dividend year.

(b) An otherwise eligible individual may apply for a current year dividend after March 31 of that year if the individual was eligible during the application period under (a) of this section for hostile fire or imminent danger pay while serving on active duty as a member of the armed forces of the United States. The individual must apply under this subsection within 90 days after the last day the individual was eligible for hostile fire or imminent danger pay. If the individual was eligible for hostile fire or imminent danger pay on March 31 of the current dividend year, the 90-day application period extension begins on the first day after March 31 that the individual was no longer eligible for the pay.

(c) The commissioner may permit an individual to apply for a permanent fund dividend for any year after the application deadline under (a) or (b) of this section if the individual

(1) at any time during the application period for that dividend established in (a) or (b) of this section,

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

(B) was eligible for hostile fire or imminent danger pay; and

(2) demonstrates a reasonable cause for the delay in applying for that dividend.

History -

(Sec. 9 ch 4 SLA 1992; am Sec. 1 ch 112 SLA 2004; am Sec. 22 ch 42 SLA 2006)

Cross References -

For provisions extending the deadlines for application for 2003 and 2004 dividends by individuals who were "eligible for hostile fire or imminent danger pay while serving in active duty as a member of the armed forces of the United States during the application period" for the respective dividends, see Sec. 2, ch. 112, SLA 2004, in the 2004 Temporary and Special Acts.

Amendment Notes -

The 2004 amendment, effective June 30, 2004, added subsections (b) and (c).

The 2006 amendment, effective July 1, 2006, substituted "January 1" for "January 2" in subsection (a).

Decisions -

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

Sec. 43.23.015. Application and proof of eligibility.

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

(b) The department shall prescribe and furnish an application form for claiming a permanent fund dividend. The application must include notice of the penalties provided for under AS 43.23.035 and contain a statement of eligibility and a certification of residency.

(c) Except as provided in (d) of this section or as may be provided by regulations adopted by the department, an individual must personally sign the application for permanent fund dividends, including the certification of residency required under (b) of this section.

(d) The application and certification of residency of an unemancipated individual under 18 years of age or of a disabled or an incompetent individual must be signed by the individual's parent, legal guardian, or other authorized representative. An individual may complete, sign, and file an application on behalf of a member of the armed forces of the United States who is serving on active duty outside of the United States if the individual has a power of attorney from the member of the armed forces that authorizes, in specific or general terms, the individual to file that application.

(e) If a public agency claims a permanent fund dividend on behalf of an individual, the public agency shall hold the dividend in trust for the individual. Money held in trust under this subsection shall be invested by the commissioner in accordance with AS 37.10.070.

(f) A minor or a disabled or an incompetent individual may not maintain a claim against the state or an officer or employee of the state based on the manner in which the parent, guardian, or authorized representative other than a public agency of the state managed or disposed of permanent fund dividends received on behalf of the minor or disabled or incompetent individual.

(g) If an individual is aggrieved by a decision of the department determining the individual's eligibility for a permanent fund dividend or the individual's authority to claim a permanent fund dividend on behalf of another, the individual may, upon payment of a \$25 appeal fee, request the department to review its decision. Within 12 months after the administrative appeal is filed, the department shall provide the

individual with a final written decision. If the individual is aggrieved by the decision of the department after all administrative proceedings, the individual may appeal that decision to the superior court in accordance with AS 44.62.560. An appeal to the court under this section does not entitle the aggrieved individual to a trial de novo. The appeal shall be based on the record of the administrative proceeding from which appeal is taken and the scope of appeal is limited to matters contained in the record of the administrative proceeding. If, as a result of an administrative proceeding or a court appeal, the individual prevails, the \$25 appeal fee shall be returned to the individual by the department.

(h) The penalty and enforcement provisions of AS 43.23.035 apply to an individual who claims a permanent fund dividend on behalf of another.

(i) An indigent individual may apply for a waiver of the appeal fee required under (g) of this section. The department shall prescribe and furnish a form for that purpose. The department shall grant the waiver if, during the year immediately preceding the year the form is submitted to the department, the individual was a member of a family with an income equal to or less than the federal poverty guidelines for Alaska set by the United States Department of Health and Human Services.

(j) The application form for claiming a permanent fund dividend must include a place for the applicant to voluntarily indicate that the applicant is a veteran, the branch of service, including the Alaska Territorial Guard, and the dates of service. Notwithstanding AS 43.23.017, the department shall release information provided under this subsection to the Department of Military and Veterans' Affairs and may not otherwise release the information. The Department of Military and Veterans' Affairs may only release the information to congressionally chartered veterans service organizations in the state. The application form must contain notice that providing the information under this subsection is voluntary, that the information will be released as provided in this subsection, and that the veterans service organizations are not required to keep it confidential.

History -

(Sec. 1 ch 102 SLA 1982; am Sec. 2 ch 159 SLA 1988; am Sec. 4 ch 107 SLA 1989; am Sec. 2, 3 ch 68 SLA 1990; am Sec. 47 ch 21 SLA 1991; am Sec. 2 ch 68 SLA 1991; am Sec. 10, 11 ch 4 SLA 1992; am Sec. 1, 2 ch 18 SLA 1996; am Sec. 1 ch 83 SLA 2005; am Sec. 1 ch 90 SLA 2008)

Amendment Notes -

The 2005 amendment, effective January 1, 2006, added the second sentence in subsection (d).

The 2008 amendment, effective September 11, 2008, added subsection (j).

Decisions -

Extension of filing time denied. - Department of revenue ruling that an extension of time for filing an application for a permanent fund dividend was not available because the information submitted in the original application was deceptive was reasonable and not arbitrary, where applicant submitted false residency verifications containing forged signatures. *Handley v. State, Dep't of Revenue*, 838 P.2d 1231 (Alaska 1992).

Prohibiting permanent fund distribution to illegal aliens. - An administrative regulation, which restricted permanent fund dividend eligibility to aliens with resident alien or refugee status, fell within the delegated authority of the commissioner of revenue to regulate the eligibility of individuals for

permanent fund dividends. The regulation was also constitutional under the state and federal equal protection clauses. Limiting the distribution of dividends to those who are lawful permanent residents is rationally related to legitimate objectives of the dividend program. *Dep't of Revenue v. Cosio*, 858 P.2d 621 (Alaska 1993).

Out-of-state students. - Regulation 15 AAC 23.175(c)(2) (now repealed) is consistent with subsection (a) because it defines "absent only for secondary or postsecondary education" and thereby resolves the question of who is a permanent resident qualified to receive a permanent fund dividend. The regulation is not arbitrary or unreasonable. Thus, an out-of-state part-time student was properly denied dividend. *State, Dep't of Revenue v. Bradley*, 896 P.2d 237 (Alaska 1995).

Military spouse. - In the case of a military spouse, although the former allowable absence requirement depended on the residency of her spouse, it was not accurate to characterize that requirement as "the principal factor" which determined her residency. *State, Dep't of Revenue v. Hale*, 978 P.2d 1276 (Alaska 1999).

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

Sec. 43.23.016. Voter registration.

The commissioner shall include, at the department's expense, voter registration forms prepared under AS 15.07.070(b) in the permanent fund dividend application packet. The forms must include a notice that an individual is not required to register to vote in order to be eligible to receive a permanent fund dividend. For purposes of maintaining accurate voter registration records, the commissioner shall provide the director of elections with the mailing addresses of all applicants for a permanent fund dividend.

History -

(Sec. 1 ch 48 SLA 1992; am Sec. 91 ch 82 SLA 2000)

Amendment Notes -

The 2000 amendment, effective July 1, 2000, inserted ", at the department's expense," and substituted "in the permanent fund dividend application packet" for "with permanent fund dividend applications" in the first sentence and added the second and third sentences.

Sec. 43.23.095. Definitions.

In this chapter,

(1) "Alaska permanent fund" means the fund established by art. IX, Sec. 15 of the state constitution;

(2) "disabled" means physically or mentally unable to complete and sign an application due to a serious emotional disturbance, visual, orthopedic, or other health impairment, or developmental disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism or other cause; "disabled" does not mean "incompetent";

(3) "dividend fund" means the fund established by AS 43.23.045;

(4) "individual" means a natural person;

(5) "permanent fund dividend" means a right to receive a payment from the dividend fund;

(6) "qualifying year" means the year immediately preceding January 1 of the current dividend year;

(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;

(8) "year" means a calendar year.

History -

(Sec. 1 ch 102 SLA 1982; am Sec. 3 ch 55 SLA 1983; am Sec. 6 ch 68 SLA 1990; am Sec. 38 ch 168 SLA 1990; am Sec. 16 ch 4 SLA 1992; am Sec. 2 ch 73 SLA 1996; am Sec. 7, 8 ch 44 SLA 1998)

Cross References -

For legislative findings and intent concerning the addition of (8)(H) - (J) by Sec. 2, ch. 73, SLA 1996, see Sec. 1, ch. 73, SLA 1996 in the Temporary and Special Acts.

Amendment Notes -

The 1998 amendment, effective January 1, 1999, rewrote paragraph (7) and added paragraph (6).

Decisions -

Equal protection. - Argument of claimant, denied permanent fund dividend because of absence from state for more than 180 days, that he was not provided the same benefits as members of groups who were absent for one of the (former) listed excusable absences, and as such his equal protection rights were violated, was without merit. *Church v. State*, 973 P.2d 1125 (Alaska 1999).

Petitioner's absence from the state for more than 180 days in a year for an "inexcusable" reason rendered him ineligible for permanent fund dividends (PFDs), even though he would have been eligible had he been a state employee, since the rules bore a fair and substantial relationship to the legitimate governmental objectives of promoting state residency, preventing fraud in the distribution of PFDs, and simplifying adjudication procedures. *Eldridge v. State*, 988 P.2d 101 (Alaska 1999).

Procedural due process. - Claimant who was ineligible for a permanent fund dividend as a matter of law because he was out of the state for more than 180 days, and whose absence did not fit into one of the (former) statutory or regulatory excusable absence categories, was not denied his procedural due process rights when his appeal was denied in a summary adjudication, since, in the

absence of a factual dispute, he was not entitled to an evidentiary hearing. *Church v. State*, 973 P.2d 1125 (Alaska 1999).

Substantive due process. - The statutory and regulatory scheme denying permanent fund dividend to claimant absent from the state for more than 180 days, whose absence did not fit one of the (former) excused categories, does not violate substantive due process. *Church v. State*, 973 P.2d 1125 (Alaska 1999).

Right of interstate travel. - The permanent fund dividend regulations and statutes are bona fide requirements which ensure that benefits provided for residents are enjoyed only by residents, and as such do not violate the constitutional right of interstate travel. *Church v. State*, 973 P.2d 1125 (Alaska 1999).

Defining permanent resident. - The legislature has given broad discretion to the commissioner to determine the factors which define a permanent resident. *Church v. State*, 973 P.2d 1125 (Alaska 1999).

Requirement of intent to return to state. - A serviceman who was absent more than five years failed to establish intent to return to the state where the evidence showed that he returned for a brief visit only once in a 12-year period, he maintained only motor vehicle registration, voter registration, driver's license and bar membership in Alaska, and he had not requested reassignment to Alaska. *State, Dep't of Revenue v. Wilder*, 929 P.2d 1280 (Alaska 1997).

Prohibiting permanent fund distribution to illegal aliens. - An administrative regulation, which restricted permanent fund dividend eligibility to aliens with resident alien or refugee status, fell within the delegated authority of the commissioner of revenue to regulate the eligibility of individuals for permanent fund dividends. The regulation was also constitutional under the state and federal equal protection clauses. Limiting the distribution of dividends to those who are lawful permanent residents is rationally related to legitimate objectives of the dividend program. *Dep't of Revenue v. Cosio*, 858 P.2d 621 (Alaska 1993).

Validity of regulation. - Since the purpose of former paragraph (8) (now paragraph 7) is to ensure that permanent fund dividends are only given to permanent residents and a legitimate function of corresponding regulations is to ease the administrative burdens of determining eligibility, 15 AAC 23.163, requiring that absences do not exceed 180 days, is consistent with its statutory purpose. *Church v. State*, 973 P.2d 1125 (Alaska 1999).

Absence for medical treatment. - "Medical treatment", as defined in this section, does not mean merely an absence from the state on the advice of one's doctor, but implies some specific therapeutic application by medical personnel; thus, applicants who were outside Alaska for nearly two-thirds of the year-long eligibility period for the permanent fund dividend did not qualify for an allowable absence for medical treatment, although their medical treatment may have been medically advised. *Brodigan v. Alaska Dep't of Revenue*, 900 P.2d 728 (Alaska 1995).

A regulation, by allowing an absence for applicants receiving medical treatment if the absence "does not include a seasonal or permanent change of residence," assures that eligibility is limited to those residents who are temporarily outside actively attempting to treat their medical conditions, and is consistent with the language and purpose of this section. *Brodigan v. Alaska Dep't of Revenue*, 900 P.2d 728 (Alaska 1995).

Military spouse. - Since an absence for military service was allowable under the definition of "state resident" in AS 43.23.095 prior to its amendment effective January 1, 1999, and so was "accompanying an eligible individual as the spouse...of the eligible individual" under 15 AAC 23.163, a military spouse absent from the state was a resident because she met both the intent and the allowable absence requirements. *State, Dep't of Revenue v. Hale*, 978 P.2d 1276 (Alaska 1999).

Dividends properly withheld. - The state department of revenue properly withheld appellant's permanent fund dividends (PFDs) for 1992, 1993, and 1994 because the absences he reported from his primary Alaska residence exceeded the 180-day period allowed under former AS 43.23.005(a), 43.23.095(8), and their implementing regulations. *Schikora v. State*, 7 P.3d 938 (Alaska 2000).

Quoted in *State, Dep't of Revenue v. Gazaway*, 793 P.2d 1025 (Alaska 1990).

Cited in *Handley v. State, Dep't of Revenue*, 838 P.2d 1231 (Alaska 1992).

Chapter 23

Alaska Permanent Fund Dividend (Select Regulations)

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 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.

History

History: Eff. 1/1/93, Register 124; am 6/26/93, Register 126; am 12/24/93, Register 128; am 10/8/94, Register 131; am 11/20/96, Register 140; am 4/18/97, Register 142; am 1/1/99, Register 148; am 1/1/2000, Register 152; am 1/1/2002, Register 160; am 1/1/2003, Register 164; am 1/1/2005, Register 172; am 1/1/2008, Register 184; am 1/1/2009, Register 188; am 1/1/2010, Register 192; am 1/1/2011, Register 196; am 1/1/2013, Register 204

Annotations

Authority: AS 01.10.055

AS 43.23.005

AS 43.23.008

AS 43.23.015

AS 43.23.055

Editor's note: As of Register 153 (April 2000), the regulations attorney made technical revisions under AS 44.62.125(b)(6), changing cross-references in 15 AAC 23.143(d)(1), (4), and (10)(A) to reflect changes to the paragraph numbering in AS 43.23.008(a), effective January 1, 2000.

As of Register 160 (January 2002), the regulations attorney made a technical revision under AS 44.62.125(b)(6), and in accordance with ch. 85, sec. 45, SLA 2001, to change "student loan" to "education loan" in 15 AAC 23.143(d)(7).

15 AAC 23.163. Allowable absences

Statute text

(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.

History

History: Eff. 1/1/93, Register 124; am 6/26/93, Register 126; am 12/24/93, Register 128; am 10/8/94, Register 131; am 11/20/96, Register 140; am 4/18/97, Register 142; am 1/1/99, Register 148; am 1/1/2000, Register 152; am 1/1/2002, Register 160; am 1/1/2003, Register 164; am 5/9/2003, Register 166; am 1/1/2005, Register 172; am 1/1/2008, Register 184; am 1/1/2010, Register 192; am 1/1/2011, Register 196

Annotations

Authority: AS 43.23.005

AS 43.23.008

AS 43.23.015

AS 43.23.055

AS 43.23.095

Editor's note: As of Register 151 (October 1999), the regulations attorney made technical revisions under AS 44.62.125(b)(6) to reflect the name change of the Department of Education to the Department of Education and Early Development made by ch. 58, SLA 1999, and the corresponding title change of the commissioner of education.

As of Register 153 (April 2000), the regulations attorney made technical revisions under AS 44.62.125(b)(6), changing a cross-reference in 15 AAC 23.163(f) to reflect changes to the paragraph numbering in AS 43.23.008(a), effective January 1, 2000.

15 AAC 23.173. Proof of eligibility

Statute text

(a) An individual must indicate, on forms prescribed by the department, information required by the department that will support the claim of residency and physical presence in Alaska as required by AS 43.23.005. The information must include the names, addresses, and telephone numbers of adult Alaska residents who can attest to facts relating to the individual's length of residence and physical presence in Alaska.

(b) The department will, in its discretion, require an individual to provide other information to accompany the individual's application. If the department notifies an individual that the information included on, or provided with, the application form is insufficient for any reason, the individual must provide the additional information as requested by the department. If the other information requested by the department is not available at the time of application or the request, the individual must specify why the information is not available, and the date by which the information will be submitted to the department.

(c) An individual must provide all information requested by the department for processing within 30 days after the date of the request. Information delivered to the department or postmarked within 30 days after the date of the request is considered timely. An individual may request, for good cause, an extension of the 30 days to respond to a department request for information. If the department determines that good cause exists and grants an extension, the department will determine the time period of the extension on a case-by-case basis. Information not timely received will not be considered in the initial eligibility determination; however, it may be considered on subsequent appeal.

(d) If an individual has not provided all information for processing requested by the department within 30 days after the date of the request or the time period granted in an extension under (c) of this section, the application will be denied.

(e) An individual whose spouse is not a resident eligible for a dividend must provide documentation that demonstrates an intent to remain indefinitely in Alaska despite the nonresidency of the individual's spouse. The department will, in its discretion, require additional proof of the individual's intent to remain in Alaska.

(f) An individual described in this subsection may be eligible to receive a dividend if, with the application, the individual provides documentation that demonstrates to the department's satisfaction an intent to remain indefinitely in Alaska despite the nature of the individual's employment in Alaska. The department may require additional proof of the individual's intent to remain in Alaska. This subsection applies to

(1) an individual transferred to Alaska on temporary assignment by the individual's employer for a definite period of time;

(2) an individual who is employed in Alaska on a seasonal basis;

(3) an individual who is working in Alaska under a contract that requires the employer to return the individual to a place outside of Alaska at the end of the contract; or

(4) an individual who is employed in Alaska but who maintains a home or other abode outside Alaska to which the individual regularly travels.

(g) Proof bearing on an individual's intent to remain indefinitely in Alaska might be any proof acceptable to the department, including

- (1) a contract to move household goods to Alaska, except when there is a contract to move household goods from Alaska at the end of the individual's employment;
- (2) proof of home ownership, a home purchase contract, rent receipts, or other proof that the individual maintains a principal place of abode in Alaska, except when housing is provided as a part of an employment contract;
- (3) employment and unemployment records, including a copy of the leave and earnings statement of a military member for
 - (A) December of the year before the qualifying year; and
 - (B) the most recent month;
- (4) tax records;
- (5) school records;
- (6) voter registration and voting records;
- (7) motor vehicle registration records;
- (8) licensing records such as those for hunting and fishing licenses;
- (9) court or other government agency records; or
- (10) birth or other vital statistics records.

- (h) Proof of physical presence in Alaska might be any proof acceptable to the department, including
- (1) records or receipts of airlines, the Alaska Marine Highway system, or other carriers;
 - (2) hotel receipts;
 - (3) traffic citations;
 - (4) repealed 1/1/2002;
 - (5) affidavits or certifications by adult residents acquainted with or related to the applicant who have personal knowledge of the applicant's physical presence in Alaska.

- (i) The burden of proof rests on an individual claiming an allowable absence to prove that the individual has maintained, at all times during the absence, the intent to return and remain indefinitely in Alaska.

- (j) If an individual is denied under (d) of this section, the department will reverse the denial if the
- (1) only reason the individual was denied was because the individual failed to provide requested information for processing timely;
 - (2) individual timely requests an informal conference under 15 AAC 05.020; and
 - (3) requested information is provided by the time of the individual's informal conference;
 - (4) repealed 8/24/95;
 - (5) repealed 8/24/95.

History

History: Eff. 1/1/93, Register 124; am 12/28/93, Register 128; am 10/8/94, Register 131; am 8/24/95, Register 135; am 1/1/99, Register 148; am 1/1/2000, Register 152; am 1/1/2002, Register 160; am 1/1/2005, Register 172