

HB

243

<TARGET><BILL>HB 243</BILL><SUBJECT>HB
243</SUBJECT><COMM>HFIN29</COMM></TARGET>

Fiscal Note

State of Alaska
2016 Legislative Session

Bill Version:	CSHB 243(STA)
Fiscal Note Number:	1
(H) Publish Date:	2/3/2016

Identifier: HB243-DOR-PFD-01-28-16
 Title: CRIM. CONV. OVERTURNED: RECEIVE PAST
 PFD
 Sponsor: LYNN
 Requester: House State Affairs

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)

	FY2017	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2017 Request	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
OPERATING EXPENDITURES	FY 2017	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
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 (FY2016) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2017) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

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 If yes, by what date are the regulations to be adopted, amended or repealed? N/A

Why this fiscal note differs from previous version:

This fiscal notes differs from the one presented on 1/23/2016 due to amendments in the CS bill version.

Prepared By:	Sara Race, Director	Phone:	(907)465-4785
Division:	Permanent Fund Dividend	Date:	01/29/2016 03:00 PM
Approved By:	Jerry Burnett, Deputy Commissioner	Date:	01/29/16
Agency:	Department of Revenue		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2016 LEGISLATIVE SESSION

Analysis**Bill Analysis**

The proposed legislation will eliminate the requirements set forth in regulation, 15 AAC 23.183(b)(1)(2)(3) that directly address the reversal or vacating of a disqualifying conviction for which an individual was incarcerated or sentenced, and therefore were denied a dividend.

The major program criteria changes in the proposed legislation include the following; removes requirements of an individual being otherwise eligible, providing an exemption that removes the requirement for an applicant to attempt to file yearly, expands the timeframe in which the individual must communicate with the Division after a dismissed conviction, and reduces the annual dividend amount by including an estimated amount necessary to pay prior year dividends from the current year for individuals that may be dismissed from a conviction.

Estimating an amount to include in the annual calculation may be overstated for the first three to four years, until the division has a historical average to base the calculated amount upon. The first year estimate may be a calculation derived by analyzing prior appeals received in relation to dismissed convictions, along with statistics collected from Department of Corrections.

Alaska State Legislature



Chairman
State Affairs Committee

Member
Judiciary Committee
Joint Armed Services Committee

Finance Subcommittees
Administration
Corrections
Military and Veterans Affairs
Judiciary/Courts

A Communication From
REPRESENTATIVE BOB LYNN
District 26 Anchorage

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Alaska State Capitol #108
Juneau, AK 99801-1182

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SPONSOR STATEMENT **HB 243**

"An Act relating to a permanent fund dividend for an individual whose conviction has been vacated, reversed, or dismissed; and relating to the calculation of the value of the permanent fund dividend by including payment to individuals eligible for a permanent fund dividend because of a conviction that has been vacated, reversed, or dismissed."

Alaska's laws do not currently provide for Alaskans who had their felony convictions overturned, (either by being vacated, reversed, or dismissed) to apply for their Permanent Fund Dividend ("PFD"). That is not fair.

HB243 simply allows for an Alaskan be permitted to apply for, within 120 days after their dismissal, be eligible to receive their PFD if their felony conviction has been vacated, reversed or dismissed.

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EXPLANATION OF CHANGES FROM VERSION E TO L HB 243

"An Act relating to a permanent fund dividend for an individual whose conviction has been vacated, reversed, or dismissed; and relating to the calculation of the value of the permanent fund dividend by including payment to individuals eligible for a permanent fund dividend because of a conviction that has been vacated, reversed, or dismissed."

TITLE CHANGE

Changed the title to tighten it.

Added:

; and relating to the calculation of the value of the permanent fund dividend by including payment to individuals eligible for a permanent fund dividend because of a conviction that has been vacated, reversed, or dismissed.

Page 1 line 14

Removed: (2) the individual is pardoned

Page 2 line 3

Removed: (2) pardon under (i)(2) of this section

Page 2 lines 5-7

Removed: (k) When a permanent fund dividend is paid under (i) of this section, the department shall also pay interest at the rate specified in AS 45.45.010 from the date each dividend would have been paid if the individual had been eligible.

Page 2 lines 9-11

Removed: (k) The Department of Corrections shall provide an application for a permanent fund dividend to any individual in the custody of the Department of Corrections who requests an application, regardless of the eligibility of the individual.

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

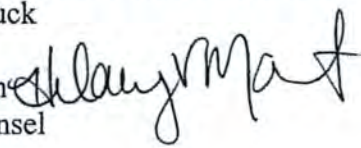
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

January 29, 2016

SUBJECT: Permanent fund dividends for persons whose convictions are overturned (CSHB 243()); Work Order No. 29-LS1279\G)

TO: Representative Bob Lynn
Chair of the House State Affairs Committee
Attn: Deneen Tuck

FROM: Hilary V. Martin 
Legislative Counsel

You have asked me to respond to four questions that were raised regarding CSHB 243() in the House State Affairs committee hearing on January 26, 2016. You additionally asked if this bill would impact the budget of the Department of Corrections (DOC) because they receive a large portion of their funding from the dividends that would have gone to incarcerated individuals.

1) Are prisoners who are incarcerated and then sent to an out-of-state prison no longer residents and therefore unable to take advantage of this bill?

The bill allows persons who were ineligible for a permanent fund dividend (dividend) because of conviction or incarceration under AS 43.23.005(d) to receive a dividend if that conviction was vacated or reversed and the charges are later dismissed or the person is retried and found not guilty. It is the fact of the person's conviction that made the person ineligible, not the lack of residency.

AS 43.23.008, which lists allowable absences, applies only to "otherwise eligible individuals." This would not include persons who are ineligible due to a felony conviction or incarceration. If a person becomes eligible under this bill, the incarceration location would not be a factor in the person's eligibility. As Department of Revenue (DOR) Deputy Commissioner Burnett stated at the January 26 hearing, any person eligible for a dividend under this bill and who was housed out of state for some or all of their incarceration would be treated as any other person who is in the custody of the state and taken out of state for reasons beyond the person's control. Therefore, I believe a state resident who was incarcerated at an out of state prison would still be able to take advantage of the provisions of this bill.

2) Do changes need to be made to allow an estate to apply for a dividend under this bill?

An estate would be able to apply for the dividend under this bill without further amendment. AS 43.23.005(h) contains a procedure for individuals who die after applying for the dividend but before it is paid, and for persons who would have been eligible but died before the application period. These provisions would also apply to the new language in the bill. However, the estate would still have to comply with the 120-day application deadline contained in AS 43.23.005(j) to receive the back dividends. If a person dies after the time limit has already passed, the estate would not be able to apply for the dividends.

3) What if a person has convictions for multiple crimes and only one conviction is dismissed? What if a person commits a felony that is vacated, overturned, or dismissed and then jailed on a misdemeanor and that previous felony causes a person to be ineligible for a dividend?

If a person has multiple felony convictions and only one felony is vacated, reversed, or dismissed, then the person would only be eligible for a dividend under this bill for the periods of time that the person was ineligible because of that vacated, reversed, or dismissed conviction. For example, if a person received 10 years for felony A, and five years for felony B, and the sentences run concurrently, the person would only be eligible in the five years that were solely for felony A and not for felony B. This is because the time spent incarcerated due to felony B makes the individual ineligible for a dividend independent of felony A. If the sentences were the same, ran concurrently, and only one was vacated or dismissed, the other felony bars the eligibility for the period of incarceration.

If a person is incarcerated for a misdemeanor, the prior overturned felony could not be used to make the person ineligible under AS 43.23.005(d), which provides that a person incarcerated for a misdemeanor is ineligible for a dividend if the person has a prior felony or two or more prior misdemeanors. If the felony would be overturned, vacated, or dismissed, and the person has no other felony conviction, the person no longer has a conviction for a felony and should not be ineligible for a dividend.

4) What if a person's dividend is garnished for child support? Would they be getting back the total amount of the dividend including the amounts garnished for child support?

I do not believe that a person who was ineligible for a dividend due to a felony conviction or incarceration would have a dividend to be garnished for child support. If a person does not receive a dividend due to conviction of a felony or incarceration, then there is no dividend available to be garnished because the person is ineligible under AS 43.23.005(d). If a person receives a dividend after being released, that dividend is subject to garnishment.

Representative Bob Lynn

January 29, 2016

Page 3

5) What is the impact on DOC's budget?

You asked if this bill would impact DOC, due to the back dividends being paid. This bill should not affect the budget of DOC.

Currently, the commissioner of revenue has to provide notice under AS 43.23.028 of a number of factors related to the dividend. However, under AS 43.23.030(b), the commissioner does not have to provide notice so long as the amount appropriated from the dividend fund does not exceed the total amount that would have been paid to individuals who are ineligible under AS 43.23.005(d) or AS 43.23.021(b), and if the appropriations go to the crime victims compensation fund, the Council on Domestic Violence and Sexual Assault, DOC, the Office of Victims' Rights, nonprofit victims' rights organizations, or to DOR for grants to minor children of incarcerated individuals.

DOC is not actually receiving the dividends for those individuals who are incarcerated and not eligible. Instead, an amount equal to the amount that would have been paid to individuals who are ineligible if they were eligible can be appropriated from the dividend fund to the (1) crime victims compensation fund; (2) Council on Domestic Violence and Sexual Assault; (3) DOC; (4) Office of Victim's Rights; (5) nonprofit victims' rights organizations; and (6) DOR for grants to minor children of those incarcerated. The amount is dependent on the number of individuals who are ineligible for that year.

The dividends that are paid out to individuals under this bill would come from the dividend fund, subject to appropriation. The legislature determines the amount appropriated to DOC every year, so it is not possible to speculate about future appropriations.

If I may be of further assistance, please advise.

HVM:dla
16-073.dla

Alaska State Legislature



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State Affairs Committee

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February 2, 2016

TO: House Finance Committee
FROM: Representative Bob Lynn
RE: Legislative Research, dated January 25, 2016

The attached research will be updated in testimony by Nancy Meade, General Counsel for the Alaska Court System

LEGISLATIVE RESEARCH SERVICES

29th Alaska Legislature
LRS Report 16.132
January 25, 2016



(907) 465-3991 phone
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Criminal Convictions Vacated or Reversed, and Dismissed

Patricia Young, Legislative Analyst

You wished to know the number of criminal convictions in Alaska that have been vacated or reversed and the conviction then dismissed. You were particularly interested in knowing if the "Fairbanks Four" are the only individuals whose convictions have been vacated and dismissed. You requested this information in regard to House Bill 243, currently under consideration.

House Bill 243 would allow persons who were ineligible for permanent fund dividends because of certain criminal convictions to receive dividends for the years they were ineligible if their convictions are vacated or reversed and the charges are dismissed, if they have been retried and found not guilty, or if they have been pardoned.

Marvin Roberts, Kevin Pease, Eugene Vent, and George Frese—sometimes known as the Fairbanks Four—are the only defendants in Alaska to have had their convictions vacated and charges dismissed, according to Kaci Schroeder, assistant attorney general, with the Department of Law's criminal division.¹

Cases in which defendants have had their convictions reversed and charges dismissed are likewise quite rare according to representatives of both the Department of Law and the Court System.² The Court system records are currently being queried for information on the frequency of such reversals and subsequent dismissals, as well as on the number of defendants who are retried and acquitted.³ We will forward that information upon its arrival.

We also note that executive pardons are rare. Since statehood, Alaska's governors have granted about 110 pardons. These have occurred with diminishing frequency: while Governor Egan granted 65 pardons before leaving office in 1966, Governor Murkowski granted the most recent six just prior to leaving office in 2006.⁴

We hope this information is useful. If you have questions or need additional information, please let us know.

¹ Kaci Schroeder, assistant attorney general, Criminal Division, Department of Law, 907.465.4037.

² Doug Wooliver, deputy administrative director, Alaska Court System, 907.463.4750.

³ In one such case, the murder conviction of Mechele Linehan was overturned on appeal. Prosecutors considered a retrial, but ultimately dismissed this high-profile case.

⁴ Historical records of executive pardons and commutations of sentence maintained by the Department of Corrections provided by Sherrie Daigle, public information officer, 907.465.4645.