

ALASKA LEGISLATURE

2612

HOUSE and SENATE FINANCE COMMITTEE FILES, 2003-2004

178

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

Table 1: Administrative Appeals of One Year or Longer Duration

Department	Agency	Open	Closed 1993 - 2003	Closed 1980 - 1992	Comments
Administration	Office of Tax Appeals	3	24	data unavailable	Date available from July 30, 1997 forward. Among the open cases, 2 transferred to OTA from appeal procedures in other agencies; among the closed cases, 13 were tax appeals from the Dept. of Revenue, and 8 transferred from other agencies. It is possible that transferred cases may be reflected in the numbers provided by originating agencies.
	Division of Motor Vehicles	0	0	0	
Community & Economic Development	Division of Occupational Licensing	223	1,648	723	Data available from 1990 forward.
	Regulatory Commission of Alaska	108	962	881	
Fish & Game	Commercial Fisheries Entry Commission	321	748	674	Officials estimate that 75 - 85 percent of all cases involving applications for permanent entry permits in limited fisheries took one year or longer to resolve. The numbers shown here represent 85% and thus may overstate the number of lengthy cases.
Health & Social Services	Division of Medical Assistance	29	118	81	
Labor & Workforce Development	Alaska Labor Relations Agency	45	304	31	Agency created in July 1990.
	Division of Employment Security	0	22	56	
	Division of Workers Compensation	11	119	no data available	Tracking of cases (from the claimant's filing of an affidavit of readiness for hearing) has been available from late 1993 forward. The number of currently open cases is likely overstated because the database cannot distinguish between a single claim lasting over one year and multiple claims (based on a single injury) each lasting less than one year but having been filed serially.
	Division of Labor Standards and Safety	9	354	176	
	Division of Vocational Rehabilitation	0	0	0	Federal regulation requires hearing to be held within 60 days of a request; findings and written decision must be produced within 30 days of the completion of the hearing.

Table 1: Administrative Appeals of One Year or Longer Duration

Department	Agency	Open	Closed 1993 - 2003	Closed 1980 - 1992	Comments
Natural Resources	Division of Mining, Land and Water	20	41	110	Early records are incomplete. More than 20 appeals were open for over 4 years pending resolution of the Mental Health Lands Trust Settlement.
	Division of Oil and Gas	1	data unavailable		The division has not kept historical statistics on the length of time needed to resolve appeals on oil and gas issues.
	Division of Forestry	0	1	1	Statutes require the process to be completed within 35 days of a stop work order.
Revenue	Office of the Commissioner	3	500	90	Incompatible format of records for cases before 1995 renders them irretrievable; numbers of closed cases are estimates.
Transportation & Public Facilities	Office of the Commissioner	1	9	4	Data available from 1988 forward.

NOTES:

We urge caution in using these data to compare agencies. For some agencies, counts do not fit precisely within the 1993-2003 and 1980-1992 timeframes. More importantly, the number and complexity of decisions vary enormously across agencies. The Employment Security Division, for example, may hear 2,000 to 3,000 cases a year, while the Division of Forestry currently has no open cases and heard only one between 2000 and 2003. Decisions may be verbal, as are most issued by the Division of Motor Vehicles, or they may be technically complex documents addressing multiple disciplines, as are those issued by the Division of Oil and Gas. In addition, agencies with limited or incomplete records may have reported only those cases for which they have data, while others estimated totals.

For clarifying information on appeals lasting one year or longer, see attached commentary from the following agencies: Department of Fish and Game, Commercial Fisheries Entry Commission (Attachment A); Department of Labor and Workforce Development, Alaska Labor Relations Agency and Division of Workers Compensation (Attachment B and C, respectively); and the Department of Revenue (Attachment D).

SOURCES:

Representatives of the various agencies.

774 4930 2027 = 8,531

8 of 16 Reporting

Attachment A

"Final CFEC Decisions" and Commentary on CFEC Cases

FINAL CFEC DECISIONS

YEAR	DECISIONS ON APPLICATIONS (Permanent Entry Permits in Limited Fisheries)	OTHER DECISIONS (Transfers of Entry Permits)	TOTAL DECISIONS
1980	3	0	3
1981	22	1	23
1982	104	0	104
1983	83	6	89
1984	75	24	99
1985	54	49	103
1986	85	54	139
1987	50	54	104
1988	72	57	129
1989	59	61	120
1990	63	38	101
1991	123	13	136
1992	68	47	115
1993	100	54	154
1994	93	54	147
1995	60	66	126
1996	51	59	110
1997	64	55	119
1998	105	53	158
1999	80	47	127
2000	70	33	103
2001	71	37	108
2002	75	29	104
2003	43	38	81
TOTALS (24 years)	1,673 (average 68/year)	929 (average 39/year)	2,602 (average 108/year)

NOTES: CFEC's computerized data has proven to be unreliable; CFEC must go to individual files for accurate information about individual cases.

Proceedings regarding applications for permanent entry permits in limited fisheries are timed so as not to interfere with an applicant's fishing, and applicants have the right to fish as long as the case is before the commission or the court. Between 75 to 85 percent of these applications require more than a year to resolve.

With applications for permit transfers, the immediate right to fish is at issue. CFEC normally hears and resolves these cases in a matter of days. None has been open as long as one year.

EXPLANATION

As noted, all individuals who apply for a permanent entry permit can continue to participate in the fishery (without having to obtain a permit by transfer) until they receive a final denial by the commission or the courts. In turn, the commission is generous in granting applicants' requests for extension of time so that commission proceedings do not unnecessarily interfere with an applicant's fishing season. Our regulations are also designed to allow sufficient time so as not to intrude on a fishing season, and, in addition, we also make every attempt to avoid scheduling a hearing or issuing a decision or an order to which an applicant must respond near or during a fishing season.

When a fishery is limited, many applications are submitted simultaneously and substantial numbers of appeals, therefore, tend to arise at the same time. For example, in Alaska's limited salmon fisheries alone, more than 17,000 individuals applied to CFEC for limited entry permits.

Following the 1984 Ostrosky decision, the Alaska Supreme Court issued a series of decisions substantially increasing the commission's caseload. In 1988, the state settled the Wassillie class action authorizing several hundred additional new applications in the original limited salmon fisheries. Consequently, by 1990, the commission's caseload had almost doubled to nearly 900 cases. As noted, however, the commission has reduced the number of pending cases to 321 despite hundreds of new, incoming appeals. The commission's caseload is a moving bus: from 1990 to the present, the commission has limited an additional 26 fisheries (giving rise to hundreds of new appeals). While the commission has completed well over 1,000 adjudications (during this same time period) and thereby let many individuals off the bus, many new individuals (applicants in more recently limited fisheries) continue to climb on the bus. Our reduction of our caseload shows, during the last 13 years, the commission has decided application cases faster than applicants have filed new appeals (while at the same time hundreds of transfer cases).

As a final consideration, CFEC adjudications require more care than those of many other administrative agencies. In the Byayuk and Cashen cases, our Alaska Supreme Court held reversals of CFEC decisions can be applied retroactively to reopen previously closed cases and to authorize new applications for a limited fishery long after the application deadline. Thus, a CFEC error can literally undermine limitation of fisheries on which almost 12,000 Alaska fishers depend for their livelihood. In the face of this challenge, the commission is pleased to report that, during the last 13 years, the commission has suffered only two partial reversals of its cases by the Alaska Supreme Court.

CONCLUSION/SUMMARY

In short, in the category of transfer cases where the immediate right to fish is at issue and time is critical, CFEC completes all such the cases within a year. In the category of application cases where the immediate right to fish is not at stake, almost all such cases require more than a year to resolve (321 such cases are currently pending). However, despite hundreds of new appeals having been filed from the limitation of 26 additional fisheries, the commission has reduced its application caseload by almost two-thirds since 1990.

Attachment B

Commentary on Alaska Labor Relations Agency Cases

Alaska Labor Relations Agency

Note: these numbers include cases that have been held in abeyance by a party or parties. Although we do not currently have a precise count of all cases in abeyance, we identified the following:

1. The number of current, on-going cases that have been open for one year or more.

Currently, 45 cases. Three cases are pending in the Alaska Superior or Supreme Courts. Sixteen are unfair labor practices (ULP), 25 are unit clarifications (UC), and 1 is a collective bargaining enforcement (CBA) petition.

- Of the 16 ULPs, one has been dismissed this week, and 7 are in abeyance. The others are awaiting agency action which may include awaiting information from the parties.
- Of the 25 unit clarifications, approximately 50% of them are in abeyance, and 50% are awaiting agency action. Of the latter 50%, some of the positions are vacant. We have previously not taken action when positions become vacant. I am now recommending we dismiss these cases and notify the petitioner to re-file the case when the position is filled.
- The one CBA case is a complex case. The State is the employer and did not provide information for a lengthy period. Then the union (APEA) asked us to hold up on the case so the parties could attempt to settle. There have been several requests to give the parties more time. We recently heard that settlement is imminent.

2. The number of cases closed within the past ten years that were open for one year or more. Answer: 384
3. The number of cases closed since 1980 that were open for one year or more.

Our Agency was created in July 1990. Since then, there have been 415 cases closed that were open for one year or more.

These are the raw data. We did not subtract out any factors that might affect the data. For example, we sometimes put cases in "abeyance" either on our own motion or on request of a party or parties. One example would be: the parties want time to settle their dispute without Agency help. These periods of abeyance mean that the Agency can't take action but the time continues to count. We recently modified our database structure to capture abeyance time.

Attachment C

Commentary on Workers' Compensation Board Cases

February 27, 2004

Dear Ms. Young:

Please find attached a response to your inquiry regarding the Alaska Workers' Compensation Board hearings administered by the Division of Workers' Compensation. As we discussed yesterday by phone most benefits are paid without any need for a hearing. For example, the number of 2003 filings indicative of some sort of dispute (a total of 1,224 workers' compensation claims and petitions) is dwarfed by the 25,981 injuries reported in 2003. When you consider that some of the 2003 claims and petitions involve injuries reported prior to 2003, the percentage of disputes diminishes further.

The attached spreadsheet responds to both definitions of appeals we discussed yesterday. The broader definition starts with the filing of a claim or petition and ignores the statutory requirement that a party file an affidavit of readiness for hearing before the Board schedules a hearing. However, the three columns to the far right on the spreadsheet reflect that limitation and therefore measure only from the earliest date that one of the parties to the dispute felt they were prepared for a hearing and filed the required affidavit. (In many cases the opposing party is not yet ready and a Board hearing is delayed while necessary preparations are completed.) Data for this more refined analysis is only available back to 2000.

Please feel free to call with any further questions or concerns.

Very truly yours,

Paul F. Lisankie,
Director

Judicial Proceeding By Year

Calendar Year	Proceedings Initiated By Claim or Petition	Proceedings With Hearings Scheduled	Proceedings With Hearings Held	Proceedings Longer Than 1 Year	Percent of Proceedings Longer than 1 Year	Affidavits Received	Resulting Hearings Continuing Longer than 1 Year	Percent of Hearings Continuing Longer than 1 Year
2003	1224	963	877	0	0	266	0	0
2002	1040	906	808	106	10.19%	245	12	4.90%
2001	949	805	720	192	20.23%	251	44	17.53%
2000	805	703	643	158	19.63%	275	63	22.91%

In the Workers' Comp system, a judicial proceeding number (JPN) is established when an initial claim or petition is filed. That JPN number is unique to the associated Alaska Workers' Compensation Board (AWCB) case file number, and subsequent judicial documents filed against the case file.

To track the length of judicial proceedings, we associated the earliest judicial document which created the JPN to the latest scheduled prehearing, hearing, or judicial appeal.

One must keep in mind that there can be – and usually are – multiple claims and petitions associated with any one JPN.

Affidavit Tracking did not become available until late 1999.

STATE OF ALASKA

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

FRANK MURKOWSKI, GOVERNOR

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WORKERS' COMPENSATION DIVISION

March 26, 2004

Ms. Patricia Young
Manager
Legislative Research
State Capitol, Room 305 Terry Miller Bldg.
Juneau, Alaska 99801-1182

Dear Ms. Young:

We have attempted to further refine our computer search in order to respond to your inquiry. As I have discovered the Division's database is not configured to allow us to distinguish a single benefits claim that took two years to finally determine from two benefits claims (based upon the same injury) that were filed serially and each took only one year to finally determine. We would have to perform a manual examination of each file to make that distinction.

In order to respond to your inquiry, even at the risk of overstating the number of individual claims that actually took more than a year to reach a determination through hearing, we did the following. We performed a computer search for all claim files with an initial prehearing conference in the years from 1999 through 2003. We then generated a list showing those claim files that went on to have a subsequent prehearing conference or hearing more than one year later. If the last conference or hearing date listed was shown as March 2004 or later, we then counted that claim as still open. The results of that effort are reflected below:

<u>Year</u>	<u>Total open more than one year</u>	<u>Number still open</u>
2003	N/A	N/A
2002	8	3
2001	29	1
2000	28	4
1999	26	3

I think that this process has likely overstated the number of individual claims that took more than a year to hear and determine. The hearings we oversee are those of the Alaska Workers' Compensation Board. The Alaska Workers' Compensation Act (AS 23.30.110) specifically requires that a hearing be set within 60 days of a party filing an unopposed affidavit of readiness for hearing. If the affidavit is opposed a prehearing conference is required within 30 days at which a hearing is to be scheduled. Under the Board's

Attachment D

Department of Revenue Commentary on Administrative Hearings

Department of Revenue

In response to your legislative request for information about the length of the Department of Revenue appeals process, Mark Handley, Senior Revenue Hearing Examiner, asked Kimberly Rechin, the paralegal who manages the hearing office data base if she could provide accurate answers to the your specific questions. The answer is *no*, except for question number one.

The reason for this is primarily a data base problem. The hearing section inputs both the date that an individual files an appeal and the date that a final decision is issued in each case. However, they do not have the ability to run a list of cases in a given year where there are more than 12 months between these dates. I am afraid they are still using an old data base system. At one point the department actually got money to convert all files to a newer system, but there was no data processing staff available to do the work. The system they have is a bit inadequate for tracking and retrieving the needed information. It is not flexible at all for retrieving data in new ways. Records for cases before 1995 were in the old WANG data base and are not retrievable. The hearing section currently tracks case aging to monitor compliance with the 20 day rule for CSED and the 6-month rule for other cases.

Mr. Handley has been with the hearing section since 1995, Ms. Rechin started a few months earlier. When they started there were hundreds of Child Support Enforcement Division and Permanent Fund Dividend and tax cases that were at the formal hearing level for over a year before a decision was issued. There was a huge backlog at the formal hearing level and even bigger backlogs at CSED and PFD at their informal conference levels. Even as the hearing section began to clear out old cases, there was a huge temporary increase in the new caseload as the Divisions cleared out their respective back logs. It took the hearing section until about 1999 to get caught up. Now it is only the rare cases, usually those that get remanded back from court that are with the hearing section for more than a year. Almost all departmental cases have a decision issued in less than two months after the hearing.

Here are the best answers that we can give based on hearing section memories and records.

What is the number of current, on-going cases that have been open for one year or more: 3.

What is the number of cases closed within the past ten years that were open for one year or more: probably over 500.

What is the number of cases closed between 1980 and 1992 that were open for one year or more: probably under 100, perhaps 80-90.

MEMORANDUM

STATE OF ALASKA
DEPARTMENT OF REVENUE
OFFICE OF THE COMMISSIONER

TO: Patti Pettijohn
Legislative Research Services

DATE: April 1, 2004

TELEPHONE: 465-3752

FROM: Mark T. Handley
Senior Revenue Hearing Examiner

SUBJECT: Request for Information

The following answers to your questions are based on my general estimations and sense of what has happened in the six years I have worked as a Revenue Hearing Examiner. When I first started, there were such huge backlogs both in dividend and child support cases that it took about six months to get through a child support appeal and more than six months to get through a dividend appeal. We do much better now.

In answer to your questions:

1) From the time of filing an appeal to the time the process is finally completed, what is the average length of time it takes for an appellant to get through the entire process? We understand times could vary wildly, but we are interested in some general sense of the process. We would also like a general estimation of the outliers (for example, perhaps most are done in two weeks but 20% take a month and five each year take six months).

Dividends and Child Support

The formal hearing process usually takes about 90 days to get through in dividend appeals (1) and 60 days to get through in child support appeals (2). This is how it breaks down:

After a child support parent requests a formal hearing, the agency forwards the request to the commissioner's hearing section. The division then files its motion for summary adjudication,

(1) In order to begin the dividend appeal process by requesting a formal hearing, you must first request and go through an informal conference, which is an in-house agency review of your case. Our goal is to issue most of our dividend formal appeal decisions within 30 days after the record closes, but we recently lost the hearing officer who did most of our dividend cases and we fell behind. We have since hired a new dividend hearing officer and we are getting caught up again.

(2) Child support cases are given higher priority because it is generally more important to resolve these cases as expeditiously as possible, as reflected by the 20-day statutory deadline for issuing a decision after the record closes.

If the parties are negotiating, the hearing officer will continue to schedule status conferences to monitor their progress. If the parties reach a settlement, the hearing officer issues an order dismissing the appeal in accordance with the terms of the agreement. If negotiations break down a hearing is scheduled.

After the record closes the hearing officer usually issues a decision within 90 days. (8)

I should note that we have also conducted proceedings as the commissioner's designee for emergency orders prohibiting violations of charitable gaming laws. These special expedited proceedings initiated by the agency under AS 05.15.610 are generally concluded in a few days.

State Assessment Review Board

Appeals to the State Assessment Review board are all scheduled for the annual meeting of the board, which meets a few weeks after the deadline for filing appeals of tax division assessments under AS 43.56. All of the hearings are completed in a few days. The board decides the cases right after the hearing in executive session. The Senior Hearing Examiner acts as the board's legal counsel and drafts the decisions at their direction. The decisions are issued within 10 days after the hearing as required by statute.

2) In what percentage of these cases does the state prevail? Again, we would welcome specifics but would be satisfied to hear whatever general sense you can provide.

Dividends

The Dividend Division prevails in about 85% of its cases. This overturn rate increases after significant regulatory or statutory changes and decreases if there have been no recent changes. This is because new issues of law require the division to make new interpretations that have not been reviewed in any formal hearing. A large percentage of the cases are disposed of by motions because the applicant is disqualified as a matter of law based on the undisputed facts of the case. This may be because the law creates many bright line tests for dividend eligibility that can result in a disqualification that may seem harsh or counterintuitive to individual applicants. Applicants are required to pay a \$25 fee for the informal, administrative review of their case at the division. There is no additional fee required to request a formal hearing.

Child Support

It is difficult to say in child support cases when the agency has "prevailed" because there are many issues involved, and the division usually takes the position that some adjustment is needed to the decision that is being appealed. In less than 30% of the cases the formal hearing decision

(8) These hearings often involve complex issues with many witnesses. The hearings can last up to a week. It often takes several weeks after the hearing for the record to close because the parties want to file additional documents after the hearing and respond to each other's post hearing submissions.

SENATE FINANCE COMMITTEE

SIGN-IN

HB 533-IF UNREAS. AGENCY DELAY, COURT DECIDES

✓ NAME: Doug Wooliver Subject/Bill No: HB 533
Co./Dept./Title: Alaska Court system Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

HB

534

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 534
(H) Publish Date: 3/24/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Legislature
Title "An Act extending the termination date of BRU Legislative Council
the office of victims' rights." Component: Council and Subcommittees
Sponsor House Rules by Request-Legis Budg & Audit Component No. 783
Requestor House Judiciary Committee

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type. Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The Legislature's budget currently includes funding for the Office of Victims' Rights. If this legislation passes, the funding for the Office of Victims' Rights will continue to be included in the Legislature's budget. There is zero additional fiscal impact to the Legislature.

Prepared by: Karla Schofield, Deputy Director Phone 465-6626
Division: Administrative Services Date/Time 3/19/04 3:57 PM
Approved by: Pamela Varni, Executive Director Date 3/19/2004
Agency: Legislative Affairs Agency

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB 534
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Legislature
Title "An Act extending the termination date of BRU Legislative Council
the office of victims' rights." Component: Council and Subcommittees
Sponsor House Rules by Request-Legis Budg & Audit
Requestor House Finance Committee Component No. 783

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	483.6	483.6	483.6	483.6
Travel	0.0	0.0	4.5	4.5	4.5	4.5
Contractual	0.0	0.0	51.5	51.5	51.5	51.5
Supplies	0.0	0.0	2.0	2.0	2.0	2.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	541.6	541.6	541.6	541.6

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
----------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1171 PFD Fund	0.0	0.0	541.6	541.6	541.6	541.6
TOTAL	0.0	0.0	541.6	541.6	541.6	541.6

Estimate of any current year (FY2004) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time			7	7	7	7
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

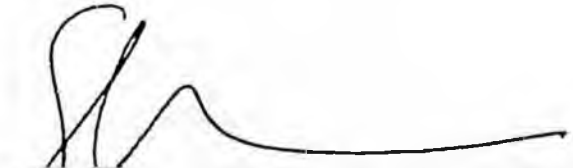
The Legislature's budget currently includes funding for the Office of Victims' Rights. If this legislation passes, the funding for the Office of Victims' Rights will continue to be included in the Legislature's budget.

Prepared by: Karla Schofield, Deputy Director Phone 465-6626
Division: Administrative Services Date/Time 4/5/04 10:08 AM
Approved by: Pamela Varni, Executive Director Date 4/5/2004
Agency: Legislative Affairs Agency



**FIRST ANNUAL REPORT
OF THE ALASKA OFFICE OF VICTIMS' RIGHTS**

JULY 1, 2003


By: **Stephen E. Branchflower, Director**
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Welcome To The 2003 Annual Report Of The Alaska Office Of Victims' Rights- The Agency's First

As a result of the victims' rights movement seen in American jurisprudence over the last two decades, almost every American jurisdiction now has a body of laws that are intended to provide a means for crime victims to effectively participate in the criminal process, and to require that their concerns are addressed by police, prosecutors, defense counsel, and judges. The principal objectives of such laws have been twofold. First, to promote respect for and to protect victims' privacy and safety. Second, to foster administrative and judicial sensitivity to the difficulty experienced when victims are unexpectedly drawn into an often indifferent but always confusing criminal justice system often at the very time they are trying to cope with injury and personal loss.¹

In Alaska, those purposes were served in 1984 by passage of AS 12.61.010-.900 captioned "Rights of Victims, Protection of Victims and Witnesses." Ten years later in 1994, Alaska joined a majority of states when voters overwhelmingly approved passage of a Victims' Rights Amendment to our Constitution. The rights guaranteed in Article I Section 24 are similar to those of thirty other states that have enshrined victims' rights in their Constitutions.²

More recently, in 2001 the Alaska Legislature promulgated an Act that created a new agency called the Alaska Office of Victims' Rights (OVR). OVR's purpose is to help victims of crime obtain the rights they are guaranteed under the Alaska constitution and statutes with regard to their contacts with criminal justice agencies in this state as well as to advance and protect these statutory and constitutional victim rights.

In a press release on February 20, 2001, announcing the OVR legislation Senate President Rick Halford, the chief architect of the OVR law said, "In 1994 voters approved an amendment to Alaska's Constitution that guarantees victims' rights, but simply passing an amendment is not enough." He then added "It is difficult for the victim of a violent crime to wade through our judicial system, which is full of technicalities and legal jargon. Many feel victimized twice - first by the criminal, then by the system. This office would ensure that victims' rights are protected."

The OVR was created in the nature of an Inspector General's office within the legislative, rather than the executive branch, as a way of avoiding conflicts within state government. It was also to ensure that the Director and his staff

¹ The Alaska Legislature has enacted 42 distinct rights to protect crime victims. Alaska's Constitution contains 7 specific crime victim guarantees.

² An amendment to the United States Constitution providing for victims' rights has also been proposed. See S.J. Res. 3 106th Cong. (1999).

would have the necessary independence to investigate criminal justice agencies and make appropriate recommendations. The law, which may be found in Alaska statute (AS) 24.65.010-.250, went into effect on July 1, 2002.

The public has responded enthusiastically to this innovation. Over the last 12 months, OVR's clients have sought a variety of services including information, education, investigation, in-court advocacy and support. In providing these needed services we have focused on facilitating a cooperative relationship between criminal justice agencies, the courts and the victims of crime who are our clients.

Alaska statute 24.65.170 requires the Director to publish an annual report regarding the OVR's activities and to notify the Legislature that the report is available. This is the OVR's first annual report.

I. Overview of the Alaska Office of Victims' Rights

1. Advocacy On Behalf Of Crime Victims-Jurisdiction

To accomplish the goal of assisting crime victims and of giving force to their Constitutional and statutory rights in Alaska, the OVR was empowered by the Alaska Legislature to advocate in state court in all felony offenses, all class A misdemeanors involving domestic violence and all misdemeanors involving crimes against the person. A felony offense is a crime where the possible sentence upon conviction is one or more years in jail and a substantial fine depending on the class of felony. Class A misdemeanors are those crimes punishable by up to one year in jail and up to a \$5,000 fine.

Additionally, OVR lawyers are permitted to address the sentencing judge on the victims' behalf when requested to do so by the victim and when the victim chooses not to personally make their victim impact statement to the judge.

2. Investigation Of Complaints By Victims

Crime victims may file a written complaint with the OVR that they have been denied any of the rights established by Article 1 Section 24 of Alaska's Constitution or the laws of this state. The OVR is empowered to investigate such complaints and take appropriate action on their behalf regarding their contacts with criminal justice agencies. In conducting an investigation the OVR may:

- (1) Make inquiries and obtain information considered necessary from justice agencies;
- (2) Hold private hearings; and

- (3) Notwithstanding other provisions of law, have access at all times to records of justice agencies, including court records of criminal prosecutions and juvenile adjudications, necessary to ensure that the rights of crime victims are not being denied; with regard to court and prosecution records, the Victims' Advocate is entitled to obtain access to every record that any criminal defendant is entitled to access or receive. (AS 24.65.120).

Some examples of information and records available to the OVR are police reports, witness statements, lab reports, photos, taped statements, grand jury proceedings and exhibits, officers notes, scene diagrams, dispatch records, autopsy reports, pre-sentence reports, access to all physical evidence, and more. All information and/or records obtained during any investigation, including information and records subpoenaed by the OVR, are deemed confidential.

3. Obtaining Information From Criminal Justice Agencies

A subpoena is a legal order requiring a person to appear at a specified time and place in order to provide documents, an object, or to answer questions under oath. It is a serious crime for a person to knowingly tell a lie when testifying. The Director of the OVR is authorized by law to issue subpoenas to any person for any records or any object if he reasonably believes such items may provide information relating to a matter under investigation. He may also require the appearance of any person to give sworn testimony if he reasonably believes that person may have such information.

If a person refuses to comply with a subpoena issued by the Director, he may file a motion with the superior court requesting a judge to issue a court order directing obedience to the subpoena. If the person persists in not complying, the person may be held in contempt of court by the judge and could be fined or jailed until the subpoena is complied with.

The law identifies certain persons who may not be subpoenaed by the Director and they are:

1. A justice, judge, magistrate or law clerk or a person acting under their direction;
2. A member of a grand or trial jury;
3. The person accused or convicted of the crime that is the basis for the investigation;
4. A victim counselor concerning a matter made confidential by statute;

5. A criminal justice agency concerning records that lead to the disclosure of a confidential police informant.

4. Information And Records Obtained By The OVR Is Confidential

The OVR is required by law to keep secret all matters and information, as well as the identities of all complainants or witnesses coming before the OVR, except insofar as disclosures of such information may be necessary to enable the OVR to carry out its duties and to support its recommendations. However, the OVR may not disclose a confidential record obtained from a court of justice agency.

5. Publication Of OVR Findings Following An Investigation

Within a reasonable time after an investigation is completed, and after the OVR reports their opinion and recommendations to a justice agency, the Director of the OVR may present the opinion and recommendations to the Governor, the Legislature, a Grand Jury, the public, or any of these. The OVR must include with the opinion any reply made by the justice agency. Written consent from the complainant to release the OVR's report must be obtained prior to release of the report.

6. OVR May Not Interfere With The Criminal Justice System

The OVR is required by law to ensure that their exercise of discretion does not interfere with any ongoing criminal investigation by a police agency or any criminal proceeding by the prosecutor's office. Additionally, the Director must make sure OVR employees do not make public statements that lawyers are prohibited from making by the Alaska Rules of Professional Conduct. Finally, the OVR may not prevent or discourage a victim from providing evidence, testifying or cooperating in a criminal investigation or criminal proceeding.

7. The OVR Has Very Broad Civil Immunity And Protection

The OVR Act provides that a proceeding or decision made by the Director of the OVR or his staff may be reviewed in superior court *only* to determine if it is contrary to the provisions of the statutes that created the OVR. It also provides that the conclusions, thought processes, discussions, records, reports and recommendations of or information collected by the Director or his staff is not admissible in a civil or criminal proceeding, and is not subject to questioning or disclosure by subpoena or discovery. Additionally, a civil lawsuit may not be brought against the Director of the OVR, nor a member of his staff, for anything

they do or say, or that they fail to do or say, in the performance of OVR's duties or responsibilities.

8. It's A Crime To Hinder Or Fail To Comply With OVR's Requests

Alaska law provides "A person who knowingly hinders the lawful actions of the Victims' Advocate or the staff of the Victims' Advocate, or who knowingly refuses to comply with their lawful demands, is guilty of a misdemeanor and upon conviction may be punished by a fine of not more than \$1000." A misdemeanor is a crime.

9. Funding Of The OVR

Many Alaskans mistakenly believe the OVR is funded from the State treasury but this is not so. The OVR is actually funded by money from convicts' forfeited permanent fund dividend checks. Alaska statute 43.23.005 is the law that determines a person's eligibility to receive a permanent fund dividend. A person is disqualified from receiving a PFD if during the dividend year they have either (1) been convicted of a felony, (2) spent time in jail for a felony conviction, or (3) jailed for their third misdemeanor conviction during the dividend year if they have ever been convicted of a felony at any time.

In dividend year 2002, 5276 persons lost their PFD checks by operation of this law, which is an amount that totaled slightly more than \$8 Million dollars. Those funds are placed into an account that (either in whole or in part) funds the OVR, the Violent Crimes Compensation Fund, the Department of Corrections, and the Council on Domestic Violence and Sexual Assault. It also funds grants to various non-profit victims' rights organizations for services to Alaskan victims of crime. The 23rd Legislature fully funded the OVR's FY 2004 budget request of \$512,300.

II. OVR Professional Staff

The Victims' Advocate

In a joint meeting of the Alaska House and Senate on May 13, 2002, the Alaska Legislature unanimously confirmed the appointment of longtime Anchorage prosecutor Stephen Branchflower to become Alaska's first Victims' Advocate and Director of the Office of Victims' Rights. Mr. Branchflower had served as a state prosecutor in Anchorage for 28 years prior to this appointment. He was nominated by a bipartisan legislative Victims' Advocate selection committee. His term of office is five years and he may be reappointed but may not serve for more than three terms. The Legislature, by a concurrent resolution adopted by a roll call vote of two-thirds of the members of each house entered in the journal, may remove or suspend him from office, but only for neglect of duty, misconduct, or disability.

The Associate Victims' Advocate

The OVR staff is small but very experienced, professional, and capable. The OVR's Associate Victims' Rights Advocate is Tamara E. de Lucia who obtained her BA in political science and philosophy from Binghamton University in New York in 1995. She earned a Juris Doctor degree and a Certificate in Environmental and Natural Resources law from Northwestern School of Law at Lewis and Clark College in Portland in 1998. Throughout her law school career she was employed with the Oregon state department of justice as an intern. She served as a law clerk to the Anchorage District Court for a year in 1998 and then as a law clerk to Judge David Mannheimer of the Alaska Court of Appeals in 1999. In 2000 she was selected to be an assistant municipal prosecutor with the Municipality of Anchorage Prosecutors Office where she served for two years before joining the OVR in August 2002. As a prosecutor she was responsible for a heavy caseload consisting exclusively of domestic violence cases, which she screened and tried before juries. She also provided extensive training to police and other prosecutors regarding DV issues and DUI detection and prosecution.

Ms. de Lucia was recently elected to serve as the chairperson of the Anchorage Domestic Violence Caucus. The DV Caucus is an organization comprised of law enforcement officers, prosecutors, magistrates, shelter coordinators, non-profit program managers, state and municipal representatives, tribal members and private citizens who gather together to advance the end of domestic violence, sexual assault and child abuse. The Caucus acts as a coordinating body to ensure that community efforts are properly directed and not duplicated; as well as a venue for information dissemination and program introduction. The Caucus meets monthly to discuss matters of import to the domestic violence prevention community.

The OVR Investigator

William Gaither, a highly decorated retired police officer, is the OVR's Investigator. He started his police career with the Anchorage Police Department in March 1974 as a rookie street officer and retired as a lieutenant in June 1996. During his 22-year career he served as field training officer, sergeant in the burglary, theft, drug and homicide units. He also commanded a K-9 unit, the APD Explorer Unit, the APD Reserve Police Officer Unit and was a senior officer on the Crisis Intervention and Response Team before retiring as a Shift Commander. He then accepted a position as a campus police officer at the University of Alaska Anchorage where he served for 5 years. He was selected to become the OVR's Investigator in August 2002 from a field of more than 50 applicants.

III. Highlights Of The OVR's First Year Of Operation

On July 1, 2002, the effective date of the Act creating the OVR, the agency did not exist. There were no offices, computers, office equipment, supplies or employees to staff the newly created organization. The OVR existed only on paper as a legal entity. However, much has been accomplished over the last 12 months to implement the Legislative intent embodied in the OVR enabling statutes.

1. Creation Of The OVR Central Office

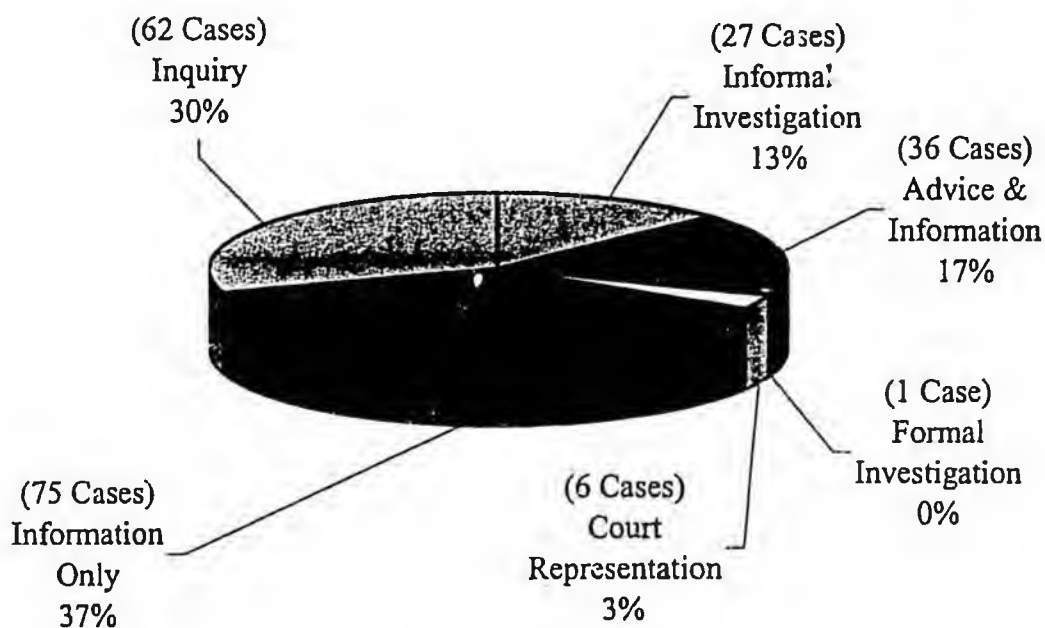
Thanks to the able assistance of the Executive Director of the Legislative Affairs Agency Pamela Varni, and her capable staff and employees, computer, data processing, and teleconference facilities have been made available in order to manage the OVR and to carry out the purposes of AS 24.65.

The OVR has been staffed with experienced and committed professional and support employees who are in the exempt service under AS 39.25.110. A long-term lease has been entered for a suite of professional offices located at 1007 West 3rd Avenue in downtown Anchorage. The office is located near key law enforcement agencies such as the Anchorage District Attorney's office, the Office of Special Prosecutions and Appeals, the Alaska Law Library, the Alaska Supreme Court and Court of Appeals, and the Nesbett Courthouse all of which are within easy walking distance for victims and law enforcement personnel alike. All the necessary office furniture, office equipment and machines have been acquired and are in place.

2. Summary Of OVR Case Statistics For 2002- 2003

Complete office systems and case processing forms have been created where none existed before in order to manage the flow of information and paperwork generated by the large number of complaints from victims. The following is a summary of the kinds of cases processed by the OVR during the 12-month period between July 1, 2002 and July 1, 2003:

OVR Opened 207 Cases Between July 1, 2002 And July 1, 2003 As Follows:



Case Classifications:

- **Information Only:**

Finally, during the current reporting period, 75 clients contacted the OVR for information or advice. After obtaining the information or advice, the clients decided not to file a complaint with the Office of Victims' Rights regarding their case.

- **Advice and Information:**

36 crime victims sought information or advice and after speaking with OVR staff, filed formal written documents with the office. These cases were easily resolved and involved minimal document collection and preparation. These cases primarily involved individuals who needed information as to how the judicial system operates and wished to have a third party look over their case to determine whether the case proceeded as other cases in similar situations.

- **Inquiry:**

During the current reporting period 62 crime victims came to OVR with particular problems or concerns regarding active criminal cases. These clients filed formal written requests with OVR and their cases required OVR to seek documentary evidence from the justice agency involved. In addition, these cases required more time from OVR staff and created a longer-term cooperative relationship between OVR, the client and the justice agency.

- **Informal Investigation:**

27 crime victims came to OVR with significant problems or concerns regarding active criminal cases during the current reporting period. These clients filed formal written requests with OVR and their cases required OVR to seek documentary evidence from justice agencies. These cases were significant in terms of the documents collected and reviewed, the time commitment required from OVR staff and the level of inquiry into justice agency affairs. These cases did not result in the publication of a formal report pursuant to AS 24.65.160.

- **Formal Investigation:**

During the first 12 months of operation the OVR opened one formal investigation, which involved significant problems regarding an active criminal investigation. Patti Godfrey filed a formal written request with the OVR and the case required OVR to seek documentary evidence from the police agency in question. This case was significant in terms of the documents collected and reviewed, the time commitment required from OVR staff and the level of inquiry into the operation of the justice agency's affairs. The case did result in the publication of a formal report pursuant to AS 24.65.160 that is available at the OVR website: <http://www.off.ceofvictimsrights.legis.state.ak.us>. The Godfrey case is discussed in greater detail in part IV of this report.

- **Court Representation:**

Six clients came to OVR with significant problems or concerns regarding active in-court criminal cases. In addition to requesting documentary evidence from judicial agencies, these cases gave rise to OVR presence in the courtroom and argument before the court on behalf of the victim and their interests.

3. OVR Community Training And Outreach

Perhaps the greatest challenge facing the newly formed OVR during the first 12 months of its existence has been to educate criminal justice agencies, the courts, victims' support organizations and the public that our agency is available as a resource to them. To meet this challenge, the OVR director and staff have undertaken an aggressive educational campaign to explain their functioning and inform prospective clients how to obtain the assistance they are entitled to under the OVR Act. The following is a summary of that community training:

1. July 30, 2002- Anchorage Area Wide Victim's Support Organization Meeting With Approximately 40 Representative From Various Victim's Support Organizations;
2. August 7, 2002- Training At The Anchorage Police Department For Command Officers;
3. August 22, 2002- Guest Appearance On The Herb Shandlin Radio Talk Show, 750 KFQD;
4. August 27, 2002- Bar-Bench Presentation To Judges, Defense Attorneys, And Probation Officers;
5. September 23, 2002- Anchorage Daily News Editorial Board Presentation For Editors And Reporters And The ADN Publisher;
6. September 27, 2002, - Statewide Probation-Parole Officers Training;
7. September 30, 2002, - Alaska State Trooper B Detachment In Palmer/Wasilla Police Dept./Assistant District Attorney Training;
8. October 1, 2002, - One Hour Guest Appearance On Live International Internet Radio Talk Show Hosted By The Voice Of America At [Http://Voiceamerica.Com/](http://Voiceamerica.Com/);
9. October 11, 2002, - Presentation About The OVR At The Eagle River Star Newspaper;
10. October 15, 2002, - Lecture To Approximately 150 State Prosecutors And Lawyers From The Attorney General's Office At The Annual DA's Conference In Girdwood, AK.
11. October 21, 2002, - Presentation To Approximately 30 Tribal Representatives From Bush Alaska At The Forum On Domestic Violence Sponsored By The Office Of The Governor, Alaska State Troopers, And

Alaska Native Women's Coalition On Domestic Violence And Sexual Assault At The Captain Cook Hotel In Anchorage;

12. October 22, 2002, - Presentation To AST Colonel Randy Crawford And Approximately 20 AST Senior Commanders From Throughout Alaska At The Hotel Captain Cook In Anchorage;
13. November 13, 2002, - Presentation To DHHS Division Of Juvenile Justice, Approximately 30 Intake And Juvenile Probation Officers, At The Frontier Building In Anchorage;
14. November 14, 2002, - Alaska Native Women's Sexual Assault Committee, Approximately 10 Representatives From Eight Victim Support Organizations;
15. December 1, 2002, - Guest Appearance On KSKA FM Radio Talk Show;
16. December 2, 2002, - TV Appearance On The Norma Goodman Show;
17. December 5, 2002, - Continuing Legal Education To Approximately 15 Assistants United States Attorneys At The US Attorney's Office In Anchorage;
18. February 5, 2003, - Continuing Legal Education To Approximately 15 Senior Alaska Fish And Wildlife Officers From Various Locations Around Alaska;
19. February 19, 2003, - Presentation To The Anchorage Women's Aid In Crisis (AWAIC) Organization;
20. February 26, 2003, - Presentation To The Board Of Directors Of Standing Together Against Rape (S.T.A.R.);
21. March 27, 2003, - Presentation To The Staff Of The Medical Examiner's Office;
22. April 2, 2003, Presentation To The Board Members And Staff Of The Alaska Violent Crimes Compensation Board;
23. Featured Guest Speaker On "Consider This" Television Show On KAKM, Channel 7, Discussing The OVR. The Show Was Taped On April 7, 2003 To Be Broadcast In Anchorage On April 23 And Statewide On April 25, 2003;

24. April 15, 2003, - Continuing Legal Education At The Fifth Annual Network On Domestic Violence And Sexual Assault (ANDVSA) Conference;
25. May 13, 2003, - Advocate Training For Alaska Women's Resource Center (AWRC);
26. May 13 And 15, 2003, - Presentation About The OVR To Attendees At The 2003 Alaska Peace Officer Association Annual Crime Conference;
27. May 23, 2003, - Presentation To Visiting Russian Dignitaries From Khabarovsk, Russia Through The University Of Alaska Anchorage American Russian Center- Community Connections Program (Sponsored By The U.S. Department Of State's Bureau Of Educational And Cultural Affairs);
28. June 20-21, 2003, - Presentation At The Second Annual Crime Victim Law And Litigation Conference At The National Crime Victim Law Institute At Lewis And Clark Law School, Portland, Oregon.
29. The OVR Director also addressed members of the Twenty-Third Alaska Legislature and their staff during their staff orientation January 18, 2003.

4. Creation Of OVR Informational Brochure

During its first year of operation the OVR has also designed and printed 5000 copies of a two-fold, color brochure called "Spotlight On Crime Victims." The brochure highlights and explains such topics as "What are my rights?" "Who does the OVR help?" "What can I expect?" as well as other matters including confidentiality issues. In January 2003, several thousand copies of the brochure were distributed statewide to dozens of law enforcement agencies along with a cover letter explaining the purpose of the OVR and providing contact information to rural police agencies.

5. Office Of Victims' Rights Web Site

The OVR has statewide jurisdiction and oversight over criminal justice agencies. In an effort to serve crime victims throughout the state, the OVR worked cooperatively with the Alaska Legislative Information Office during FY 2003 towards the joint development of an OVR website. The website was developed by Lori Yorba, and may be accessed at <http://www.officeofvictimsrights.legis.state.ak.us/> It was designed to provide the user with easy access to information about the Alaska OVR, the various statutory and constitutional rights of crime victims, information on current investigations, information regarding other helpful links and how to file a complaint with the OVR. The OVR website complaint form is currently being programmed to allow

for online submission. The OVR also has a dedicated e-mail address, which can be accessed directly from the web page, as well as information about how to contact the OVR including its toll free 800-telephone number. A copy of this annual report will be posted on the OVR website for viewing by the public.

6. OVR Chart Of Statutory And Constitutional Victim Rights

Crime victims in this state are entitled to approximately 50 separate constitutional and statutory rights. However, prior to the creation of the OVR, these rights were difficult for victims to learn about or find because they were scattered throughout the statutes. One of the first priorities of the OVR was to construct a chart that gathered all crime victims' rights in this state into one document in order to provide victims, law enforcement agencies and the public with a central repository of this key information. That chart may now be found on the OVR web page at the following URL address <http://www.officeofvictimsrights.legis.state.ak.us/ovrlisting.htm>

IV. Significant Cases Handled By The OVR During Its First Year Of Operation

A. John M. Murtagh, et al v. State of Alaska, and the Office of Victims' Rights, 3AN-97-649 Civil

Some five and a half years before the OVR was created, four Anchorage criminal defense attorneys, John M. Murtagh, James H. McComas, Cynthia L. Strout, and Sidney K. Billingslea and private investigator Harry D. Taylor, filed suit in Anchorage Superior Court challenging four subsections of Alaska's Victims Right Act: AS 12.61.120(c)(2), (c)(3); AS 12.61.120(d) and AS 12.61.125. In their January 23, 1997, complaint, the plaintiffs moved for a declaratory judgment seeking a ruling that these statutes were unconstitutional because, they claimed, these laws interfered with a criminal defendant's right to investigate the charges against them and to prepare a defense. The Superior Court entered a partial judgment on the plaintiff's claims and the case was appealed to the Alaska Supreme Court. The matter was remanded to the Superior Court on November 4, 2002 for further determination. The OVR filed a motion with the Superior Court to intervene as a matter of right in March 2003, which was granted, and the OVR is now a named defendant in the suit.

- *Why This Lawsuit Threatens Victims' Rights*

The challenged provisions of AS 12.61.125 greatly limit criminal defense contacts with crime victims in order to safeguard their constitutionally protected privacy rights under Article I Section 22 as well as their right to be treated with dignity, respect and fairness as required by Article I Section 24 of Alaska's Constitution. Neither a defendant accused of a sexual offense, the defendant's counsel, an investigator, or other person acting on behalf of the defendant, may contact the victim of the offense or a witness to the offense if the victim or witness has informed the defendant or the defendant's counsel in writing or in person that the victim or witness does not wish to be contacted by the defense. Also, the defense may not obtain a statement from the victim of the offense or a witness to the offense, unless, (if the statement is taken as a recording), the recording is taken in compliance with AS 12.61.120. If the statement is not taken as a recording, written authorization must first be obtained from the victim or witness and it must state that the victim or witness is aware that there is no legal requirement that the victim or witness speak to the defense. Statements obtained from a victim or witness in violation of AS 12.61.120 or 12.61.125 are presumed inadmissible.

To overcome the presumption of inadmissibility, the defendant is required to prove by clear and convincing evidence that (1) the statement is reliable; (2) similar evidence is unavailable from any other source; and (3) failure to introduce the statement would substantially undermine the reliability of the fact-finding process and result in manifest injustice. AS 12.61.127. Violation of these restrictions by an attorney or an agent of the attorney is considered so serious that "...the court shall refer the violation to the Disciplinary Board of the Alaska Bar Association as a grievance." AS 12.61.125(c).

- *Why The Office of Victims' Rights Sought To Become A Party*

The Attorney General is responsible for representing the state in all civil actions in which the state is a party as in this case. The Office of the Attorney General then, has the mandate to advocate on behalf of the state's interests and to defend state law from challenge. Here however, the constitutional and statutory rights of a particularly vulnerable class of citizens, crime victims, could be gravely impacted by this action if the plaintiffs prevail. When this suit was filed in 1997, the OVR was not yet in existence. With the case now on remand from the Supreme Court, the opportunity was presented for this office to intervene and the opportunity has been seized. This is proper because the OVR has the specific legislative mandate to advocate on behalf of the very citizens whose rights could be directly impacted as a result of this action. OVR is the voice for that class of citizens and advocates solely on behalf of crime victims' statutory and constitutional victims' rights. Further, OVR represents the legislative branch of government – the same body that enacted and passed the contested laws. It is anticipated that a final opinion by the Alaska Supreme Court will not be rendered for at least 24 months.

B. State of Alaska v. Joshua Wade, 3AN-S00-8436 CR

In October 2000 Joshua Wade was indicted by an Anchorage grand jury for the murder, robbery, and sexual assault of D.B. His case went to trial in the spring of 2003 in Anchorage before the Honorable Michael L. Wolverton, judge of the Superior Court. Prior to the commencement of his trial, Wade's defense lawyers were successful in persuading Judge Wolverton to admit evidence before Wade's jury that another suspect, Gregory Poindexter, may have committed the crimes against D.B. rather than Wade. At the time of Wade's trial, Poindexter was in prison having been convicted earlier of a number of sexual assaults of other women, including M.F. and E.K. In part, the court granted the request because of the similarities in the manner of the commission of the crimes against M.F. and E.K. and D.B. In an attempt to raise doubt about Wade's complicity, his lawyers subpoenaed M.F. and E.K., two of Poindexter's sexual assault victims. Both victims then sought assistance from the OVR.

The OVR filed a motion to quash their subpoenas advancing a number of different legal arguments in support of the motion. Chief amongst them was that, since M.F. and E.K. had no involvement with Wade, to require them to become re-victimized by reliving Gregory Poindexter's crimes through their compelled testimony in open court for the purpose of attempting to raise doubt about Wade's guilt, violated their constitutional right to be treated with dignity, respect, and fairness as guaranteed by Article I, section 24 of the state's constitution, as well as their right to privacy under Article I Section 22 of that document. Following argument, Judge Wolverton granted OVR's motion and quashed M.F. and E.K.'s subpoenas.

C. The Patti Godfrey Case- OVR's First Formal Investigation

The OVR has the statutory authority to conduct investigations of complaints from crime victims that they have been denied the rights they are guaranteed under Alaska's constitution and laws of this state. Within a reasonable time after an investigation is completed, and after the OVR reports their opinion and recommendations to a criminal justice agency, Alaska statute 24.65.160 authorizes the OVR to present their investigative findings, opinions and recommendations to the governor, the legislature, a grand jury, the public, or any of these.

- *Investigation Of The Anchorage Police Department*

Patti Godfrey filed a written complaint with the OVR regarding the response by the Anchorage Police Department (APD) to her home on August 3, 2002 after her husband Glen Godfrey was murdered, and she was shot several times and seriously wounded by Karen Brand who then committed suicide. At

issue was the delay in providing immediate medical assistance to Ms. Godfrey as required by law. The dispatch log showed arriving officers made contact with her at 1:18 am after she called 911 at 12:29 am, some 49 minutes earlier. Crime victims have a right to immediate medical assistance as provided in Alaska statute (AS) 12.61.010(a)(7).

The second basis for her complaint related to the unauthorized release of confidential information about her home address and telephone number, as well as her daughter's home telephone number, in the 911 tape and transcript released by APD to the media at an APD press conference on August 22, 2002. Both Patti Godfrey and her daughter are considered "victims" as that term is defined in AS 12.55.185(16). AS 12.61.110 provides for confidentiality regarding the location of a crime victim's residence address and telephone numbers. Whenever a report, paper, picture, photograph, court file, or other document that is in the custody or possession of a public officer or employee relates to a crime and contains the residence or business address or telephone number of a victim or witness, that public officer or employee may not make it available for public inspection unless the residence and business addresses and telephone numbers of all victims and witnesses have been deleted. Here, neither the written transcript of the 911-dispatch tape nor the audiotapes were edited to remove this confidential information prior to release to the public as required by law.

- *Information Reviewed By The OVR*

AS 24.65.120 provides that during an investigation, the OVR is authorized to "make inquires and obtain information considered necessary; hold private hearings; and notwithstanding other provisions of law, have access at all times to records of justice agencies..." necessary to protect victims' rights. AS 24.65.130 authorizes the OVR to subpoena documents and objects, and to command the appearance of persons who may have relevant information about a matter under investigation to give sworn testimony.

In accordance with these laws the OVR subpoenaed records from the APD as well as the Municipal Office of Management and Budget. Additionally, records, data, and information were subpoenaed from Resource Data Inc. (RDI), an Anchorage computer software applications developer that had contracted with the APD to improve the accuracy of the E-911 database. Altogether, approximately 4,105 documents were subpoenaed and reviewed during this investigation. The OVR also heard sworn testimony from APD Chief of Police Walt Monegan and Deputy Chief Mark Mew. The Municipal legal department cooperated with OVR subpoenas and requests for information.

The OVR interviewed numerous private individuals who have relevant information about the facts of the Godfrey incident, as well as the inner workings of the APD dispatch unit. Individuals interviewed included the Godfrey's neighbors, members of the public and other witnesses as well as representatives

from Alaska Communications Systems (ACS) and the Matanuska Telephone Association (MTA). Finally, the OVR considered information within the public domain.

- *OVR Findings*

The OVR published its 36-page report on November 26, 2002. The OVR found that the release of confidential information by the APD violated the Godfrey family's right of confidentiality and that the delayed response to her home violated Patti Godfrey's right to immediate medical assistance as required by AS 12.61.010(a)(7). The investigation also disclosed that the delayed emergency response was not an isolated event and in the weeks following the Godfrey case, several cases came to light that involved similar errors. The delayed response was determined by the OVR to be attributable to an error in APD's database that prevented the system from verifying the Godfrey address as a valid address. Instead the computer database suggested an address that did not exist. The OVR report concluded by making numerous recommendations to improve the efficiency of Anchorage's E-911 system.

Prior to the tragic events of August 3, 2003, and the delay in locating the Godfrey residence, the Municipality of Anchorage was aware of problems cited in the OVR's report and engaged in making a number of improvements to the city's emergency response system. However, it appears the unusual facts of the Godfrey incident brought the E-911's shortcomings into immediate community focus and underscored the need for immediate action.

On December 6, 2002, Mayor George Wuerch announced the creation of an E-911 oversight task force to study the city's existing E-911 shortcomings and to make recommendations for improving the system and related personnel issues discussed in the OVR's final written report. The complete text of that report is available on line at http://www.officeofvictimsrights.legis.state.ak.us/investigations/OVR_Final_Godfrey_Report.pdf

V. 2003 CRIME VICTIM LEGISLATION SUPPORTED BY OVR

Three important pieces of legislation were actively supported by the OVR during the recently concluded twenty-third session of the Alaska Legislature. The enactment of all three Bills into law has significantly advanced the interests and well being of crime victims throughout Alaska.

House Bill 68

In its written response to the OVR's report in the Patti Godfrey case mentioned above, the Municipality of Anchorage stated in part:

"It is doubtful the OVR has the jurisdiction to investigate or make findings regarding the Anchorage Metropolitan Police Department ("APD"). OVR's authorizing statute specifically defines "justice agencies" as belonging to the "executive or judicial branches of state government". The Municipality of Anchorage and its departments are not part of the executive or judicial branches of state government and so are outside the OVR's jurisdiction." (At page 2).

Overlooked by the Municipality in asserting this claim was AS 24.65.120, which states "The Victims' Advocate may investigate complaints from crime victims that they have been denied the rights they are guaranteed under the constitution and laws of this state." In any event, the matter has now been rendered moot by passage of HB 68 on February 12, 2003. HB 68 amended the definition of "justice agencies" in AS 24.65.250 to now include all municipalities within the state. This legislation was sought, and supported by the OVR in response to the Municipality's assertion that it lacked statutory authority to investigate the Anchorage Police Department. HB was introduced by House Representative Ralph Samuels (R) Anchorage and passed both houses of the 23rd Alaska Legislature unanimously. The bill was signed by Governor Frank Murkowski on April 11, 2003, and becomes effective on July 10, 2003.

Senate Bill 41

Medicaid is a federal-state financed health care program for indigent patients. Medicaid costs in Alaska have escalated an average of 15% a year over the last 5 years with the FY 2004 budget approaching \$1 Billion. One reason for the rapid escalation of such health care costs is due to theft by unscrupulous Medicaid providers who can cheat Alaska's Medicaid program through fraudulent or inflated billings. When limited money earmarked for sick and needy patients is diverted from the Medicaid program due to theft, the public is victimized because the suffering of those patients is unnecessarily prolonged and critical medical services are curtailed due to lack of funds.

Unfortunately, investigating and prosecuting such thefts can be very difficult. Unlike most "regular" crimes, there is no "crime scene" in a health care case nor is there any physical evidence to send to a crime lab for analysis. There are seldom any witnesses to crimes of dishonesty generally, and health care crimes are in a league of their own in terms of specialization. Those who commit such crimes are intelligent, well educated and able to afford the best criminal defense. Health care practitioners work in specialized areas of medicine and are usually no match for most police officers or prosecutors. Often, such crimes depend on a

showing by prosecutors through expert testimony that medical services were not provided in accordance with complex Medicaid rules and Regulations. This requirement raises thorny issues regarding medical necessity and the quality of care provided by a practitioner to their patients, something juries find difficult to understand in the absence of clear, specialized criminal laws. That is why in Alaska there exists a specially trained prosecution office known as the Medicaid Fraud Control Unit.

However, until recently, it was difficult even for such specialists to investigate and prosecute health care crimes because Alaska was the only state that had no specific health care criminal theft laws in its criminal code. As a result, prosecutors had no choice but to use non-specific, generic criminal statutes to prosecute health care professionals who operate in a highly technical field and are able to mount expensive and well-financed (and often successful) defenses. SB 41 has changed all that. For the first time in this state, prosecutors and Medicaid Investigators now have statutes that are specific to health care crimes.

SB 41 also now requires the Commissioner of Health and Social Services to undertake annual statewide audits of Medicaid providers and to commence administrative procedures to recoup overpayments identified in the audits. SB 41 was passed by the legislature on May 21, 2003 and was signed into law by Governor Murkowski on June 11, 2003. SB 41 was introduced by Senator Lyda Green (R) of Wasilla.

Senate Bill 45

Another Bill sponsored By Senator Green was SB 45, which concerns the work of the Legislative Budget and Audit Committee of the Alaska legislature.

AS 24.20.201(a)(3) states that the Legislative Budget and Audit Committee has the power to "require all state officials and agencies of state government to give full cooperation to the committee or its staff in assembling and furnishing requested information." Unfortunately, this well-intentioned statute has been unenforceable because there are no penalties to be had against anyone who hinders or undermines the work of the Committee.

SB 45 will fix this by amending the criminal code to establish AS 11.56.870, a new statute captioned "Hindering the Legislative and Audit Committee." AS 11.56.870 will now make it a violation punishable with a fine up to \$5000 for any person who obstructs the work of that committee. SB 45 also amends Alaska's Whistleblower Act found in AS 39.90 to protect any state employee who reports interference or any failure to cooperate with an audit or other matter within the authority of the Legislative Budget and Audit Committee. As state revenue continues to decrease, the Legislative Budget and Audit Committee's work will likely increase and become more important. This statute

will advance their important work. SB 41 was passed by the legislature on May 21, 2003 and was signed into law by Governor Murkowski on June 11, 2003.

VI. OVR PLANS FOR FY 2004

A. OVR Regulations To Be Implemented During FY 2004

Alaska statute 24.65.090 requires the OVR to promulgate regulations adopted under AS 44.62 of the Administrative Procedure Act. Over the last several weeks, the director and his staff have been in the process of drafting regulations as authorized by this statute. The regulations will establish procedures for advocacy on behalf of crime victims, receiving and processing complaints from crime victims, conducting investigations of justice agencies, reporting findings and ensuring that confidential information obtained by the OVR in the course of advocacy on behalf of a crime victim, or in the course of an investigation, will not be improperly disclosed. The regulations will also establish procedures so that advocacy and investigations on behalf of crime victims in felony cases take priority over advocacy and investigations on behalf of crime victims in misdemeanor cases. It is anticipated that the regulations will become effective prior to September 1.

B. Development Of An OVR Case Management System

The Office of Victims' Rights Case Management System, called OVRcms, is a unique application that has been custom designed specifically for the work of the OVR. The program's ability to streamline data entry for new contacts and cases, as well as to produce ad hoc reports on command, make it a very useful tool for OVR caseworkers. Another unique feature is the program's ability to track relationships amongst contacts and cases which can produce patterns otherwise unforeseen e.g. whether a contact in the system is a victim in more than one open case or whether the facts of one case are related to another. The case management system will further benefit the Office of Victims' Rights by continually monitoring case status, deadlines, and any other important flags it is tasked with while retaining the ability to notify the correct caseworker through reminder e-mails and pop-ups. The application is also able to send an OVR client a group of forms or information sheets from the document database on the fly with little effort. The principal benefit to the OVR from this application is its ability to have data at the touch of a button and to be able to share it amongst other office staff instantly. OVRcms is currently in it's final programming stages and version 1 should be available within a few weeks. Changes and improvements will be added to the application as needed.

C. Statewide Survey Of Criminal Justice Agencies

The OVR is charged with the legal duty to ensure that crime victims are granted the rights guaranteed them under the constitution and laws of the state with regard to their contacts with justice agencies throughout Alaska. In furtherance of that responsibility the Victims' Advocate plans to contact all law enforcement agencies throughout the state during FY 2004 to inquire about, and request copies of, their policies and directives related to providing services to crime victims. The materials will be evaluated with the goal of drafting suggested model policies for law enforcement agencies.

D. OVR Plans To Recruit Another Attorney During FY 2004

As the public continues to learn about the services available to crime victims, and as the OVR's caseload continues to expand, it is presently envisioned that there will arise a need for an additional attorney position within the agency during FY 2004, bringing the total legal staff to three lawyers. It is anticipated that one primary responsibility of the attorney will be to focus efforts on education of victims and justice agencies in major cities and communities throughout Alaska.

E. Drafting Of An OVR Policies and Procedures Manual

It is the intent of the Victims' Advocate to commence preparation of an OVR Internal Policies and Procedures Manual for the Office of Victims' Rights during FY 2004. In accordance with AS 24.65.200, the manual will be confidential and for internal use by OVR staff.

VII. CONCLUSION

The Alaska Legislature created the Alaska Office of Victims' Rights in 2002 to help victims of crime obtain the rights that they are guaranteed under Article I Section 24 of the Alaska Constitution and numerous state statutes with regard to their contacts with criminal justice agencies in this state. The Office of Victims' Rights is also charged with the advancement and protection of those statutory and constitutional victim rights and is the only such agency of its kind. OVR's director and staff have undertaken outreach and education efforts statewide to make the public aware of the new and innovative office. The public has responded enthusiastically to this much-needed legislation and support for the agency throughout the community has been tremendous.

Since the establishment of the office on July 1, 2002, more than 200 crime victims have sought a variety of services including information, education, investigation, in-court advocacy and support. In providing these needed services the OVR staff has focused on facilitating a cooperative relationship between criminal justice agencies, the courts and the victims of crime who are our clients. OVR has established a user-friendly, educational web site that includes a complete listing of all the rights guaranteed to crime victims in the state. In addition, OVR has undertaken representation of victims both in- court and behind the scenes; for many victims the advocacy, support and advice they received from OVR attorneys has proven invaluable to resolving their cases in a way that preserves their dignity, respect and legal rights.

The OVR has plans to further its efforts on behalf of crime victims during the next twelve months. OVR will continue to discharge its statutory duty to assist crime victims and also plans to promulgate regulations; implement a case management system; survey criminal justice agencies throughout the state and assess their policies and directives related to crime victim rights; and hire another OVR staff attorney. OVR will continue its education and outreach program and will further develop the agency's ability to investigate complaints from crime victims and effectively advocate on their behalf in ongoing criminal cases and juvenile adjudications.

The dedication and commitment of the OVR staff has made the past year a fruitful one for crime victims. The future is bright and FY 2004 promises to be another successful year for the Office of Victims' Rights and the clients it serves.

HB

534

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 04/28/04

FURTHER:

REPORTED OUT

MAY 09 2004

SENATE FINANCE
COMMITTEE

DATE TURNED
IN TO OFFICE: 9 May 2004

Finance Committee considered CS FOR HOUSE BILL NO. 534(FIN)

HB 534 MAKE OFFICE OF VICTIMS RIGHTS PERMANENT

"An Act repealing the scheduled termination date of the office of victims' rights."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:
 Same Title
 New Title

House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero.	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero.	FN#
Legislature	4/5/04	✓		✓	#2

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
COCHAIR:				
COCHAIR: <i>[Signature]</i>	✓			

CS FOR HOUSE BILL NO. 534(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 4/6/04
Referred: Rules

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE BUDGET AND AUDIT
COMMITTEE

A BILL
FOR AN ACT ENTITLED

1 "An Act repealing the scheduled termination date of the office of victims' rights."

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

3 * Section 1. Sections 8, 18, 22, 24, 28, 30, 32, 34, 41, and 51, ch. 92, SLA 2001, are
4 repealed.

MAY 09 2004

SENATE FINANCE
COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 534(FIN)
(H) Publish Date: 4/6/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Legislature
Title "An Act extending the termination date of BR'J Legislative Council
the office of victim s' rights." Component: Council and Subcommittees
Sponsor House Rules by Request-Legis Budg & Audit
Requestor House Finance Committee Component No. 783

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	483.6	483.6	483.6	483.6
Travel	0.0	0.0	4.5	4.5	4.5	4.5
Contractual	0.0	0.0	51.5	51.5	51.5	51.5
Supplies	0.0	0.0	2.0	2.0	2.0	2.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	541.6	541.6	541.6	541.6

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1171 PFD Fund	0.0	0.0	541.6	541.6	541.6	541.6
TOTAL	0.0	0.0	541.6	541.6	541.6	541.6

Estimate of any current year (FY2004) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time			7	7	7	7
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The Legislature's budget currently includes funding for the Office of Victims' Rights. If this legislation passes, the funding for the Office of Victims' Rights will continue to be included in the Legislature's budget.

Prepared by: Karla Schofield, Deputy Director Phone 465-6626
Division Administrative Services Date/Time 4/5/04 10:08 AM
Approved by: Pamela Varni, Executive Director Date 4/5/2004
Agency Legislative Affairs Agency

REPRESENTATIVE RALPH SAMUELS

HOUSE DISTRICT 29

CS HB 534 Sponsor Statement

“An Act repealing the scheduled termination date of the office of victims’ rights.”

CS HB 534 simply repeals the sunset date of the Office of Victims’ Rights (OVR).

The OVR provides legal counsel, education, and assistance to victims of crime. Because many of the cases OVR handles can take several years to resolve, a limit on their existence could potentially leave a victim without help halfway through a case. In addition, the OVR is already included in the Legislature’s annual audit.

Email: Representative_Ralph_Samuels@legis.state.ak.us

Session: Alaska State Capitol, Juneau, Alaska 99801-1182 • Phone: (907) 465-2095 Fax: (907) 465-3810
Interim: 716 W. 4th Ave., Anchorage, Alaska 99501-2133 • Phone: (907) 269-0240 Fax: (907) 269-0242

SENATE COMMITTEE REPORT

DATE: 04/20/04

FURTHER: Finance

DATE TURNED IN TO OFFICE: 4/28/04

State Affairs Committee considered CS FOR HOUSE BILL NO. 534(FIN)

HB 534 MAKE OFFICE OF VICTIMS RIGHTS PERMANENT

"An Act repealing the scheduled termination date of the office of victims' rights."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
House Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
<i>Leg.</i>	<i>4/5/04</i>	<input checked="" type="checkbox"/>			<i>2</i>

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	NO REC	AMEND
<i>John Cowdrey</i>	<input checked="" type="checkbox"/>			
<i>Scott K. Peterson</i>	<input checked="" type="checkbox"/>			
<i>Fletcher</i>	<input checked="" type="checkbox"/>			
CHAIR: <i>G. Stevens</i>	<input checked="" type="checkbox"/>			

Cowdrey
Skidmore
Guss

G. Stevens

HB

535

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSSB 393(FIN)
(S) Publish Date: 5/1/04

Revision Date/Time (Note if correction): _____ Dept. Affected: UA
Title TAKE PERM FUND DIVIDEND FOR L BRU UA
Sponsor FINANCE Component _____
Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	75.0	25.0	25.0	25.0	25.0	25.0
Travel	5.0					
Contractual	15.0					
Supplies	5.0	5.0	5.0	5.0	5.0	5.0
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	100.0	30.0	30.0	30.0	30.0	30.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1048)	400.0	350.0	300.0	250.0	180.0	130.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1048 University Receipts	100.0	30.0	30.0	30.0	30.0	30.0
TOTAL	100.0	30.0	30.0	30.0	30.0	30.0

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time		1	1	1	1	1
Temporary	1					

ANALYSIS: (Attach a separate page if necessary)

Currently, UA has a very aggressive process to collect unpaid tuition, fees and other charges such as dorm fees, parking tickets, lost library books, etc. The process includes notices at 30, 60, 90, 120 and 180 days, administering deferred payment plans, and employing collection agencies. However, even with these collection efforts there is currently over \$1M owed to the university that is at least 180 days past due. Given the number of Alaska resident students, we estimate that \$800K of the \$1M, that is over 180 days old, is attributed to students receiving a PFD. For appropriate protection of each citizen, this legislation provides for extensive notification, warning and appeals processes in advance of being able to garnish a permanent fund dividend. Therefore, of the \$800K, we estimate about \$400K would be collectible via this mechanism in the first year. Thereafter, that amount will likely decline each year to a minimum of \$100K annually in 5 to 10 years.

Prepared by: Pat Pitney Phone 474-5889
Division: University of Alaska Date/Time 4/28/04 8:57 AM
Approved by: Pat Pitney Date 4/28/2004
Agency: University of Alaska

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSSB 393(FIN)
 (S) Publish Date: 5/1/04

Revision Date/Time (Note if correction): _____ Dept Affected: Revenue
 Title: Take Perm Fund Dividend for RDU: Revenue Programs & Services
University Fees Component: Permanent Fund Dividend
 Sponsor: Senate Finance Committee
 Requester: Senate Finance Committee Component No. 981

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual	15.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	15.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Permanent Fund Dividend Fund	15.0					
TOTAL	15.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						0
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This bill would authorize the university to claim up to 100% of an individual's Permanent Fund Dividend for payment of defaulted tuition, fees and other charges of the University of Alaska. The university estimates approximately 1,700 garnishments in the first year and something less in subsequent years.

This fiscal note covers the cost of programming the PFD garnishment system, warrant, and direct deposit programs as needed to accommodate a new agency with authority to claim up to 100% of an individual's dividend. Once the computer programs are in place, claims will be handled electronically and there should be no increase in cost to process the university garnishments from year to year.

Prepared by: Sharon Barton Phone 465-4785
 Division: Permanent Fund Dividend Date/Time 4/25/04 11:45 PM
 Approved by: Steve Porter, Deputy Commissioner Date 4/25/2004
 Agency: Department of Revenue



Official Business

Alaska State Senate

Senate Finance Committee

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

Sponsor Statement

SB 393

Take Permanent Fund Dividend for University Fees

This legislation provides the University of Alaska the ability to collect outstanding debt through garnishing a person's permanent fund check in a manner similar to the collection process used by the Alaska Student Loan Corporation on defaulted loans.

Currently, UA has a very aggressive process to collect unpaid tuition, fees and other charges such as dorm fees, parking tickets, lost library books, etc. The process includes notices at 30, 60, 90, 120 and 180 days, administering deferred payment plans, and employing collection agencies.

However, even with these collection efforts there is currently over \$1M owed to the university that is at least 180 days past due. Given the number of Alaska resident students, UA estimates that \$800K of the \$1M, that is over 180 days old, is attributed to students receiving a PFD. For appropriate protection of each citizen, this legislation provides for extensive notification, warning and appeals processes in advance of being able to garnish a permanent fund dividend. Therefore, of the \$800K, UA estimates about \$400K would be collectible via this mechanism in the first year. Thereafter, that amount will likely decline each year to a minimum of \$100K annually in 5 to 10 years.

This legislation provides UA one additional avenue to collect revenue, that in the past has been un-collectible and written off as bad debt.

A handwritten signature in black ink, appearing to read "C. Smith".

HB

536

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT
MAY 09 2004
SENATE FINANCE COMMITTEE

DATE: 5/7/04

FURTHER:

DATE TURNED IN TO OFFICE: 9 May 2004

Finance Committee considered CS FOR HOUSE BILL NO. 536(MLV)

HB 536 PFUND APPLICATION DEADLINES: MILITARY

"An Act relating to applications for permanent fund dividends by certain individuals serving in the armed forces, and to payment of certain 2003 and 2004 dividends; and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:
 Same Title
 New Title

House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero.	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
Revenue	7/04			✓	#2

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>	✓			
<i>[Signature]</i>			✓	
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
COCHAIR:				
COCHAIR: <i>[Signature]</i>	✓			

FISCAL NOTE

REPORTED OUT
MAY 09 2004
SENATE FINANCE
COMMITTEE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 536(MLV)
(S) Publish Date: 5/7/04

Revision Date/Time (Note if correction): 5/5/2004 Dept. Affected: Revenue
Title Related to applications for permanent RDU Revenue Programs & Support
Component Permanent Fund Dividend
Sponsor House Rules by request
Requester Senate State Affairs Component No. 981

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1950 Permanent Fund Dividend Fund						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						0
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
This bill proposes to extend the filing period for the 2003 and 2004 dividends for 90 days after the effective date of the bill for otherwise eligible active duty military PFD applicants who were also eligible for hostile fire or imminent danger pay. The cost of processing the additional applications that would result from this legislation is negligible.

Prepared by: Sharon Barton Phone 465-4785
Division Permanent Fund Dividend Division Date/Time 5/6/04 11:07 AM
Approved by: _____ Date 5/6/2004
Agency _____

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 536(MLV)
 (H) Publish Date: 4/7/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
 Title Permanent Fund Application RDU Revenue Programs & Services
Deadlines: Military Component Permanent Fund Dividend
 Sponsor Rules by Request of EDT
 Requester House Military and Veterans' Affairs Component No. 981

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual	25.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	25.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1950 Permanent Fund Dividend Fund	25.0					
TOTAL	25.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						0
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill proposes to extend the filing period from March 31 to August 31 in any dividend year for individuals who are absent from the state, serving as a member of the US Armed Forces, and eligible for hostile fire or imminent danger pay. The fiscal note would cover costs for advertising the change in 2005.

Prepared by: Sharon Barton Phone 465-4785
 Division Permanent Fund Dividend Division Date/Time 4/3/04 7:29 PM
 Approved by: Steve Porter, Deputy Commissioner Date 4/3/2004
 Agency Department of Revenue

Alaska State Legislature



Representative Cheryll Heinze Sponsor Statement HB 536

"An Act relating to applications for permanent fund dividends by certain individuals serving in the armed forces; and providing for an effective date."

Currently, Alaskan men and women who serve in the armed forces are being denied their permanent fund dividend checks because they were in situations where communications were unavailable during the application period. Alaskans who fought in the recent wars in Iraq and Afghanistan have had their applications rejected because they either didn't get their application forms in time or were unable to send them out.

These Alaskan men and women are patriots who serve their country faithfully in times of crisis and need, they deserve to be praised for their bravery and fortitude not punished for it. HB 536 amends the current PFD application process to allow for members of the armed services who receive hostile fire/imminent danger pay during the application period to receive an application extension. This would give members of the armed services the leeway they need to submit their PFD applications on time. I urge you to support this bill.

Summary of the CS for HB 536 (MLV)

- An individual who is eligible for the PFD and who
 - o **Receives hostile fire/imminent danger (HF/ID) pay**
 - o **Serves as a member of the armed services****is eligible to apply for their PFD up to 90 days after they stop receiving hostile fire/imminent danger pay**

- An individual may apply for a permanent fund dividend for any preceding year if at any time during the application period of the dividend year they are applying for
 - o They served on **active duty in the armed services**
 - o Were **eligible for hostile fire/imminent danger pay**
 - o **Can demonstrate a reasonable cause for the delay in applying for their dividend**

- An individual who was eligible for hostile fire/imminent danger pay while serving as a member of the armed services **during the application period for the 2003-2004 dividend may apply for it for 90 days after this bill takes effect.**
The Dept. of Revenue shall promptly pay those dividends.

Prepared by Rep. Heinze's Office

The CS is worded like it is for a few reasons. First being that if someone is in a war zone situation and can't apply for their dividend due to hardship, it would seem unfair to put a limitation on their application period that isn't tied to that hardship.

For example, under the original version of HB 536, a person who met the criteria for the extension (Hostile fire/imminent danger pay and active duty member of armed forces) who was in a war zone situation for longer than 6 months would not be able to receive their dividend.

Under the CS they would have 90 days after leaving the war zone situation to apply.

For people who participated in the recent wars in Iraq and Afghanistan but weren't able to submit an application, even late, the CS applies to them by allowing any member of the armed services who received HF/ID pay during the application period for 2003 and 2004 to apply for those dividends for 90 days after the signing of this bill into law.

The CS also gives the commissioner leeway to allow an individual to apply for their PFD if they demonstrate reasonable cause and

fall under the previous criteria (HF/ID pay and member of armed services) which gives the PFD office enough leeway to make sure people who truly deserve an extended application period due to hardship can still apply for their PFD.

Frequently Asked Questions.

When is the filing period for the Permanent Fund Dividend?

The dividend filing period is January 2 through March 31 each year. You must file an application every year to apply for a dividend. Late applications will be denied.

How do I know if the PFD Division needs any additional information?

The Division will send you a letter if we need additional information. The letter will be sent to your most current address on file.

How do I inform the PFD Division of an address change?

Complete a Change of Address form and submit it to the Permanent Fund Dividend Division. You may obtain a Change of Address form by:

- ◆ downloading a form off our web site at www.pfd.state.ak.us or
- ◆ contacting us at a PFD Information Office (back side of this brochure) and request a form.

Do I need to submit a copy of my Leave and Earnings Statement (LES) with my application?

No. The PFD Division will run a tape match with Department of Defense (DOD) to check for military members with Alaska as their state of legal residence. If for some reason your information does not match DOD records and the division needs a copy of your LES or other documents related to your enlistment or discharge, the division will contact you.

www.pfd.state.ak.us

For detailed eligibility criteria, contact one of the dividend information offices below, or visit our web site at www.pfd.state.ak.us

PFD Information Office Addresses

Anchorage Dividend Information Office

Alaska Department of Revenue
Permanent Fund Dividend Division
1016 W. 6th Ave.
Anchorage, AK 99501
(907) 269-0370
(907) 269-0384 (fax)
Located on the corner of 6th and K

Fairbanks Dividend Information Office

Alaska Department of Revenue
Permanent Fund Dividend Division
1005 Cushman Street, Suite 1
Fairbanks, AK 99701
(907) 451-2820
(907) 451-5142 (fax)

Juneau Dividend Information Office

Alaska Department of Revenue
Permanent Fund Dividend Division
PO Box 110461
Juneau, AK 99811-0461
(907) 465-2326
(907) 465-3470 (fax)
11th floor of the State Office Building
333 Willoughby Avenue

Toll-free number (800) 733-8813

- ◆ Available in the state of Alaska year-round.
- ◆ Available from outside the state of Alaska October through March.

Or you can E-mail us at:

dividend_information@revenue.state.ak.us

State of Alaska
Department of Revenue

Military Guide for the Alaska Permanent Fund Dividend

ALASKA



Permanent Fund Dividend Division

This brochure provides general information about the Permanent Fund Dividend program as it relates to active duty military and their spouse and dependents.

Active duty military

How to establish Alaska Residency

You must:

- ✓ Arrive in Alaska on or before December 31, of the year before the qualifying year and
- ✓ Take at least one step beyond just being physically present in Alaska.
For Example:
 - ◆ Obtain an Alaska driver's license or ID card,
 - ◆ Register to vote,
 - ◆ Register a vehicle,
 - ◆ Sign a lease for non-governmental housing or purchase a home.
- ✓ Maintain Alaska residency at all times during the qualifying year and intend to remain an Alaska resident.
- ✓ **NOTE:** Qualifying year means the calendar year prior to the year you are applying for. For example, if you apply for a dividend in 2002, the qualifying year is 2001.

What you will need to supply to the PFD Division

- ✓ Original birth certificate, passport, or citizenship papers.
- ✓ A completed PFD adult application (including a supplemental schedule if required) and requested documentation.

www.pfd.state.ak.us

Spouse

How to establish Alaska Residency

A spouse must:

- ✓ Arrive in Alaska on or before December 31, of the year before the qualifying year and
- ✓ Take at least one step beyond just being physically present in Alaska.

For Example:

- ◆ Obtain an Alaska driver's license or ID card,
- ◆ Register to vote,
- ◆ Register a vehicle, or
- ◆ Sign a lease for non-governmental housing or purchase a home.
- ✓ Maintain Alaska residency at all times during the qualifying year and intend to remain an Alaska resident.

What a spouse will need to supply to the PFD Division

- ✓ Original birth certificate, passport, or citizenship papers.
- ✓ A completed PFD adult application (including a supplemental schedule if required) and requested documentation.

Dependent Children

For the PFD program, a child is a person under the age of 18 unless legally emancipated.

A child's eligibility for the PFD is based on the eligibility of the parent or guardian who applies for the child. A child must also meet all other requirements of the PFD program.

What you'll need to supply to the PFD Division for children

- ✓ A completed PFD child application, and an original birth certificate, passport, or citizenship papers (if you are filing for the child's first dividend).

Filing for the PFD while stationed outside of Alaska?

- ✓ An application will only be mailed if you specifically request one. You may also download an application form through our web site at www.pfd.state.ak.us
- ✓ In addition to other requirements, you, your spouse and dependents must return to Alaska for at least 72 consecutive hours every 2 years to continue to be eligible for the dividend. Exception: If a child is born to or adopted by an eligible resident within the two calendar years immediately preceding the dividend year, that child is eligible for a dividend even though the child has not been physically present in Alaska during the two years.
- ✓ If you have been stationed outside for over 5 years, you will need to provide proof that you have spent at least 30 cumulative days in Alaska during the past 5 years to and be required to complete a detailed questionnaire.

Words to the wise

- ✓ Do not register to vote in another state or country.
- ✓ If you are required to file a tax return, file as a non-resident. Some states require you to file as a resident or part-time resident. PFD will know which states have this requirement.
- ✓ Do not execute a will, which describes residency in another state or country.
- ✓ Keep a copy of the form (Form DD 2058) you filled out requesting Alaska as your state of legal residence on your LES.
- ✓ Do not claim residency in the state or country of your duty station outside of Alaska.
- ✓ If you can not be readily contacted, for example you are on an extended tour of duty overseas, file a Power of Attorney to facilitate processing your PFD application.

E-mail dividend_information@revenue.state.ak.us

Your Absence from Alaska and the PFD Program

Are you going to be absent from Alaska this year? If you are, you need to be aware of the rules of the Permanent Fund Dividend (PFD) program for absences and how they affect your eligibility.

This document is intended to cover the most common circumstances related to absences as they pertain to the PFD program. This document refers to eligibility only in the context of an absence from Alaska – other requirements of the PFD program must be met to be otherwise eligible. Refer to PFD statutes and regulations for more detailed information or contact your nearest Dividend Information Office to get more specific information about your absence.

Anchorage Dividend Information Office
616 E Street
Anchorage, AK 99501
(907) 269-0370

Fairbanks Dividend Information Office
1005 Cushman Street
Fairbanks, AK 99701
(907) 451-2820

Juneau Dividend Information Office
PO Box 110461
Juneau, AK 99811-0461
(907) 465-2326

TTY (Hearing Impaired) (907) 279-0098

Toll-free Number (800) 733-8813 (Available year-round in Alaska and from October 1 through March 31 from out of state).

General Rule

You may be absent from Alaska in a calendar year for up to 180 days for any reason and still be eligible for a dividend, as long as you meet all other requirements of the program.

For certain absences, you may still be eligible for a dividend even though you are absent from Alaska for more 180 days. These absences are referred to as "allowable absences" and are described under the Allowable Absences section below.

Absences and Residency

While you are absent, whether one day or the whole year, you must maintain your Alaska residency and intend to return to Alaska and remain a resident. If you do anything to establish residency in another state or country while you are out of Alaska, such as registering to vote or filing a resident income tax return, you will not be eligible for a dividend.

Example. You move from Alaska in May to take a new job Washington and purchase a home there. After two weeks, you decide to come back to Alaska to live again. Even though you were gone less than 180 days, you will not qualify for the next dividend because you broke your Alaska residency and were not an Alaska resident for the entire calendar year.

Reporting Absences

You must report all absences if you were absent from Alaska for more than 90 total days during the calendar year, or were absent when you file your application. For purposes of the dividend program, absences are counted in cumulative days, not consecutive days, for a calendar year. The division counts the day you leave as a day in Alaska; the day you return is counted as an absence day.

Example. You left Alaska on March 1 and return May 20, and again from October 1 through the 16th. The total number of absence days in this example is 95 days (80 for the March 1 through May 20 absence and 15 days for the October absence). All absences must be reported on your dividend application because your total absence days exceed 90 days. Since the total number of days is less than 180 days, you may still be eligible for a dividend.

Allowable Absences

Permanent Fund Dividend laws allow persons to be absent from Alaska for more than 180 days if they are absent for one or more of the following reasons:

- 1) Receiving secondary or postsecondary education on a full-time basis
- 2) Receiving vocational, professional, or other specific education not reasonably available in Alaska
- 3) Serving on active duty as a member of the U.S. armed forces or accompanying the eligible military member if you are a spouse, minor dependent or disabled dependent
- 4) Serving aboard an oceangoing vessel of the U.S. merchant marine
- 5) Receiving continuous medical treatment under a licensed physician's care if the treatment is not based on a need for climatic change
- 6) Providing care for your parent, spouse, sibling, child, or stepchild with a critical life-threatening illness that requires travel outside for treatment at a medical specialty complex
- 7) Providing care for your terminally ill parent, spouse, sibling, child or stepchild
- 8) Settling the estate of your deceased parent, spouse, sibling, child or stepchild provided the absence does not exceed 220 cumulative days
- 9) Serving as a member of the U.S. Congress
- 10) Serving on the staff of a member of the U.S. Congress
- 11) Serving as an employee of the state
- 12) Accompanying a minor who is absent under reason (5) above
- 13) Accompanying another eligible resident who is absent for reasons (1), (2), (5)-(12) as the spouse, minor dependent, or disabled dependent of the eligible resident

Example. You are absent from Alaska for the entire calendar year while serving on active duty in the army in Fort Lewis, Washington. While out of state, you claimed Alaska on your Leave and Earnings Statement (LES) as your state of residency for the entire calendar year. You will be eligible for a dividend because you are on an allowable absence. However, note the 72-hour rule below.

Example. In January, you and your child moved to Eugene, Oregon to be with your wife who is a full-time student at the University of Oregon. Your wife was a full-time student for the whole year except summer school. You, your wife and child will all be eligible for a dividend because you are on allowable absences. Your wife is on the full-time student absence under (1) and you and your child are on allowable absence (13) accompanying an eligible resident. However, note the 72-hour rule below.

72-Hour Rule

All persons on allowable absences must be physically present in Alaska for at least 72 consecutive hours during the prior two years before the current dividend year.

Example. You are an Alaska resident who has been stationed in Fort Benning, Georgia on active duty military service since July 1, 2000 and are applying for a 2003 dividend. You returned to Alaska from June 6 through June 11, 2001. You will be eligible for a 2003 dividend because you were in Alaska for more than 72 consecutive hours during the two prior years (2001 and 2002).

The commissioner of the Department of Revenue may waive this rule for military members (and spouses, minor dependents and disabled dependents of the military members) during times of national emergency. If applicable, contact the Permanent Fund Dividend Division to see if there is a waiver in effect for the dividend period you are applying for.

5-Year Rule

If you have been on an allowable absence for more than 5 years, the department will take a closer look at your application and look for indicators of your intent to return to Alaska. To maintain your eligibility under the dividend division will look at factors that indicate your intent to return to Alaska. You will need to spend at least 30 cumulative days in Alaska during the past 5 years, unless you can demonstrate that unavoidable circumstances prevented you from returning to Alaska. The department will look at such things as the length of the absence compared to the time spent in Alaska, home ownership in Alaska, and Alaska voter registration and vehicle license.

10-Year Rule

Beginning with the 2008 dividend, you will not be eligible for a dividend if you have been on allowable absences for the 10 preceding years and continue to be on an allowable absence greater than 180 days in the qualifying year. This rule does not apply if you are a member of the U.S. Congress or serving on the staff of an Alaska member of the U.S. Congress.

Absences in addition to Allowable Absences

If you were absent for more than 180 total days in a calendar year including one or more allowable absences during the year, you have a limited number of days that you may be absent for other reasons in order to still qualify for the dividend. There are different rules for the number of additional days depending on your circumstances as outlined below.

Military Members and Family

If you are on active duty, you and your family (spouse, minor dependent and disabled dependent) have 180 additional days if you are only claiming your active duty service time as an allowable absence. If you claim other allowable absences ([LINK TO AS 43.23.008 HERE](#)), your additional days will be limited as follows:

- If you claim an absence as a full-time student in addition to your active duty service time, you are limited to 120 additional days.
- If you claim any other allowable absence in addition to your active duty service time, you are limited to 45 additional days.

Example: You are a military member and get discharged from active service on July 1. While you were serving in the military, your wife and minor child accompanied you. You and your family decided to spend time on the East Coast after your discharge and return to Alaska September 1 (62 days). In October, you take a vacation in California from October 2 to November 15 (44 days). You and your family will still be eligible for a dividend because you were not absent from Alaska for more than 180 days in addition to your allowable military absence.

Example: You are a student at the University of Washington and graduate May 14. You stay in Seattle after school until June 1 and then take an extended vacation in Mexico until September

30 (139 days). You return to Alaska October 1. On October 15, you enlist for active duty military and are stationed outside of Alaska. Even though you are claiming a military absence and had less than 180 additional absence days, you will not be eligible for a dividend because you also claimed an allowable absence as a student. To be eligible for a dividend you would have need to be absent less than 121 additional days.

Example. You served as active duty military from January 1 to July 1 when you were discharged. You decide to take a vacation and spend time with family in Oregon after your discharge and come back to Alaska on September 1 (92 days). Later in the year, you leave Alaska to care for your terminally ill father in Oregon from November 20 through December 10 (21 days). Your total additional absence days were 102 days. Even though you are claiming a military absence and had less than 180 additional absence days, you will not be eligible for a dividend because you also claimed an allowable absence for the time you were caring for your father. To be eligible for a dividend, you would have needed to be absent less than 46 additional days.

Students

If you are a full-time student in good standing, you and your family (spouse, minor dependent and disabled dependent) have 120 additional days if you are only claiming your student absence as an allowable absence. If you claim other allowable absences, your additional days will be limited to 45 days.

Example: You are a student in Seattle meeting the requirements of the education allowable absence and attend school from January 5 through May 15. You then take a summer job in Seattle for the summer and are out of school from May 16 through August 20 (96 days). For the remainder of the year, you are in school in Seattle from August 21 through December 15. You then return to Alaska to be with family for Christmas break from December 16 through January 4 the next year. You will still be eligible for a dividend since you were on an education allowable absence during the year and the additional days you were absent was less than 121 days.

Example. You are a student at the University of Washington and graduate May 14. From May 15 to July 31 (78 days), you took a vacationed and visited family in California. Later in the year, you leave Alaska to care for your terminally ill father in Oregon from November 20 through December 10 (20 days). Your total additional absence days were 98 days. Even though you are claiming a student absence and had less than 120 additional absence days, you will not be eligible for a dividend because you also claimed another allowable absence for the time you were caring for your father. To be eligible for a dividend, you would have needed to be absent less than 46 additional days.

Others

If you are not a military member or student, and you are on an allowable absence for more than 180 days, you are limited to 45 additional days.

Example: You are out of state from January 5 to April 8 receiving continuous medical treatment under a licensed physician's care (an allowable absence). Later that year you are absent from

August 10 through September 29 for vacation (50 days). You are absent from October 20 through December 31 again receiving continuous medical treatment under a licensed physician's care. Even though you were on an allowable absence during the year, you will not be eligible for a dividend because you had more than 45 additional days of absences during the time you were on vacation in August and September. To be eligible for a dividend, you would have needed to be absent less than 46 additional days.

THE
FOLLOWING
DOCUMENT(S)
ARE
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DEPARTMENT OF THE NAVY
USS BENFOLD (DDG 65)
FPO AP 98861-1243

IN REPLY REFER TO:

1000
Ser DDG 65/039
13 Jun 03

Alaska Department of Revenue
Permanent Fund Dividend Division
PO Box 110460
Juneau, AK 99811-0460
ATTN: Paul Dick

Subj: STATEMENT OF SERVICE ICO YN3 JOHN GRAMLICK, USN, 353-70-7316,
USS HIGGINS (DDG 76)

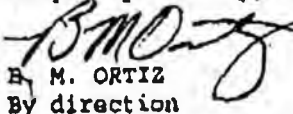
Dear Mr. Dick,

Petty Officer John Gramlick has been assigned to a seagoing and deployable United States Navy warship since 11 October 2000. He is currently assigned to USS BENFOLD (DDG 65), stationed at San Diego, California. YN3 Gramlick has just returned from a deployment in the Arabian Gulf in support of Operation Iraqi Freedom.

Presently, YN3 Gramlick's presence is required aboard BENFOLD. He is unable to leave the geographic area of BENFOLD's homeport of San Diego due to operational commitments. As a result of world events, his presence will be required in San Diego for an undetermined amount of time. I respectfully request that YN3 Gramlick be found eligible to receive the Alaska Permanent Fund Dividend despite his inability to travel to the State of Alaska. His inability to meet this requirement is due solely to his military service. I would be disappointed if his military service was a bar to his receiving this entitlement as a resident of the State of Alaska.

Thank you in advance for your assistance and support. Please contact my Command Legal Officer, LT Barbara Ortiz, directly if I may be of any assistance to you. She can be reached via phone at 619-566-3866 or via email at ortizb@benfold.navy.mil.

Very respectfully,


B. M. ORTIZ
By direction

Christopher Rauchenstein is a Lance Corporal in the United States Marine Corps. Last year, like 4,193 other Alaskans he failed to file for his PFD in time and was denied his informal appeal for reconsideration. What makes Chris's problem special is the reason he failed to apply for the PFD.

Chris is currently stationed in Camp Pendleton, California. Born in Talkeetna in 1978, Chris decided to join the marines after graduating High School and was soon sent out of state for training and deployment. In 2003 Chris got leave from his superiors to come home for Christmas and visit his family. In the first week of January the Marines called Chris back to prepare for immediate deployment. This meant that he had to leave Alaska before his PFD packet had reached him.

His parents tried to mail it on to him in California but unfortunately mail sent to a marine from outside the base has to pass through many hands before it reaches its destination and Chris never received the application before he shipped out. He probably could have called the Permanent Fund office and requested another one but at the time he had other things on his mind.

Chris is a member of the First Marine Division. For those of you who followed the war in Iraq that name probably sounds familiar. The First Marine Division was one of the first American divisions to be deployed in Iraq and continued to lead the advance for practically the entire war. On the day of the deadline for turning in the PFD application Chris was on the outskirts of Baghdad preparing to liberate the city. Needless to say, filling out paperwork was the last thing on his mind.

Even if he had been inclined to take time out from his division's relentless advance and frequent skirmishes, Chris had no way to get the PFD

application out of Iraq. During the war mail service was unreliable at best and phone or Internet access was completely unavailable.

In the 25 years that Chris has lived in Alaska, this is the first dividend he has ever failed to file for. I think that says something about the seriousness of his situation in the month before he shipped out.

Currently Chris is making his way through the appeals process. His informal appeal request was denied this January, almost six months after it had been filed and now it's up for a formal appeal.

Unfortunately time ran out for Chris. On February 25th he was redeployed back to Iraq to finish what his Division started in 2003. Last year's dividend would have helped Chris take care of his obligations here at home while he is overseas protecting Iraq's fledgling. A soldier's duty to their country is difficult enough without penalizing them for circumstances outside their control.

HB 536 would give Chris and other Alaskans serving in the armed forces the extra time they need and deserve to fill out their PFD applications when they are subject to extenuating circumstances such as the recent war in Iraq. For those Alaskans who give the most of themselves for their country, it's the least we can do.



Search



Topic Index Choose a Topic

Hostile Fire/Imminent Danger Pay ■ ■ ■

Active duty and Reserve/Guard members can qualify for \$225 for any month in which they are exposed to hostile fire or imminent danger. (Last Updated June 2003)

- ACTIVE DUTY
- RESERVE
- NATIONAL GUARD
- VETERANS
- RETIREES

A member of a uniformed service may be paid special pay at the rate of **\$225** for any month in which he was entitled to basic pay and in which he:

- Was subject to hostile fire or explosion of hostile mines;
- Was on duty in an area in which he was in imminent danger of being exposed to hostile fire or explosion of hostile mines and in which, during the period he was on duty in that area, other members of the uniformed services were subject to hostile fire or explosion of hostile mines;
- Was killed, injured, or wounded by hostile fire, explosion of a hostile mine, or any other hostile action; or
- Was on duty in a foreign area in which he was subject to the threat of physical harm or imminent danger on the basis of civil insurrection, civil war, terrorism, or wartime conditions.

Reserve members are also eligible for Hostile Fire and Imminent Danger Pay.

RELATED TOPICS

- [Aviation Career Incentive Pay \(Officers\)](#)
- [Career Enlisted Flyer Incentive Pay](#)
- [Career Sea Pay \(Enlisted\)](#)
- [Combat Zone Tax Exclusion](#)
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Special Pay Index

BENEFITS UPDATES

- [Resource: Hazardous Duty Incen...](#)
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AREA SITE



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SENATE COMMITTEE REPORT

DATE: 5/2/04

FURTHER: Finance

DATE TURNED
IN TO OFFICE: 5/7/04

State Affairs Committee considered CS FOR HOUSE BILL NO. 536(MLV)

HB 536 PFUND APPLICATION DEADLINES: MILITARY

"An Act relating to applications for permanent fund dividends by certain individuals serving in the armed forces, and to payment of certain 2003 and 2004 dividend's; and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

- Same Title
- New Title

House Bill:

- Same Title
- Technical Title Change
- New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
DOR	5/6/04			✓	2

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:

Cowdery
Stedman

	DO PASS	DO NOT PASS	NO REC	AMEND
<i>John A. Cowdery</i>			✓	
<i>Bob Stedman</i>			✓	
CHAIR: <i>G. Stevens</i>			✓	

G. Stevens

